Parliamentary Debates
(HANSARD)

FORTY-FIRST PARLIAMENT
FIRST SESSION
2021

LEGISLATIVE COUNCIL

Thursday, 24 June 2021

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THE PRESIDENT (Hon Alanna Clohesy) took the chair at 10.00 am, read prayers and acknowledged country.

VISITORS — PERTH MODERN SCHOOL

Statement by President

THE PRESIDENT (Hon Alanna Clohesy) [10.02 am]: Members, before we commence our business today, I would like to acknowledge students from Perth Modern School in the gallery today. The Usher of the Black Rod in this chamber is a former student of Perth Modern School. I am aware that your motto is "knowledge is power". I hope you gain some knowledge today during your visit with us.

BUS SERVICES — BULLSBROOK

Petition

HON DONNA FARAGHER (East Metropolitan) [10.03 am]: I present a petition containing 478 signatures couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned support an increase of bus services to facilitate our growing community's needs (i.e. shopping, to and from work, medical appointments, general day to day activities and the like—enabling our community to access services that are not in our location in a more productive manner).
>
> We therefore kindly ask the Legislative Council to support the increase of bus services to and from the community of Bullsbrook and surrounds.
>
> And your petitioners as in duty bound, will ever pray.

[See paper 347.]

SCHOOLS — P&C DAY WA

Statement by Minister for Education and Training

HON SUE ELLERY (South Metropolitan — Minister for Education and Training) [10.04 am]: I rise today to acknowledge and celebrate the crucial role that parents and citizens associations play in supporting our schools and advancing the education of Western Australian children. This house will adjourn over the winter recess, but on Friday, 23 July the Western Australian Council of State School Organisations will celebrate P&C Day WA. P&C Day WA started in 2019 and is an opportunity to champion the work of the many volunteers who contribute greatly to our schools under the P&C umbrella. It is also a time to celebrate the many achievements of our local P&Cs. Our P&Cs play a vital role in our school communities; they fundraise, host activities and work hard to ensure our schools and the school communities are connected. Research shows that successful schools have highly engaged parents. I am very pleased we will be able to acknowledge that effort on P&C Day.

This year is also an important milestone year for WACSSO, which celebrates 100 years of service to education and our school communities. WACSSO was known as The Federation in 1921, and changed its name in 1973 following affiliation with its national body, the Australian Council of State School Organisations. WACSSO is predominantly made up of volunteers who work hard to support the work of more than 650 P&Cs across the state and advocate on their behalf. To help them celebrate this milestone, I look forward to inviting you all to a function I will host here at Parliament House later this year.

Our schools are the hub of many of our communities, and all have played an important role through the many challenges the COVID-19 pandemic has brought. I take this opportunity to thank the many volunteers who make up our P&Cs and to all at WACSSO for their efforts and commitment.

I hope members will all join me in celebrating P&C Day WA and 100 years of WACSSO.

PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES — SIXTY-FIRST REPORT

Notice of Motion

Hon Nick Goiran gave notice that at the next sitting of the house he would move —

> That this house —
>
> (a) expresses its appreciation to the members and staff responsible for the drafting, tabling and publishing of the sixty-first report of the Standing Committee on Procedure and Privileges;

(b) is concerned that good faith negotiations between the committee and the Corruption and Crime Commission ceased inexplicably;

(c) notes that the committee's audit reveals that 1 120 privileged documents were provided without parliamentary approval by the government to the CCC;

(d) reasserts that draft parliamentary speeches, motions and questions are subject to parliamentary privilege in the same way as confidential parliamentary committee material such as committee deliberations and draft report recommendations; and

(e) encourages the CCC to avail itself forthwith of the opportunity to access the more than 450 000 non-privileged records.

BUSINESS OF THE HOUSE

Standing Orders Suspension — Motion

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.08 am] — without notice: I move —

That so much of standing orders be suspended so as to enable the Council to sit beyond 5.20 pm at this day's sitting and take members' statements at a time ordered by the house.

By way of explanation, President, this reflects discussions that have been held behind the chair.

HON PETER COLLIER (North Metropolitan) [10.09 am]: This is not a point of order, but is there going to be a dinner break?

Hon Sue Ellery: Based on advice, if we need to take one, we will ask the President to leave the chair until the ringing of the bells.

Question put and passed with an absolute majority.

ELECTORAL REFORM

Motion

HON JAMES HAYWARD (South West) [10.10 am] — without notice: I move —

That the Legislative Council —

(1) requests that the report from the Ministerial Expert Committee on Electoral Reform is made public upon its receipt by the state government;

(2) notes the points raised during non-government business on 13 May 2021 and that, at the time, no regional member who is a member of the Labor Party contributed to that debate; and

(3) calls on all regional members of the Council during this debate to express their views on the ongoing electoral reform process and update the house on their level of engagement with their constituents on this issue.

This is a hot topic for regional Western Australia. The current make-up of this house comprises 18 members from the metropolitan area and 18 members from regional WA. I want to start by quoting an exchange between a journalist and the Premier that happened just a few days before the election. The journalist asked —

If Labor is returned next Saturday will you pursue electoral reform in the Upper House?

The Premier said —

It's not on our agenda, I've answered this question many times, it's not on our agenda, we care deeply about country WA and the issues of jobs, health, education, important infrastructure other sorts of things that we will implement.

The journalist said —

There's a difference between something not being on the agenda and committing not to doing something as Labor did with the gold royalty increase. So will you commit, are you committing?

The Premier replied —

Well I'll be clear, I'll be clear again, it's not on our agenda enhanced regional representation will continue and this is just another smoke screen by the Liberals and Nationals. What the Liberals have shown today with their comments is if they don't care about regional WA. If they don't think the Premier of the state shouldn't go to regional WA they don't care about the regions.

The journalist asked —

Do you think that Electoral Reform in the Upper House is something that parties ought to take to an election before ever trying to implement it?

The Premier replied —

No like I said before it's not on our agenda.

The journalist said —

So can I take from that the Labor Party isn't going to be doing it?

The Premier replied —

It's not on our agenda we support and enhance regional representation.

That is what the Premier told the people of Western Australia moments before the election. He said that constantly in the run-up to the state election. After the state election, WAtoday ran a story under the headline "'I'm not Nostradamus': McGowan defends change of direction on electoral reform". We know that the very first piece of business that this government put before the house after coming into power, the day after the first sitting, was to form a committee to look into electoral reform. The Premier said, "I'm not Nostradamus; I didn't know; I couldn't look into my crystal ball and imagine that this terrible outcome was going to happen where an honourable member was voted in, through a preference arrangement, with very few primary votes. There you go; I'm not Nostradamus; I didn't know." Interestingly, it appears that the Liberals and Nationals are Nostradamus because they knew! I knew—in fact, I put some television ads on in regional WA saying that the Labor Party's intention was to reduce the number of regional members in this house down to perhaps just nine.

Hon Dan Caddy interjected.

Hon JAMES HAYWARD: Thank you for your interjection; I appreciate it. I have still got my L-plates on, team!

We knew that it was on the agenda. How is it that the Premier could not see that? After the Premier constantly told the regional electorate that this was off the agenda, how come it is the top priority of this new McGowan government?

Yesterday, I received an email from a constituent who is very concerned about these changes. I have not yet met this constituent. He wrote in very strong terms. I know that other regional members in my space also have a copy of this email. I will not read it out because he makes some accusations about the Premier's conduct that I do not wish to repeat right now in this place. But the reality is that people in regional WA feel deceived by this government. People feel that they were perhaps lied to in terms of how this debate has rolled out.

The Premier and his government have hand-picked a number of individuals. Those people are all, no doubt, excellent in their field. I certainly do not in any way, by my remarks, disparage the quality of the individuals who have been chosen. The people who have been chosen have a track record, or are already on the public record, of having a particular view about the outcome. In fact, I understand that some of them have already published papers with some suggested outcomes. These people have already made up their minds. Why is this such a big rush? Clearly, because it was always on the agenda. We know that after 2017, Premier McGowan said that he was disappointed about the fact that he had control of the lower house but he did not have control of the upper house. He thought that was unfair. It has always been on the agenda.

After sharing my Facebook posts—as we do when we are campaigning, inviting constituents to engage—a number of people asked me, "What are you on about, James? This is nonsense. The Premier has already told us it's not on the agenda; it's not going to happen." I engage with those people online and have had discussions with them about the fact that it has always been the Labor Party's agenda to reduce regional representation, to move to an idea called one vote, one value, which, in the Labor Party's view it would seem, is only about counting numbers of people, not equating fairness or equity.

One of the big challenges for regional people—I note the regional members we have in Parliament today—is that things are different out in the bush. I think we have talked in here a number of times about some of the challenges and inequities that people in regional WA face. People who do not live in those spaces or who do not have to navigate their lives in regional WA will find it difficult to really get an understanding of the difficulties and challenges faced by those people living in the bush in Western Australia. Clearly, we have a massive state. It is nearly a third of the country. It is many thousands of kilometres long. We could squeeze Queensland, Victoria and New South Wales in, no problem at all. It is a very, very large space. Yet Western Australia, unlike other states in Australia, has a massive population concentration in this little bubble called Perth, and the population outside of Perth is reasonably sparse, as we know. Particularly in many of those areas, that remote living creates other challenges.

We had our first meeting as members-elect here in this room, and Hon Shelley Payne talked about some difficulties she was having getting her electorate office set up in Esperance. The response from the Department of the Premier and Cabinet was, "Look, we just don't have anyone in Esperance. It's a long way away. It will probably take us a couple of weeks at least to be able to organise somebody to get out there." That is just an example of some of the difficulties faced by people in regional spaces, because the services that are freely available in Perth are not available in regional areas. With health, for example, if there is a major incident in regional Western Australia, in almost every instance, those people are emergency evacuated back to Perth. There are big barriers for those people.

In a recent debate on 13 May, Hon Matthew Swinbourn claimed that his electorate of the East Metropolitan Region included localities that faced the same issues as other regional areas, and that people in the Perth metro area do not lack an appreciation of or an understanding about what happens outside the metro area. With the greatest of respect to the honourable member, the reality is: is this not the exact problem? I am looking around at other regional members who do understand what the differences are. I have absolutely no doubt that in the honourable member's seat, there are significant challenges in housing and education and significant issues in getting people the resources they need. Again, with respect, it is the honourable member's place to come here and advocate on behalf of those people. But all those issues are also issues in regional WA. I would invite Hon Matthew Swinbourn to come to the Kimberley and have a look at the state of some of the Aboriginal communities in the north west of our state to see their living conditions. Those communities have issues with not only housing, health, education and other issues, but also the fact that there are significantly less government resources available. They have to wait to be able to get the important things that they need. The reality is that the government is not as nimble on the ground in those places. It is not able to provide the things that those people need. Although I would certainly expect Hon Matthew Swinbourn and other metropolitan members to stand up for their regions in the metropolitan area, the reality is that all of those issues are amplified in regional WA. The situation for people out there is worse, and that is the current status quo. Despite the fact that there are 18 members representing the regions in this house, it is still a battle for those regions. The reality is that any change to the make-up of this house with any reduction in regional representation will only exacerbate those problems, because, as with the example of Hon Matthew Swinbourn, it is a metropolitan member's responsibility to stand up for their electorate, and that is what they ought to do. As a regional MP, that is what I ought to do—stand up for the people whose voices could potentially be silenced by these proposed changes that are in the process of coming along.

One thing that I suggested in my motion is that we have not heard from regional members of the Labor Party in this house, who know. I have had some discussions with some members personally. One of the great things I have to say since being in this house is that I have certainly got to meet a lot of people on the other side of the house, and I am developing and have developed a tremendous respect for the work that many of them do and the commitment they show. But—boy oh boy—those guys are wedged on this one; there is no question about it. It must be uncomfortable to be in their electorates and talking to the people out there, because they know that what is being proposed is ultimately not in the best interests of their constituents. I accept that there are some people within the party who might have the view, "I'm a purist; I believe in the numbers and I always have." But the cold, hard reality is that when we distil it down to this test and ask ourselves whether this is in the best interests of our communities and constituencies, deep down they know the answer. The answer is no, it is not in their interests. How could it be?

I understand, honourable members, that probably members of the Labor Party do not get a lot of choice on how they vote on these things, but surely it comes down their own sense of morality and right and wrong, and their own sense of standing up for their constituencies about this particular issue.

There has been a bit of media around and honourable members have been asked about this. I know that Hon Kyle McGinn was asked by the *Kalgoorlie Miner* on 5 May about his views and, to his credit, he said, "I want to hear from my constituency. I want to listen to what those people are saying." I would certainly love to hear what they are saying. What are they telling Hon Kyle McGinn? What are the people in Kalgoorlie saying? Do the people in Kalgoorlie really think that they would be better off with fewer regional members of Parliament than they have today? There is not a chance that could be correct.

I was on ABC radio with Hon Jackie Jarvis before the election and this issue came up. To her credit, Hon Jackie Jarvis told ABC radio that she would not support a reduction in regional representation. She also rolled out the line that it was not on the agenda. I do not know whether she will get that choice; I certainly hope she does. The people of Margaret River need her to make the right decision there. The people of the south west need her to make the right decision, as do the people of Esperance, Kalgoorlie, Karratha, Halls Creek and Wyndham. Those people need their regional members of Parliament to stand up for them and to ensure that there is not a reduction in their voice in the Parliament of Western Australia.

I understand that honourable members of the Labor Party, on the other side of the house, are not allowed to speak openly and freely in this format or to express their vote and cross the floor to join opposition members in their fight for regional Western Australia, but I understand that they are able to speak in caucus. Boy oh boy, I hope the regional members of Parliament in this house who are members of the Labor Party scream the house down. One of the great challenges that we as members of the Nationals WA have always contested is that we sit in a caucus room that has only regional members. We have always told the electorate that the challenge for members of the Labor Party in this place would be to go into a party room full of metropolitan members. They would need to be able to make their case and argue, but, inevitably, they would be outnumbered.

We know that in the lower house as it stands, with 43 members from the metropolitan area and 16 members from the regions, the votes for forming government are largely found in the metropolitan area. So those regional members of Parliament who are on the other side of the house need to scream the house down for the people of regional Western Australia. We cannot allow regional people to end up worse off under this proposed scheme. I challenge each and every one of the regional members of this house to speak up and to make their position clear to their electorate and this Parliament.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [10.31 am]: I stand today representing the Minister for Electoral Affairs in my role as parliamentary secretary. I thank Hon James Hayward for bringing this important topic back to the floor of the Legislative Council. It is really important that we get an opportunity to continue to speak about electoral equality. I always welcome the opportunity to talk about how unrepresentative this Legislative Council is and has been since 1890 when a representative government was finally granted to the people of Western Australia. The Legislative Council has existed with the malapportionment, the property franchise and the disenfranchisement of women and all those other sorts of things; therefore, the opportunity to talk about how we can reform this house to become more democratic is always welcome, so I thank the member for bringing this motion to the house.

I take this opportunity to recap what has happened to date, because the member kept talking about a proposal. There is currently no proposal. Nothing has yet been proposed. Therefore, I invite the member in his reply, if he gets one, to let the house know that he is aware that there is no proposal at the moment. However, there is a process underway, and that process, at the moment, is that the Ministerial Expert Committee on Electoral Reform was appointed on 28 April 2021. The committee is chaired by the former Governor of Western Australia, Hon Malcolm McCusker, QC. As far as I am aware, Mr McCusker has not expressed any public comments about electoral reform—he may have done, but I am not aware of them. To suggest that he has a preconceived view on the outcome is suggesting that that eminently important and qualified person has come forward and is not able to bring an independent and free mind to this issue. This is a very serious allegation to make against Mr McCusker.

Professor John Phillimore, who is a member of staff at Curtin University, is a very well qualified academic. Professor Sarah Murray, who is also —

Hon Neil Thomson interjected.

Hon MATTHEW SWINBOURN: President, I am not taking interjections.

The PRESIDENT: Noted, honourable member. I request that other members ensure that interjections are limited.

Hon MATTHEW SWINBOURN: Professor Sarah Murray from the University of Western Australia is a constitutional law expert and, again, is another person who is eminently qualified. Associate Professor Martin Drum is someone whom many of us are very familiar with for his understanding of, and work within, the Western Australian electoral system. These are all highly qualified and esteemed persons who should not be impugned for the work that they are currently undertaking.

The committee released a discussion paper on 14 May 2021, and it advertised and called for public submissions on 1, 14, 28 and 29 May. We are lucky that we have received 184 submissions from interested members of the public and organisations. The submissions that have currently been processed are published on the committee's webpage, other than those submissions that were asked to be kept private. The committee is now preparing its report for the government.

The member did not speak to the first point of his motion, which requests that the report from the Ministerial Expert Committee on Electoral Reform be made public upon its receipt by the state government. It will not be made public upon its receipt by the government because that is not the normal course for how these things are done. But an undertaking has been given by —

Hon Tjorn Sibma: Gold-standard transparency!

The PRESIDENT: Order!

Hon MATTHEW SWINBOURN: Thank you, President. I did not interject on the previous members and it would be appreciated if they could extend me the same courtesy.

Legislative Council question without notice 361 was asked on Tuesday, 22 June and the answer said that the report would be tabled in Parliament after it had been considered by the government, which is a very ordinary course of affairs. There is nothing unusual or exceptional about that. It is the normal and standard approach. For example, the *Independent review of the vocational education and training sector* in WA by Emeritus Professor Margaret Seares was completed and presented to former Minister for Education Hon Peter Collier on 30 April 2014, but was not tabled in both houses until 19 November 2014, when it was tabled at the same time as the government response. There is nothing unusual about that and nothing unusual about tabling the report after the government has had an opportunity to consider it. Therefore, that point is of no particular note, in my view.

The member made a couple of other points. He spoke about the comments that the Premier made about this not being on the agenda. It is worth noting that what the Premier said was that he did not make an election commitment. It was not on the agenda, and I think that realistically that is the most appropriate answer, because given that since 1890 there is never been a Labor majority in the Legislative Council, how could it possibly be on our agenda? How could it possibly be on our agenda when all the political orthodoxy says that it is not something that the Labor Party will ever be able to achieve, yet we achieved it? We are very grateful for achieving a majority in this house for the first time. We have the ability to deliver a program that will be progressive and transformative for the people of Western Australia. It is a program that has often been frustrated by members opposite for no good reason, most of the time, other than pure belligerence.

I think that the people of Western Australia understood that. They gave the Labor Party a majority in this house, and it was their choice to do that. It was not just a majority of people who voted; sixty per cent of Western Australians voted for the Labor Party in the Legislative Council. How many people voted for the Nationals WA in the Legislative Council? I think about 2.6 or 2.8 per cent of Western Australians supported National Party members. They really are a voice for Western Australians! The Premier has been very clear that electoral reform was not on our agenda, but, now, clearly, it is on our agenda, so there is no great mystery or surprise about that. The process is underway and we will see how that process plays out.

The member said that he could have fixed the issue that, essentially, resulted in the election of a Daylight Saving Party member with 98 votes. However, the member's party was in power for eight and a half years. The Senate voting system was fixed to remove group ticket voting in 2016. As I recall, the member's party was still in power then, but it did nothing to fix that same problem! The opposition members' parties did nothing to fix that apparent problem. Those members supposedly all knew what the problem was and how likely it was that we would get an outcome in which someone is elected on 98 first-preference votes, but they did nothing about it. I was in Parliament in the last term and I do not recall the member's party putting forward any bills dealing with that issue. The member did nothing about a problem that he said was apparent and needed fixing and was simple to do. He is high and mighty about his position and says that we all knew about it, but the former government did not do anything about it. In any event, it is now being considered by this committee. Again, the member did not say anything about that. He talked only about what he thinks might happen with the Nationals WA vote. One thing worth raising is that the member comes in here and talks about having a voice for regional people and about how bad it is out there. Hon James Hayward is a member for the South West Region. I suggest that he get a better understanding of the problem with malapportionment in Western Australia, because his constituents in the south west are beginning to be disenfranchised, and they have been more and more disenfranchised because of this system. One voter in the South West Region is worth 2.35 in the Agricultural Region and 3.48 in the Mining and Pastoral Region. When his constituents write to him, I hope that he tells them how their vote is worth less than others in Western Australia. I hope he also tells them that a voter in Bindoon, 55 minutes from Perth, is worth 2.35 votes compared with a voter in Katanning or Denmark, which is five hours away. Tell them about that. Tell them that is the system the member is defending. That system is getting progressively worse for people in the South West Region. The National Party casts the issue into the bucket of metro versus the regions because it is the easiest way to do it without thinking about how other things cut across that dichotomy that National Party members create and do not tell their own constituents is causing their vote to be further diminished, but, apparently, that is okay, because it does not suit the National Party's ideology or interests.

One of the most galling things I have learnt over time coming into this chamber is the way in which the National Party conflates its interests with the interests of regional people. The National Party always thinks they are the same thing, but regional people do not think that. Fewer than six per cent of people in Hon James Hayward's electorate voted for the National Party. What about the other 94 per cent? They do not see their interests connected to the National Party's interests. For the National Party, it is all about the National Party's interests. Even in the National Party's heartland of the Agricultural Region, the National Party received less than 27 per cent of the vote. The other 73 per cent of voters in the Agricultural Region do not even support the party that says it is the party for regional Western Australians. Hon James Hayward needs to have a good, long hard look at his party and what he stands for and why he is not getting the level of support out there that he claims he supposedly gets when he comes in here.

I will finish my comments about the motion. This is the member's first motion in non-government business and I appreciate that the member is new, but can I suggest that he speak to other members before putting in a motion comments about members on this side of the chamber not contributing during non-government business. Normally, non-government business is the time for non-government parties; it is not the time for government members. There will always be a government response to non-government business. That is very normal and we will give a government response, but government members do not often seek the call during non-government business because that is the time for non-government members to speak. If our government members stood up—all 21 of them—and sought the call during non-government business, I can imagine that a few members who have been around for quite some time, or at least a bit longer than Hon James Hayward, would complain about that and say that we wanted to dominate the debate and that we were not letting opposition members' voices be heard when debating non-government motions. It is the same with private members' business. That is private time for the government backbenchers. Typically, other members can seek the call, but usually preference is given to a majority of government backbench members so that they have an opportunity to speak. The member is using this time to cast judgement on government members by saying they are not interested in this issue, when they are respecting what members opposite refer to as the hallowed conventions of the house, which is that we respect non-government business as the time for non-government members to speak. If the member wants us to dominate his non-government time, we can do that—that is possible—but we are not going to do that, even though we could. Reflect on that, member.

I also make the point that during the debate back in May, Hon Alannah MacTiernan made a contribution, and I admit that at the time she made it she was still a member of the North Metropolitan Region. She is now a member for the South West Region, and was elected as a member for the South West Region. She made a contribution in that regard

as an elected member of the South West Region. We have the rump period, as I like to call it, during which we have to come back as the previous Parliament before we can start the new Parliament, notwithstanding that the people of Western Australia had expressed their views about what the make-up of this place should be. We come in for that rump period, which is when Hon Alannah MacTiernan made her contribution. She also made a contribution as the Minister for Regional Development. She was not giving the government response; she was responding on her own behalf.

As I said, the member is new. He is obviously trying to stir the pot and make a name for himself. Congratulations and well done. Perhaps next time he will put forward a motion on which he is happy for his own members to get up and make a contribution rather than inviting every other member on this side of the house to make a contribution. With that, I cannot commend the motion of the house because I do not support it. I hope for the member's sake that he reflects a bit more on the quality of the motions that he puts forward.

HON TJORN SIBMA (North Metropolitan) [10.45 am]: I begin by observing that I think this motion has awoken a sleeping giant and filled him with a terrible resolve. I say that as a compliment to the honourable parliamentary secretary. If that was meant to be a speech to mark him out for future cabinet material, it has just been delivered. I have noted in recent times that the honourable member has been called upon by his government to defend the indefensible, and he has done another sterling job. Unfortunately, I cannot concur with any of the significant points that he made in rebuttal.

Obviously, I speak in support of the motion put before us today. I wish to address in particular the first limb of this motion. I want attempt to make my contribution in an abbreviated time because I note that a number of regional members on this side of the house wish to speak to it, and I want to provide them with an appropriate opportunity. The parliamentary secretary was correct that 184 submissions on this very matter were received by the expert committee. In fact, I have a file of about 100 of them in front of me. I will quote from a number of them to give members an indication of the sentiment in regional Western Australia about the way this issue has been presented, because I think the process that has been initiated by the government is deeply flawed and problematic. Members will discover from some of the sentiments—there is a diversity of views—that some of them are quite strong. I think that of itself speaks to the fact that the committee should make available its recommendation to government at the first available opportunity.

I will quote from a contribution from the Shire of Wagin, which goes to the nub of the issue. It states —

> Whilst Council concurs that the principle of one vote—one value is a noble one, it is of the view that due to the relative sparsity of population in regional Western Australia, the level of disadvantage experienced by those living in the regions and the significant contribution that the regions make to the Gross Domestic Product (particularly in mining and agriculture) there is a strong argument for resisting changes to the current level of Parliamentary representation in the Legislative Council.

It goes on to say —

> After the election, reassurance was given by the Government that it would govern fairly and honestly for all people. Given its significant majority and control of both houses of Parliament there is unprecedented opportunity for the Government, if it wished, to capitalise on its position and to reduce regional Parliamentary representation in the Legislative Council. If this opportunity was taken it would result in grave disappointment throughout regional areas that the Government was primarily focussed on power than on recognising the challenges and disadvantages that those living in the bush contend with on a continuing basis.

Hon Dan Caddy: Who signed off on that letter, just out of interest?

Hon TJORN SIBMA: It is publicly available. It is from the Shire of Wagin.

Hon Dan Caddy: The president of the shire was a Liberal candidate. I am just putting it out there.

Hon TJORN SIBMA: He is a voice for his community who was duly elected, as indeed is the member.

There is also a contribution from the shire president of the Shire of Esperance. I will read a portion of that submission —

> For an isolated Shire, such as Esperance having regional representation on the Legislative Council is more than necessary to ensure our region is catered for and considered throughout State Government decisions.
>
> Without this regional representation, critical issues such as health and education outcomes, serious injuries and deaths on our roads, cost of transportation and access to reliable telecommunications will not be addressed or get the consideration they desperately need.

Furthermore, a submission from the Shire of Lake Grace reads —

> The Shire of Lake Grace is concerned that changes to the weighted representation of the upper house … in the Agricultural Region of Western Australia will impact on our ability to have an adequate voice for our citizens.

> We feel that as the Agricultural Region currently serviced by six (6) members, it is necessary to adequately represent the region which extends from Kalbarri in the mid-West to Israelite Bay in the South East, encompassing most of the traditional grain and livestock primary production area of the state.

The submission from the Shire of Bruce Rock is summarised in the last sentence of its letter, which states —

> The Shire of Bruce Rock strongly opposes the reduction of regional, rural and remote political representation, including any loss of members in the Legislative Council.

That is not all the submissions; it is a select number of submissions. Indeed, there are submissions that are deeply committed to the government's proposition. I think that demonstrates, however, that there is a depth of feeling on the issue because this process has been initiated by surprise, in contravention of election commitments given by the Premier and will not be undertaken by the Western Australian Electoral Commission but by a handpicked selection of eminent people. I impugn nobody on the committee, but they are not necessarily uninvested in a particular outcome and have made their views quite clearly known. I say that because the earliest indication of what model will be recommended to the government is likely to inform—if it has not done so already—the government's draft bill, which I anticipate will be read in reasonably swiftly after the winter recess. The parliamentary secretary said that there is no preconceived notion of what the outcome might be, there is no model and the government is effectively open-minded. One might reflect on whether that is indeed the case!

For members of the chamber present who were not residing in Western Australia 20 years ago or interested in this matter, there were models conceived by a previous Labor administration. I do not know whether I need to seek leave to table this document now or incorporate it later.

The PRESIDENT: You can do either, but for the benefit of members, you might want to table it now.

Hon TJORN SIBMA: I seek leave to table the document "Indicative models for Legislative Council region boundaries for Western Australia" volume 2 of 2, version 1.1, May 2001.

[Leave granted. See paper 348.]

Hon TJORN SIBMA: I draw members' attention, once they avail themselves of this document, to what is possibly an indication of outcomes. There are a number of models, but I draw members' attention to the two-region model and the three-region model. The two-region model is, effectively, a north region and a south region, with the boundary being the Swan River and the then Shire of Dundas local government authority boundary across to the state boundary. That is one option that might inform the government's model in the bill that will be presented to the house in August or September. There is a three-region model, with a metropolitan area, a north region and a south region, with the boundary again contiguous with the Swan River. Effectively, that is the option. Or, not included in this matter because it would be almost farcical, there is a whole-of-state electorate model. I actually think that is what is being seriously contemplated and will be proposed by this ministerial expert panel. That is problematic not only for regional representation, but also because it will potentially lower the threshold of the quota required to be elected to Parliament in the first place. If there is anything that might frustrate the plans of a future Labor government, it is a plurality of political representation in this chamber, because it would necessarily involve the quota dropping from around 14.28 per cent to something closer to five per cent.

Hon Dr Sally Talbot interjected.

Hon TJORN SIBMA: I thank the member very much for the clarification.

Who knows what kind of party would be voted into this chamber on that basis?

HON WILSON TUCKER (Mining and Pastoral) [10.55 am]: I rise to make a contribution to the debate on this motion. I thank Hon James Hayward for raising such an important topic. I am sure that there will be a lot more debate on electoral reform in the coming weeks and months as the Ministerial Expert Committee on Electoral Reform hands down its findings, and I look forward to engaging in that debate. I think it is fair to say, as a micro-party representative and regional member, that I have a fair amount of skin in the game.

There are two issues in this debate. The first is group voting tickets and preferences. I am a product of 98 votes and have been blasted publicly by the Premier and used as an excuse to rush through this electoral reform mandate, despite the Premier saying time and again before the election that the Labor Party was not going to touch this issue and that it was not on its agenda. My election to this place could be considered by some as undemocratic; however, I am open to having a constructive and consultative discussion about the group voting ticket system and how we might improve our electoral system. I do not think electoral reform should be deliberated on and debated behind closed doors; there should be a consultative process. Reform should not be rushed through without engagement with the community, especially regional members and constituents. I would like to see a referendum on the issue. A referendum would allow the public to decide for themselves and it would not close the door to input from micro-parties and regional constituents.

The other issue is regional representation and the one vote, one value system. I do not think anyone in this chamber would deny that changing this model will result in less representation for rural areas by concentrating the focus on

cities. Regional areas are already struggling with gaining equality in health and education services. I do not believe anyone in this chamber thinks that regional areas are in a more fortunate position than cities. It is not fair to mix up these two issues. The Premier has taken umbrage with micro-parties being elected, but this should not be mixed up with the one vote, one value system.

In summary, I think we should do this properly. Group voting tickets should be looked at, but we should not conflate the two issues. Let us do this properly. Let us look at reform and make sure that regional areas are not in a worse position than metropolitan areas. Thank you.

HON NEIL THOMSON (Mining and Pastoral) [10.58 am]: I rise to say a few words on this motion. I think it is an appalling betrayal of regional people for a party to publicly make one thing very clear to the people of Western Australia prior to an election and then the very first thing it does after the election is exactly opposite. I do not know whether members on the other side of the chamber are watching the news and seeing reports on people's opinion of politicians. There is a very good survey currently being run by the ABC that I think is called "Australia Talks". There are some very interesting points made about the truthfulness or otherwise of politicians. I want to point out some of these things. Ninety-eight per cent of Australian people believe that politicians should resign if they accept a bribe. I think that is fair enough. I am surprised it was not 100 per cent. Ninety-five per cent think that politicians should resign if they mislead Parliament. If it is uncorrected and done on purpose, maybe that is fair enough. Ninety-four per cent of the Australian public believe that a politician should resign if they lie. I am not going to stand in judgement of whether or not what the Premier said prior to the election was a lie, but I believe the people of Western Australia will make that judgement. They will make that judgement themselves when they read what the honourable member here quoted from the Premier in the interaction he had with Mr Mercer. I do not have to go back over that again, because to me that was very clear. The people of the regions will find that very clear. I think it is a disgrace that, at very best, the Premier misled on purpose the people of Western Australia prior to the election, when they could have made an informed decision. By all means those opposite could then have said yes, they have a mandate on this issue. It was raised repeatedly with the Premier, but he chose not to tell the full story. I go back to this "Australia Talks" survey. Ninety-four per cent of the Australian people said that a politician should resign if they lie. I call on the conscience of the Premier and for him to think about what he has done here. He has the opportunity to listen to the Australian people—94 per cent—and he can if he chooses to. If he feels he has lied to the Western Australian people about this issue, he can choose to resign. That is my invitation to Hon Mark McGowan in the other place at this point, because that is what 94 per cent of Australians thought in that survey of over 60 000 people in Australia about the truthfulness or otherwise of politicians.

I sat in the Broome Chamber of Commerce, where I had an interview, like we do before an election. I sat with Divina D'Anna, the member for Kimberley. She was asked a question on this issue and she made it very clear in front of all those people that she supported regional representation and that she was going to "fight like a Chihuahua". We have it on record and we can always present it here. She said she was going to fight like a Chihuahua.

Hon Dr Steve Thomas: Fight like a Chihuahua?

Hon NEIL THOMSON: Yes. I think she said "nipping at the heels" to fight for this issue. I call on Hon Kyle McGinn sitting on the opposite side, who is a very robust and decent person, to stand up for regional Western Australia. When the inevitable vote comes to gut regional Western Australia of representation, I call on Hon Kyle McGinn to join us on this side of the house to vote against that bill. I call on Hon Peter Foster to do the same—represent his region. I feel very sorry for Hon Rosie Sahanna, who is fourth on the ticket and who will not have a position in the new Parliament when it is finally gutted on behalf of this review. We know what this review is going to do, because we know the members on Ministerial Expert Committee on Electoral Reform. Mr John Phillimore is on the panel. He has already published his findings on what he thinks about regional representation and equality. "Equality" is a very important word in this debate—equality as opposed to equity. I thought the Labor Party was the great party of equity—clearly not. It takes members on this side to stand up for equity for people in the regions. Labor members should be ashamed of themselves, because Mr John Phillimore has already put out a paper. Hon Tjorn Sibma presented a previous review, but more recently on the Curtin University website, which members can google and check out, John Phillimore and Graham Hawkes put out a paper with five options. Option A is for the number of metropolitan seats to go to nine—nine representatives. What happens to the regional seats? There will be three each. Option B is for the number of metro seats to go to five members. What happens to the regional seats? Seats in the Mining and Pastoral Region and the Agricultural Region will go down to three, and then another seat will be added. Option C is for the number of metropolitan seats to go up to seven members, and for the South West Region to be enlarged and include some of the metropolitan area—that is going to be great! It will include some of the metropolitan area, so it will be really representative! The Agricultural Region will have five seats and the Mining and Pastoral Region will have three seats. In my region there will be three seats. I have heard people say that there are vested interests. The Liberal Party gains on all these options, because the analysis has been done. But I am not standing up here for some smart process to get some extra numbers in the Liberal Party. I am standing up for the people who voted for me, and I expect Hon Kyle McGinn to do the same. The next option involves the whole state. Can members imagine what that option would look like—the whole state? That is Perth-centric thinking, and that is the sad part of speaking here today. I am very sorry for Hon Matthew Swinbourn. I have not got to know him very well yet,

but I have heard he is an honourable person. He had to defend the indefensible. I could see by his body language how tough it was for him. This is Perth-centric thinking, which is going to result in bad outcomes for the state, I promise, because Western Australia's regions drive this economy. We need more people living in the regions. We need better representation.

During the election campaign I drove to Warburton. I drove to as many remote communities as I was allowed to visit. I was not even allowed to talk to my constituents until four days after the writs were called. I thought that was an absolute disgrace, by the way, and I would like to know more about why people who were representing their regions could not go and talk to their constituents. This is the sort of thing that ran on—absolutely! Members opposite can look at me; I can prove remote communities were shut down. We could not go and talk to the people who voted for us. Meanwhile, government ministers were flying around on the jet visiting these communities. That is one-sided. It does not stand up to any degree of democracy. I stand by that point. It was an absolute disgrace. We now see the same stitch-up here to knock out regional representation.

Several members interjected.

Hon NEIL THOMSON: I am furious, because the government has lied to the people of Western Australia. It makes me furious. I will stand —

Point of Order

Hon PIERRE YANG: I understand that the honourable member is very enthusiastic, but accusing the government of lying is absolutely unparliamentary.

The DEPUTY PRESIDENT: Members, I draw your attention to standing order 44, "Offensive Words", which states —

> A Member shall not use offensive words in debate, including offensive words against either House of Parliament, any Member of either House, the Sovereign, the Governor or a judicial officer.

I listened to the context in which the member used those words. I do not believe they were directed at an individual; they were used in a general sense, so there is no point of order.

Debate Resumed

Hon NEIL THOMSON: Thank you, Mr Deputy President. I note the time; I have 14 seconds left. I have made my point, so I will leave it at that.

HON SOPHIA MOERMOND (South West) [11.10 am]: I thank Hon James Hayward for bringing forward this motion today. If media reports around the potential for electoral change are to be believed, the motion is both timely and topical. We can see the philosophical merits of one vote, one value but we are also painfully aware of the practicalities that can be encountered in rural electorates. It is a simple truth that rural members have a very different task in front of them when they represent great swathes of the state. The tyranny of distance is very real for us. I, for one, will spend much of the recess travelling from one end of the South West Region to the other, stopping at all points in between just to touch base with only a fraction of my constituents.

It might not be appropriate to ask when a minister last visited, let us say, Donnybrook; it is perfectly valid to ask how many times ministers passed through Donnybrook for whatever reason during a year or a Parliament. I suspect that the number is quite low compared with visits to electorates such as Stirling, Armadale or even Rockingham.

I look forward to hearing what others have to say on this subject but, for my part, I am not by any means convinced that we could or should rush to treat the regions in the same way we treat the metropolitan area. Even though I have philosophical sympathies towards one vote, one value, members can rest assured that I have some very practical sympathies for Hon James Hayward and his motivation in moving this motion today. If any system is deemed unfair, it deserves to be scrutinised and improved to provide fair and equal representation for all people in WA.

HON DR BRIAN WALKER (East Metropolitan) [11.12 am]: I have listened with some concern for some months to what is going on. I have to say that I do not know what is going on because I have not been informed properly and therefore I cannot take an opinion either way. If that is true for me, it is probably also true for the people of Western Australia. If we are looking at democracy, we ought to be involving every voice in this debate.

I have lived and worked in the regions. I have travelled to the Kimberley and the Pilbara and worked in both those areas, and visited Halls Creek, Fitzroy Crossing, Derby, Broome, Newman and the wheatbelt, where I resided for quite some considerable time. I am quite familiar with the issues surrounding the regions and how they are represented or, indeed, not represented as the case may be. The feeling in the regions where I lived is that the people are remote from Perth; they are not listened to. I cite as an example a psychiatric facility erected in Broome for the quite major Indigenous mental health problems. A very beautiful centre was built perfectly. It was constructed elegantly, but it was designed based on statistics referring to Perth metropolitan psychiatric needs. It was completely inappropriate for the needs of the Kimberley. It was designed by well-meaning people in Perth but it was not fit for purpose. Were we in the Kimberley best served? How do we know how to serve the people in the Kimberley if we do not have representatives there who can cast an eye over what is happening? Blind people are leading those who have vision but who have no voice. This is not tenable.

We have a system that has brought surprising results. I think we can deal with that. I think we need to speak about it. We need to look at it with an open mind—clearly, unbiased, unprejudiced. A few days ago I said some words about the fundamental principles by which we need to abide. Every member in this place is passionate; if they are not, they should not be here. Every member here is committed to serving the people who elected them and also to being good members of the party that supported them and gave them help. We recognise this. No imputation of any kind should be made against any sitting member or party. We all have our views and our biases, but because we have our biases, we also need to have an open mind to the other point of view. This entrenched vision needs to be stopped. This is one reason the study by the ABC showed how much people despise politicians, myself included, for what goes on in the public eye. We need to stand up and make changes. When we talk about electoral reform, we also need to consider reforming how we behave, because, quite plainly, our behaviour does not match the needs of the Australian people. This will be a word I give to myself as well as to my honoured and respected colleagues. It can also be said that our need to consider reform is genuine. We have a genuine need. I would like very much to look at how things are going on, but I also ask that this not be held behind closed doors initially but is put out to everyone to have a voice.

It is very clear that a different approach to how we manage legislation is needed. We have a house that is unmentionable, for very good reason, and we have this house of review. It has a different purpose. Although individual members of the other place might represent smaller populations, in here we need to look at legislation with a clear eye and a different perspective to look at what is right. That is not a party-political perspective but the perspective of a clear, open-minded, unbiased eye that perceives what is needed and what is not needed. We need to deal with honesty and integrity. We need to look at our basic policies—our own approach to what is right. We need to set the standard for this nation, if you like. Casting blame and forcing things through by sheer force of might, as is possible, do not serve the people of Western Australia. I ask that we bear this in mind in our deliberations over the coming weeks and months.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [11.17 am]: I do not intend to make a long contribution, but I will just reinforce some of the obvious points that have been made by speakers today. I thank Hon James Hayward for his contribution and for his excellent motion on electoral reform. The government had no interest in electoral reform prior to the election.

Once again, we had an excellent contribution by Hon Dr Brian Walker. I enjoy his contributions. He referred to the other place, the place that shall not be named, as "unmentionable". I thought we might have a little competition at some point to come up with a description. "Unfathomable" might rate. I have a few others, but I probably cannot say too many because the standing orders obviously tell us that we need to be respectful of the place that shall not be named.

Hon Sue Ellery: Wouldn't you be reflecting on yourself as well?

Hon Dr STEVE THOMAS: I think that some of the things that come from that house to this place to be repaired could probably be described in various forms; "unfathomable" might be one of them. In relation to some of the legislation, we could potentially say "incomplete". "Indescribable" is a word that I have occasionally used for some legislation that finally arrived in the house of review in need of repair—we have given it the appropriate scrutiny and fixed it as best we can. I have added one more word to my lexicon for the place that shall not be named! I have already got a few on that list. Thank you, honourable member; I thought that was great.

This is, of course, the description of trust being broken. How many times does the Premier have to be asked prior to the election whether this is about to happen? I suspect that the Premier did not realise or did not think that he was going to have a win of the size that eventuated, but I am pretty certain that he thought he was going to win comfortably and win control of both houses of Parliament. I am pretty confident that is what he thought. He obviously does not confide in me. I did not get a phone call from the Premier saying, "Steve, I think we're doing pretty well. I think we're on top here and we'll have both houses." I am pretty confident, given the various polls that were out there, that the Premier had a fair idea that this result was going to look, perhaps not quite as lopsided as it did, but lopsided enough. I know a number of opposition members asked this question prior to the election. A number of opposition members spoke to journalists and said, "We think, given the potential outcome of this, the Premier needs to be asked quite specifically what his intent is." He was asked quite specifically. I do give credit to a very good journalist, Dan Mercer, who was originally at *The West Australian* but is now in the joyous ABC offices in the south west, which obviously, if we are talking about where this legislation might go, is the best region in the state! It was put to the Premier in no uncertain terms.

This is a matter of confidence and trust. This is a matter about whether we can trust the words of the Premier of Western Australia in what he says. It is an important question because, despite the political differences and the argy-bargy across the floor, the people of Western Australia want to be able to trust the words of their representatives, particularly the Premier, who is their highest representative at a state level. It was proven without doubt in the lead-up to the election, and afterwards, that that trust is not in good faith. How can a person repeatedly say, "It is not on our agenda" to do this thing? The polling was publicly available, and across the board it did not change significantly. Multiple polls sent a very similar message. The end result of the election was remarkably close to the polling that was released. I do not think the Premier had the slightest doubt about the outcome of the election. In my

view, he must have known that the result was going to give him the capacity for significant electoral reform because he could control both houses. Why could he not come up with an honest answer when it was put to him by a journalist? Why could the Premier not give an honest answer to the people of Western Australia?

When did we recently have a very rushed committee review that gave rise to an outcome to which the government was disposed? Gee, that was not that long ago, was it, members? There is now a developing trend here, honourable members—it is a very old-fashioned part of government. Obviously, we know these things; we have known these things for a long time. To suggest that we have a committee that will review these things is a little like: never form a committee and ask for a report that you do not already have the answer partly written to! That is how government works. When we get to reports, the old saying is, "If you don't know what you're doing or if you don't know what the answer to the problem is, form a committee. If you don't know what the question is, form two committees: one to find the answer and one to work on the solution"! But also you certainly do not want to form a committee where you might get a recommendation that you do not like very much. In relation to the electoral reform committee, is it not the case that much of what is being debated is predetermined? I do not think sensible, right-thinking people in Western Australia have any doubt that what the government intends to do is slash regional representation, because it has the opportunity to do so, and it is going through the facade of a public review in order to justify its position. When we get to the end of that process, we will have to discover what the people of regional Western Australia think about that. Many members have said that it will then be up to the people in regional areas of Western Australia to respond, and I think that is absolutely the case.

Like many other members, I look forward to regional members, particularly those regional members who are new, in seats that the Labor Party have not traditionally held, working hard to justify the Labor Party position over the next three and three-quarter years. That will be an incredibly fun thing! I am sure the government is very good at discipline. I am sure that Labor Party members will have to stick to the good party line: it is good for the state of Western Australia to strip regional people of representation! They did it in the lower house. I remember that very clearly because my seat was one that disappeared. They are about to do it in the upper house. I am hoping that at long last the people of regional Western Australia will remember who looks after their interests and who has done their absolute best to decimate their representation. The impact of that on the 2025 election should be a very interesting outcome, and I hope it is.

HON DR SALLY TALBOT (South West) [11.25 am]: I want to make something clear right at the beginning of my remarks on this motion: I will never seek the call during non-government business while I am sitting on this side of the chamber. That is not what this 80 minutes of parliamentary time is about. That should have been made very clear to every member of this chamber who is not a member of the government during the training that they received. Compared with the time when I was sworn into this place in 2005, I know that there is a very comprehensive training program. I assume that members of the opposition know that this is their time to fill, but I have sought the call now to save Hon James Hayward being humiliated the very first time that he gets to his feet to move a substantive motion in this place. There are some things, obviously, that either the people who provided his training, or his own party, have not informed him about. There are a few basic rules. One, as I say, is that non-government business is supposed to be for members of non-government parties; that is not me, but I do not want Hon James Hayward to run out of speakers, which is exactly what has happened to him. I am going to say to Hon James Hayward, through you, Deputy President, that rule number two is: make sure you are not set up when you are asked to put your name to a motion. That is clearly what has happened here. There is 80 minutes of non-government business.

I know there are very few members sitting on the other side of the chamber; I know that they are few and far between. They can be counted on the fingers of —

Hon Pierre Yang interjected.

Hon Dr SALLY TALBOT: I just about need two hands, but only just!—thank you, Hon Pierre Yang.

Eighty minutes divided by the number of people on the opposition side of the chamber means they will run out of speakers unless they can put up something that people actually want to speak on, which that side clearly does not want to do.

The third lesson that I would like to suggest to Hon James Hayward, with respect, is that if he is going to move a motion like this, he does his homework, which he clearly has not. He is clearly labouring under a serious misapprehension, both about the way that this place works and about the way the processes of government work.

I thank the Leader of the Opposition, Hon Dr Steve Thomas, for giving this place an insight into the way the Liberal Party regards inquiries that are set up. Hon Dr Steve Thomas has just told us that as far as he is concerned, an inquiry is not set up unless the answer is known. What does that tell us about the way the Liberal Party positions itself for government?

Hon Dan Caddy interjected.

Hon Dr SALLY TALBOT: It does not even know the question, let alone the answer, when it sets something up. He has just told us that he would never do it while he is in a leadership position.

Several members interjected.

The DEPUTY PRESIDENT: Order, members! Hon Dr Sally Talbot has very limited time left. I am actually now starting to struggle to hear the honourable member.

Hon Dr SALLY TALBOT: The Leader of the Opposition has just told us that while he is a member of the leadership team of the Liberal Party, it will never hold an independent, open-ended inquiry into anything! He is going to want to know the answer as well as the question! I am not actually sure that he knows either, and I do not think he has got any record to run on that.

I would just suggest to Hon James Hayward to be careful about the advice he gets from his own side.

I thank the members of the Legalise Cannabis WA Party for the thoughtful contributions they have made today, as they are rapidly establishing a reputation for doing in this place. It is nice to have people come into this place with an open mind and to hear them give voice to that open mind.

There are a couple of things that Hon James Hayward did get right. In my spirit of cooperation and collegiality, I would like to pay him the compliment of saying that he did get something right. He did get right the fact that electoral reform was not on the government's agenda before we were re-elected. That is absolutely correct. It is absolutely correct—I will say it again in case members did not hear—that electoral reform was not on the government's agenda prior to the election. The member is right and we will keep saying that because it is the truth. The reason it was not on the agenda is that we did not know what the outcome of the election was going to be.

Hon Dr Steve Thomas interjected.

The DEPUTY PRESIDENT: Order!

Hon Dr SALLY TALBOT: Unlike members of parties on the other side of the political spectrum, who clearly did know what the outcome of the election was going to be. Oh yes, that is right—they went out and conceded! They went out five or six weeks before polling day and said, "We're giving up now. We're taking our bat and ball and going home, because the Labor Party has already won the election." Are members opposite saying that at that point, we should have said, "Okay; there is no opposition. What shall we do?" No—we carried on fighting right until the last minute. Until six o'clock on Saturday, 13 March, we were fighting for every last vote at the ballot box. That is what those guys did not do. They packed up their bat and ball and went home. They hung up their clogs. What did they do? They were probably all at the afterparty by lunchtime on the Saturday. Did they wait until Saturday, 13 March?

Several members interjected.

The DEPUTY PRESIDENT: Order!

Several members interjected.

The DEPUTY PRESIDENT: Order, members! Hon Dr Sally Talbot, with 10 seconds.

Hon Dr SALLY TALBOT: Thank you, Deputy President. I just give Hon James Hayward that final advice.

Motion lapsed, pursuant to standing orders.

CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2021

Time Limits — Statement by Deputy President

THE DEPUTY PRESIDENT (Hon Martin Aldridge) [11.32 am]: Before we commence the debate on the Corruption, Crime and Misconduct Amendment Bill 2021, I remind members that yesterday the house amended standing order 21 on time limits for speeches on the second and third reading questions on bills. Unlimited speaking times on these questions have been abolished. The new speaking times for second and third reading speeches are as follows: mover, 60 minutes; lead member, government or opposition, 60 minutes; party leader or member deputed, 60 minutes; other members, 45 minutes; and mover in reply, 60 minutes. I also note that under standing order 22, a member limited to 45 or 60 minutes speaking time may, by leave, be granted an extension of 15 minutes.

Second Reading

Resumed from 17 June.

HON NICK GOIRAN (South Metropolitan) [11.33 am]: I rise as the lead speaker on the Corruption, Crime and Misconduct Amendment Bill 2021. At the outset, I encourage members today as they contemplate their vote to consider this paraphrased quote from G.K. Chesterton: "Don't ever take a fence down until you know the reason it was put up." I would ask members who are considering today to vote in favour of the second reading of this bill to stand and explain to the house: what is the fence, why was it created, and why do they believe it should be taken down? If members cannot do that, they have failed in their duty to the people of Western Australia.

I understand, expect and anticipate that members opposite will have been ordered by their Leader of the House not to speak today. I respect the fact that they will feel obliged to comply with that direction. Nevertheless, even if they feel obliged to comply with that direction, they should still in their own mind and conscience be able to articulate precisely what is happening today. If they cannot, they should question their position as a Legislative Councillor.

I encourage members, if they are not already familiar, to read the *Royal commission into whether there has been corrupt or criminal conduct by any Western Australian police officer: Final report*. The volume that I now show members is only volume I. They will need to take a little extra time to read volume II of this final report from January 2004. There will be inadequate time for members to achieve that accomplishment today, but, at the outset, I say that Western Australian history since WA Inc informs us why it is necessary to have an apolitical appointment to the corruption watchdog of Western Australia. History since WA Inc informs us of this. If a member is a poor student of history and is unfamiliar with the inquiries that have taken place since WA Inc, they have a duty to Western Australians to inform themselves of that history. Once they do, they will understand why it is imperative that the corruption fighter in Western Australia is an apolitical position. I will spend some time later this morning taking members through that history.

Secondly, I encourage members today to give significant weight to the fact that the Parliament's expert committee in this field has rejected this candidate's appointment not once, not twice, but three times. Significant weight should be given to that fact. It is not the determining factor as to why members should vote a particular way on the bill before the house and nor is the history in Western Australia since WA Inc. But we are being asked today to specifically endorse the selection of one Western Australian to head up the Corruption and Crime Commission for the next five years. A statutory reappointment of that sort is inappropriate if an individual's first term of office has been filled with a litany of episodes of refusal to be guided by the statutory guardians. That is to say—I will unpack this a little later this morning—that there has been a plethora of examples in which the then commissioner, Mr McKechnie, refused to take the guidance of the chief guardian, the Parliamentary Inspector of the Corruption and Crime Commission, and the second guardian, the Joint Standing Committee on the Corruption and Crime Commission.

Thirdly, a statutory reappointment of this sort is improper if the lawfulness of an individual's actions is pending determination by a court, parliamentary committee and/or the parliamentary inspector. Lastly, it is the position of the opposition that Parliament should not facilitate, by force of law, the executive's desired reappointment of an individual whose eligibility is in question in circumstances in which the underperformance of the individual has been repeatedly exposed by those entrusted to oversee that performance and, worse, when questions of misconduct by that individual remain unresolved.

At the outset, I take members back to the history of the Corruption and Crime Commission and its genesis following the interim report by the Kennedy royal commission. The royal commission was established in Western Australia to determine whether any officer in the Western Australia Police Force had engaged in corrupt or criminal conduct. Following that interim report, a bill was progressed through the chambers of this Parliament, and, subsequently, the final report, to which I referred earlier, found that members of WA police had engaged in corrupt and criminal conduct.

The Attorney General at the time in 2003 was the member for Fremantle. In his speech introducing the Corruption and Crime Commission Bill 2003, he indicated that the purpose of the bill was to, I quote —

> … restore the community's confidence in the integrity and honesty of those who serve the public.

He went on to say —

> To ensure the community and Parliament will have confidence in the commissioner, the appointment of the commissioner can be made only after the Premier has consulted the parliamentary leader of each party in the Parliament.

Later, he said —

> The CCC will have three main jurisdictions: investigation of police corruption; investigation of public sector corruption; and a role in relation to the investigation by the police of organised crime.

He emphasised that the CCC would have, and I quote —

> … all of the powers of the Anti-Corruption Commission, plus the powers currently used by the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers, including powers to examine on oath, both in public and private; powers to use assumed identities and surveillance devices; and powers to conduct covert activities, such as controlled operations and integrity testing programs. Even when no allegation of misconduct has been made, the CCC may conduct integrity tests on police officers and prescribed classes of public officers.

It was emphasised at the time that the role of the Ombudsman in reviewing police conduct would be transferred to the CCC and that the CCC would be able to investigate Western Australian police officers. That was the reason that the Corruption and Crime Commission Bill was brought in by the previous Labor administration and its Attorney General; it all arose out of the Kennedy royal commission's interim and then final report.

It is important to be a keen student of history when it comes to these matters, because if we follow the progress of that bill from 2003, brought in by the Labor administration, to create this new corruption fighter, we will note that the outcome of that first bill was that the bill was split and it was referred to the Standing Committee on Legislation. The Standing Committee on Legislation at the time was chaired by Hon Jon Ford, MLC. The twenty-first report, titled *Report of the Standing Committee on Legislation in relation to the Corruption and Crime Commission Act 2003*

and the Corruption and Crime Commission Amendment Bill 2003, was tabled in December 2003, and specifically considered the appointment process. It is that appointment process that, today, the McGowan government is asking members to dispense with.

As I said at the beginning, it is important to understand why the fence was created in the first place before we decide to tear it down, particularly because when one of our own members, Hon Jon Ford, tabled this report in December 2003. It was so persuasive that the Labor government at the time decided to change the appointment process. The appointment process that had been outlined in the original bill by the Labor government was described at the time by the Anti-Corruption Commission—for those members who do not know what the Anti-Corruption Commission was, it was the predecessor to the Corruption and Crime Commission. The Anti-Corruption Commission submitted that the proposed appointment process for the commissioner created a political appointment, which it did not support. The Anti-Corruption Commission at the time further submitted to the legislation committee, chaired by Hon Jon Ford, that the current process under the then Anti-Corruption Commission Act 1988 was an appropriate procedure and was recommended by the WA Inc royal commission.

As a result of that inquiry. The legislation committee, chaired by Hon Jon Ford, indicated to the Parliament that it considered that the appointment of the commissioner should be "apolitical and bipartisan" and therefore did not endorse the appointment process that was contained in the act at the time. The committee recommended that the CCC act be amended to incorporate the appointment process, which would involve the process that is in place now in which a majority of the committee needs to agree with the appointment of the Premier and it must have bipartisan support.

I take members through that history so they understand that the fence that has been created was created by the previous Labor government. It was a fence created at the request of Hon Jon Ford. It was a fence that the Labor government decided that it saw sense with, because it, presumably at the time, understood that we do not want to repeat the dark days of WA Inc and that we should respect the inquiries that have taken place since that time and ensure that an appointment process is indeed apolitical and not political.

Be under no illusions, members, that the fence that you desire to tear down today, and have no doubt been muzzled from speaking on, will be because of the work undertaken by the predecessors in your own party as a result of the inquiries that followed after WA Inc. So members should consider carefully: do they wish to be associated with the dark days of WA Inc and the return to political appointments or do they prefer to take the approach recommended by the Anti-Corruption Commission, Hon Jon Ford and, ultimately, the Labor administration in 2003? I indicated to members that they should consider more than just the history behind what is occurring today. I strongly recommend that members be in a position to articulate their position. Even if they come to the position, notwithstanding the history of this matter, notwithstanding WA Inc, notwithstanding the Kennedy royal commission, notwithstanding the work of the Standing Committee on Legislation in 2003 and notwithstanding the fact that the then Labor administration changed the process because it saw sense in it being an apolitical process, members say that it is 2021 and they have decided that they want to create their own history, members need to consider the appropriateness of the individual being put up for candidacy today. If they are to do their job properly, they need to consider the performance of the individual over that five years and they need only look at matters on the public record on that performance.

There has been much talk in the debate, which has ensued over more than a year, about secret deliberations and secret material and so on and so forth. I do not know anything about the secret material or deliberations, but I do know that there is a ream of material on the public record that sets out the performance of John Roderick McKechnie over his five-year term. I take members to the twenty-fifth report of the Joint Standing Committee on the Corruption and Crime Commission, tabled on 20 November 2015, titled *Parliamentary inspector's report on allegations of misconduct made against officers in the Corruption and Crime Commission electronic collection unit*. Incidentally, at the time I was chairing that committee, which comprised Peter Watson, Hon Adele Farina and Nathan Morton, MLA, in circumstances in which I was a member of the party in government. Members should take the opportunity to read this report because they will see that there was corruption in the Corruption and Crime Commission—specifically, in the commission's electronic collection unit. So that I am not in any way misquoted either in or out of this place, the corruption that occurred in the CCC by the electronic collection unit was not—was not—during the tenure of John Roderick McKechnie.

However, the Parliamentary Inspector of the Corruption and Crime Commission, who uncovered and reported on this corruption in the CCC, through the Joint Standing Committee on the Corruption and Crime Commission, wanted to investigate and deal with this matter further, but John Roderick McKechnie said no. I invite members to familiarise themselves with this report and, if nothing else, the chairman's foreword. John Roderick McKechnie did not want that parliamentary inspector of the CCC to continue to deal with this matter; he wanted to shield those corrupt officers under the guise of the Industrial Relations Act 1979. No sooner had he started his term in 2015 than he was shielding corrupt officers within the CCC. Not a good start by John Roderick McKechnie in 2015. He had a five-year term and within the first year he was shielding corrupt officers from the electronic collection unit. Maybe that is not enough and members will say that he was new to the role in 2015. He had five years. Maybe his performance improved over the following four years. Members are about to cast their vote either in favour of this individual or not. Ask yourselves: should a person, one of the first acts of whom was to shield corrupt officers, be supported?

I turn now to the following year—2016—and encourage members to familiarise themselves with the thirty-second report, tabled in November 2016. At that time, the committee that I was chairing, which also had the same members to whom I referred earlier, when we did our job without fear or favour—it did not matter to us who was the Premier of the day and which political party we were part of because we had a sworn duty to fulfil as the oversight body for the Corruption and Crime Commission—we tabled the thirty-second report in November 2016. We sought information from John Roderick McKechnie, and his attitude to the parliamentary committee, the oversight committee, was to decline to provide us information. He said, and I quote —

> "unless summonsed under section 5 of the Parliamentary Privileges Act 1891 or directed under the Standings Orders of the Legislative Assembly."

Strike two, Mr Deputy President. John Roderick McKechnie, in his first year, was trying to shield corrupt officers from the electronic collection unit under the guise of the industrial relations legislation, and in his second year he told one of the two guardians—the Joint Standing Committee on the CCC—that he would not provide any information to those to whom he reports. He said, in effect, "If you want information from me, you will need to summons me." That was the attitude of the person that the McGowan government wants members to reappoint for another five years. That same year, the Standing Committee on Procedure and Privileges had something to say about the performance of John Roderick McKechnie, and it will be a performance that will be well known to the Leader of the House, because the forty-fourth report is titled *Referral of a matter of privilege raised by Hon Sue Ellery MLC*. Read the report, members. November 2016. The members of that inquiry at the time, should anyone be concerned it was being politicised in any way, were Hon Barry House, Hon Martin Aldridge, Hon Adele Farina, myself and a substitute member by the name of Hon Sue Ellery, MLC. That five-member committee made a number of findings and recommendations. Finding 17 reads —

> … **the use by the Corruption and Crime Commission of *proceedings in parliament*, being the drafts of answers to Question without Notice C 192 and associated emails, to form an opinion of misconduct against Ms Turnseck *impeached or questioned* those proceedings. This is contrary to the immunity provided by Article 9 of the *Bill of Rights 1688* (UK). The actions of the Corruption and Crime Commission therefore constituted a breach of parliamentary privilege.**

That was Hon Sue Ellery's attitude, and mine, in November 2016. Who was in charge of the Corruption and Crime Commission during the next fiasco? It was John Roderick McKechnie—strike three! It is uncomfortable, members; is it not? Once members start to get the history of this matter they can start to see how corrupted this process is. If people were serious about the fight against corruption in Western Australia, they would go out of their way to make sure that this appointment is apolitical. Instead, we have people going out of their way to make sure that it is a political appointment. If the government wants to make it a political appointment, because it has total control of both houses of Parliament, it can do that, but it should then expect its candidate to be scrutinised for their performance during their first five years.

I do not want to spend time going through and identifying all the elements of underperformance by John Roderick McKechnie, with whom, at least during the time I had the opportunity to work with him, I found I had a relationship that was professional and cordial. We both understood that we had a job to do, and we did it. I would like to think that at the time he knew that it made absolutely no difference that I was a member of the Liberal Party that recommended his initial appointment, and that the Premier of the day had made that recommendation, because I was still going to ask the questions that needed to be asked.

I would prefer much more that we were in a situation in which we could simply respectively thank this gentleman for his service to the people of Western Australia, including a long history in the legal profession, and move on. However, for reasons not yet clear to me, the McGowan government insists on dictating that this particular person will be the commissioner. Well, the questions that need to be asked will be asked, including a comprehensive analysis of this person's performance over his five-year term.

As we consider further the underperformance of John Roderick McKechnie during his five-year tenure, having already quickly struck out three times—trying to shield corrupt officers from further scrutiny, trying to withhold information from the parliamentary committee that oversees him and breaching the law of Western Australia, as identified in the forty-fourth report—I turn to the Joint Standing Committee on the Corruption and Crime Commission's seventh report of November 2017, *Unfinished business: The Corruption and Crime Commission's response to the committee's report on Dr Cunningham and Ms Atoms*. The report refers to the committee's fourth report of October 2017 titled *Parliamentary inspector's report on a complaint by Dr Robert Cunningham and Ms Catherine Atoms*. Members who are about to cast their vote in favour of John Roderick McKechnie might like to familiarise themselves with the extraordinary sequence of events experienced by Dr Cunningham and Ms Atoms. The chair's foreword of the seventh report reads —

> This report marks the unsatisfactory conclusion to a long-running saga where the Corruption and Crime Commission has consistently declined over a number of years to exercise its statutory duty to monitor and report upon a case of police misconduct, excessive use of force, tampering with physical evidence and collusion in the content of sworn evidence.

The report goes on to say there has been —

> … outright refusal to revisit the case even to examine whether its own processes were lacking …

The report goes on to say that the commissioner—make no mistake who that was at the time; it was John Roderick McKechnie —

> … had notified the committee that he did not intend to accede to these recommendations.

These recommendations were not just made by the Joint Standing Committee on the Corruption and Crime Commission, but also had as their genesis recommendations from the Parliamentary Inspector of the Corruption and Crime Commission, the now late Hon Michael Murray. We had a situation in Western Australia in which two Western Australian citizens were so wrongfully dealt with by Western Australian police and John Roderick McKechnie's CCC was so derelict in its duty that they had to go to the court to seek some form of justice. The District Court determined that the nature of the police officers conduct was unlawful and malicious, and awarded general, aggravated, exemplary and special damages totalling $110 304.10 and $1 024 822.11 respectively. Such were the aggravated circumstances for citizens Cunningham and Atoms that they had to resort to that measure, while John Roderick McKechnie said to the Parliamentary Inspector of the Corruption and Crime Commission and the Joint Standing Committee on the Corruption and Crime Commission, "There's nothing to see here. I will not accede to your request to relook into this matter." That was John McKechnie attitude in 2017. Members should put themselves in the shoes of citizens Cunningham and Atoms and ask themselves whether it is right and fair that in a First World democracy such as Western Australia a person can be so badly treated by WA police that they complain to the CCC, which does nothing about it, and only eventually get some form of justice after having expended a massive amount of dollars to go to court. Thankfully, the Parliamentary Inspector of the Corruption and Crime Commission and the Joint Standing Committee on the Corruption and Crime Commission were overseeing this process to ensure that there is some modicum of fairness. But John Roderick McKechnie refused outright to revisit the case. He refused outright to deal with a case of this nature. A Western Australia citizen is awarded more than $1 million in compensation because of the behaviour of police officers in Western Australia. The Corruption and Crime Commissioner's job is to oversee police corruption.

I have shown members before the two-volume report from the Kennedy royal commission. Why was the CCC created in the first place? It was created to look into police corruption. When there was misconduct by the police, there was an outright refusal by John Roderick McKechnie to revisit the matter. His overseer, the Parliamentary Inspector of the Corruption and Crime Commission, said, "I really think you need to have another look at this matter", but he said no. The Joint Standing Committee on the Corruption and Crime Commission said, "I really think you need to have another look at this matter", but he said no, and the McGowan government want us to give a ringing endorsement to this person. That is the fourth strike.

The result of the debate yesterday will suit the McGowan government, and I am limited to a one-hour contribution. The litany of underperformance by John Roderick McKechnie during his five-year term as the Corruption and Crime Commissioner is so long that it makes a mockery that members are expected to evaluate his performance today in these battering ram–type conditions imposed upon us by the Leader of the House and the McGowan government. It makes a mockery of this. The people of Western Australia deserve a lot better than this when we consider that at the heart of the matter today are matters to do with police corruption, government corruption, the history of WA Inc and multiple inquiries. In 2003, Hon Jon Ford tabled a report pleading with the government of the day to revert to the apolitical appointment process and the government of the day agreed with Hon Jon Ford. Now, we have the McGowan government behaving in dictatorial fashion and saying in effect, "We have no regard for the rule of law and we have no regard for the history of anticorruption bodies and the appointment process. We will do whatever we want to do." Do not expect the opposition to roll out the red carpet while the government corrupts the process.

I turn to the fifth strike with respect to the underperformance of John Roderick McKechnie, whom the Premier and Attorney General of Western Australia tell us has to be the Corruption and Crime Commissioner. I encourage members to look at the report tabled in the last Parliament when the Joint Standing Committee on the Corruption and Crime Commission was chaired by Margaret Quirk, MLA. One of the government's own members chaired the committee in the last Parliament. I refer to the twelfth report of October 2019. Members opposite who have a great fondness for the member for Kalamunda might note that there is no minority report. Even that individual, whom I have described on the public record as unsuitable to be on a parliamentary committee, recognised the problems by presumably providing his consent towards this report, and there is no minority report. The other members of the committee are of course well known to members, being former members Hon Jim Chown and Hon Alison Xamon. This is the twelfth report. This matter deals with another Western Australian. This Western Australian's name is Mr Denys Martin, and he had a complaint about his treatment at the hands of WA police. It is worth noting that in the opinion of the parliamentary inspector—once again, John Roderick McKechnie had not done his job, so Denys Martin had to go above him to the parliamentary inspector—this Western Australian was wrongfully deprived of his liberty for an appreciable period. He was wrongfully and forcibly fingerprinted, wrongfully prosecuted for refusing to provide his personal details to the police and convicted, fined and ordered to pay costs, all under the watch

of John Roderick McKechnie. What was the response of this man at the time, when he was getting paid the big bucks by Western Australian taxpayers? I quote from the twelfth report of October 2019 of the committee chaired by Margaret Quirk. It says —

> The Corruption and Crime Commissioner advised that while he does 'not disagree' with the opinion of the PICCC expressed in the attached report, he considers 'the issue beyond the remit of the Commission's functions in relation to misconduct.'

The history that explains the creation of the Corruption and Crime Commission is police misconduct. If it has a role to play in Western Australian society, the chief of those roles is to oversee the police. That is why it was created. That is not its only role, but it is the chief of the roles. When a Western Australian who was wrongfully deprived of their liberty for an appreciable time, wrongfully and forcibly fingerprinted, wrongfully prosecuted for refusing to provide his personal details to police, convicted, fined and ordered to pay costs complained to the Corruption and Crime Commission about his treatment, I am afraid the commissioner was asleep at the wheel. I am sure that Mr Martin is eternally grateful that the now late Hon Michael Murray was not asleep at the wheel and was doing his job. I am sure that Mr Cunningham and Ms Atoms, whom I referred to earlier, feel the same way. Thank goodness that the guardians were there watching the watchdog at the time, because in five years we have had five major failings by John Roderick McKechnie. In five years we have had five major failings exposed by different Joint Standing Committees on the Corruption and Crime Commission. Will those members who feel that they want to give no weight to the reports of the Joint Standing Committee on the Corruption and Crime Commission while I was the chair give some weight to the committee reports done when Margaret Quirk, MLA, was the chair? Will they give some weight to the reports by the parliamentary inspector, the now late Hon Michael Murray? How many reports of underperformance by John Roderick McKechnie does it take before a Labor member in this administration understands that he is not an appropriate appointment? His performance has been woeful. We did not need to say that today. He has had a long career in the public service. He has now attained the age of retirement of a judicial officer and is entitled to continue to be paid his judicial pension and enjoy his retirement. We do not get that opportunity because the McGowan government insists that we deal with this particular matter and agree to this particular appointment. If I have said it once, I have said it a few times this week: the government should not expect me to do my job half-baked. If it wants to roll up with a bill naming John Roderick McKechnie as the Corruption and Crime Commissioner, it should expect his underperformance to be exposed. I have no interest in witnessing WA Inc mark II play out before my eyes in the Parliament of Western Australia and staying silent on it. This is an unacceptable state of affairs if ever there was one.

It does not stop there. Members may be aware that the Standing Committee on Procedure and Privileges Committee tabled its sixty-first report only last month. If members have not had the opportunity to read the reports that I referred to earlier, I hope that they are at least across that particular report. It was presented by Hon Kate Doust, MLC. The other members of the committee included Hon Simon O'Brien, Hon Adele Farina, Hon Martin Aldridge and Hon Rick Mazza until he was replaced by Hon Tjorn Sibma.

Hon Sue Ellery interjected.

Hon NICK GOIRAN: Sorry, Leader of the House?

Hon Sue Ellery: Nothing.

Hon NICK GOIRAN: Hopefully, Hansard picked it up but I think the Leader of the House said, "And why was that?" If that is what she said, through you, Madam Acting President, I think the public record reflects that the former member, upon being alerted to the fact that he might be the subject of an investigation, did the honourable thing and stood down. He was then replaced by another member of this place. Incidentally, Leader of the House, for the record, the CCC has subsequently tabled a report. I am not sure if she has read it. It exonerates the former member. She and I might well have strong feelings about the disgraceful conduct of some former members of this place but Hon Rick Mazza is not one of them, according to the CCC. Today will be long and difficult enough but let us not besmirch the reputations of those who have done nothing wrong. Indeed, they cannot defend themselves either. That is not right.

I referred to the sixty-first report of the Standing Committee on Procedure and Privileges because we are dealing with an extraordinary set of circumstances. No doubt other members will be better placed in the time provided to them to unpack these matters. At the heart of it is the report that I referred to earlier. When Hon Sue Ellery and I were on a committee, we identified that the CCC, under the stewardship of John Roderick McKechnie, had breached parliamentary privilege. It is my assessment that since that time, Mr McKechnie felt aggrieved by that finding of the procedure and privileges committee. I note that the public record reflects that after that episode, when he was, in effect, reprimanded by the expert committee of this Parliament for his breach of Western Australia law, he said that he would take a more timorous approach to these matters. Time has told us that nothing could have been further from the truth because now two court actions involving this chamber are being mitigated in the Supreme Court because the same individual, John Roderick McKechnie, chose not to take a timorous approach.

As per the motion that I gave notice of earlier today, the record reflects that the law of Western Australia has been breached more than 1 000 times. That is the assessment of the expert committee of this Parliament with respect to

parliamentary privilege. What were those 1 000 breaches? They involve the delivery of draft parliamentary speeches, draft parliamentary motions, draft parliamentary questions, submissions from members of the public requesting a member to vote a certain way on a bill or other measure before the Legislative Council, documents indicating how a member intended to vote on a bill or other measure, and confidential parliamentary committee material, including committee deliberations and draft report recommendations—more than 1 000 times. For anyone who is unclear about that, that means that about 1 000 documents or 1 000 records are subject to parliamentary privilege, things like draft parliamentary questions. They have been handed over to the CCC contrary to Western Australian law.

In the meantime, that same expert committee of this Parliament has identified that more than 450 000 records are not subject to parliamentary privilege. It has invited—encouraged—the CCC to access them. I want to emphasise this point for two reasons. First, we have expensive litigation occurring in Western Australia because John Roderick McKechnie decided not to take a timorous approach as he previously said he would, having been reprimanded by the procedure and privileges committee. Second, any member of this place or the other place or any member of the public who suggests that the appointment of John Roderick McKechnie somehow facilitates the investigation into former Liberal members is nothing more than a liar. Incidentally, members, we do not need a full-time commissioner at the moment because we have an acting commissioner, Scott Ellis, who is doing a fine job as far as I can see. Nevertheless, all those documents, including the much sensationalised laptop, are available for collection by the CCC. They have been available for ages. It does not suit the McGowan government to facilitate that; instead, it prefers to interfere with operational investigations; well, maybe not all members of the government but certainly the Attorney General of Western Australia.

Paragraph 5.49 of the report tabled last month states —

> Finally, in an sms message sent by the Commissioner of the CCC to the Attorney General dated Monday, 22 July 2019, the Commissioner wrote:
>
> > The DPC has delivered a USB in accordance with the requirements under the CCM Act. Any privileged material was identified and removed prior to delivery. I have ordered that the USB remain in the secure exhibit room. In the absence of any indication to the contrary I will release it to the investigators later this week. Enjoy your last night in Bali.

Was John Roderick McKechnie simply taking instructions from Hon John Quigley? Is that how the CCC is now operating in Western Australia? Maybe WA Inc mark II will start on 24 June 2021. I suspect that by the time this bill is concluded, it will probably be 25 June 2021. Whatever date it is, that will be the day that WA Inc mark II started. Despite the public record of the underperformance of John Roderick McKechnie, the McGowan government will proceed with its political appointment anyway. That was completely contrary to the history of why the Corruption and Crime Commission was established in the first place. It is as though WA Inc never happened, according to the McGowan government. It is as though the Kennedy royal commission into police corruption never happened. It is as though Hon Jon Ford was never a member of this place, let alone the chair of the standing committee recommending, clearly persuasively, that the then government revert to an apolitical process. It is as though those things had never happened. People talk about cancel culture—the McGowan government is into cancelling history!

These are no trivial matters that we are dealing with today. The Corruption and Crime Commission has extraordinary powers. Those extraordinary powers need to be overseen by a person who has demonstrated integrity and competence. Reports on the public record should be sufficient for members to understand that competence has been lacking in respect of that first five-year tenure. With respect to integrity, I take members no further than that disgraceful SMS from John Roderick McKechnie to the Attorney General while he was holidaying in Bali. This standard of performance is not acceptable for Western Australia's corruption watchdog, yet that is what we are being asked to do.

In the remaining minute or so that I have left, I invite members to look at other matters on the public record. We have the fifteenth report, again chaired by Margaret Quirk, MLA, dated September 2020 in the last Parliament, titled *If not the CCC … then where? An examination of the Corruption and Crime Commission's oversight of excessive use of force allegations against members of the WA Police Force*. It says that in effect the CCC was—I am paraphrasing—asleep at the wheel; it was not doing its job with respect to the WA Police Force. All this was under the time and stewardship of John Roderick McKechnie.

It is so important that those members who are about to cast their vote in favour of a particular person—this is unique; to the best of my knowledge it is genuinely unprecedented to be naming an individual in this fashion—at least spend the time to review that particular person's performance. As I say, Parliament should not facilitate, by force of law, the executive's desired reappointment of an individual whose eligibility is in question in circumstances in which the underperformance of the individual has been repeatedly exposed by those entrusted to oversee that performance and, worse, when questions of misconduct remain unresolved.

HON WILSON TUCKER (Mining and Pastoral) [12.33 pm]: I rise to make a small contribution to outline the reasons I will not be supporting the Corruption, Crime and Misconduct Amendment Bill 2021. Hon Nick Goiran and other opposition members have already outlined the events that led to this bill. I will raise two points today for why I will not be supporting the bill. The first point is that the appointment of a Corruption and Crime Commissioner

should be about the process; not the person. Drawing on my experience working in technology companies, the direct appointment of John McKechnie, by bypassing the current process in place to appoint a commissioner by directly naming the commissioner within the bill—to use a tech term—feels like a code smell and a hack in the process! The current process, which relies on recommendations by the nomination committee, the joint standing committee and the Premier, has been used successfully for a number of commissioner appointments in the past. Because the Premier did not like the outcome of this last appointment, the process is considered broken and a bypass mechanism, naming McKechnie directly, is now being used. If the government does not want to wait until a review is completed into the process to appoint a commissioner, it has two other candidates to fall upon—both were recommended by both committees. I do not believe the argument is valid that the CCC is not currently functioning correctly and that Mr McKechnie's reappointment needs to be rushed through as he is the only suitable candidate.

My second point relates to the suitability of Mr McKechnie. Given the extraordinary powers of the CCC and its important role as WA's premier integrity agency, it is essential that the commissioner we appoint is not only experienced, competent and of the highest integrity, but also is unbiased, rational and above party politics. On 25 November, former commissioner Mr John McKechnie gave an address outside St George's Cathedral in Perth. In his address, Mr McKechnie attacked the Liberal Party, the former Leader of the Opposition and members of the Joint Standing Committee on the Corruption and Crime Commission. His address included extraordinary claims of a deliberate and targeted attack against the CCC, criticisms of the leadership of the former Leader of the Opposition, and criticism of a house of this Parliament. The making of such a political statement really raises serious questions in my mind about Mr McKechnie's ability to perform the duties of commissioner. Whether Mr McKechnie was suitable previously or not, given these comments I do not believe he is suitable now.

I believe we should be trusting the Joint Standing Committee on the Corruption and Crime Commission that it acted impartially, unless proven otherwise, in its vetting of the suitability of a commissioner. It is for these reasons that I will not be supporting the bill.

HON DR BRIAN WALKER (East Metropolitan) [12.36 pm]: I rise as the lead speaker for the party on this topic. I actually have personal experience of the opposite. Living in Russia, I was exposed to being commanded by the KGB. I vividly recall having to hand my passport over as I stood at a railway station seeking to leave the country. I was exposed to the difficult status of actually having no passport in a foreign country that was under the care of the KGB—I use that word carefully—and not knowing whether I would get my passport back and be allowed to leave the spot where I was standing. There was no oversight. I was completely under the vicarious attention of a very malignant organisation, which had complete control of every member of that society. We do not want that. We do not want anything like that in this country of ours.

I rise to oppose the motion based on my own personal experiences. I expect, however, that the bill will be forced through. This troubles me a lot because we have not got anything in the way of a consensus. This affects every single one of us; not simply 51 per cent of the population. We ought to have a consensus approach to managing this problem. There are other priorities. What about family law? What about confiscation reform? Manifest major injustices are occurring right now in our society, which I think have precedence. Daily injustices are occurring. This bill being forced through affects only two people: the Premier and Mr McKechnie. This matter is not proportional. I do not understand these priorities. Who am I? I am not a member of the government. Manifest daily injustices are being perpetrated but we are not addressing them right now. Take the example of me prescribing some cannabis to a patient who is suffering from severe pain. When that person is stopped by police and drug tested, police determine that they have more power over my patient than I do. They do not care about the pain: "You shouldn't be taking this and driving; therefore you're going to the magistrate and you will have a criminal record." This matters to hundreds if not thousands of people in our nation every day, and we ought to address this. Do we want the police to be determining what the doctor prescribes or not? Is that more important than the bruised feelings of Mr McKechnie or, indeed, the Premier?

The Corruption and Crime Commission is important. It is vitally important. It has a wide range of powers. It is imperative that we have leadership that is beyond reproach, is it not? It is essential also for the public to be 100 per cent behind this organisation. There will be those who wish not to be. I would not like to be friends with those people. I would think of them as criminals or reprobates. But the honest, ordinary public should be 100 per cent behind the highest standards of a very important body.

I think that the first appointment of Mr McKechnie was very appropriate. I have heard things today I knew nothing about—I am thankful for that information—such as the times he has fallen short, as indeed we all do. Hon Wilson Tucker referred to statements that Mr McKechnie made, and for the benefit of *Hansard* and to refresh the memory, I will read these words into the record. On 25 November last year, speaking at St George's Cathedral, Mr McKechnie said of the committee's process to fulfil the commissioner's role —

> "The Liberal Party, which could have quickly solved the problem has shown no inclination to do so, apparently content to let the Commission flounder without a permanent head."

He went on to describe the Liberal Party's refusal to support his reappointment as —

> … "a deliberate and partially successful attempt to lessen the effectiveness of the CCC".

I have to say that I am not a member of the Liberal Party, or, indeed, of any other party apart from this one. But these remarks were made in a public forum and printed in *The West Australian* for all to see. He can certainly do that as a private individual; there is no reason he should not. He was no longer in the employ of the government. He may even have been right, but, sadly, that is not the point. His comments made me question his impartiality going forward. This reflects on one of the most important of our important committees. It casts doubt on the very institution of Parliament. It casts doubt on me and every member here. This is a matter of principle. I feel the major concern we have is that the committee is being assaulted, and if that can happen to this committee, why not to every other committee? Members should consider this very carefully: do we wish to allow the integrity of this house to be impugned and damaged by outside forces? I sincerely hope not. This is a sorry affair.

I do not attribute any blame to Mr McKechnie. He is a private individual; he can say what he likes. But when it comes to this particular role, I need to have full confidence that the CCC is being well-managed, and that our important committees here with that oversight are not going to be hindered in any way in the duties that they have. To my mind, we do that by following the tried and tested procedures of this house and the other place, not by abandoning them. We abide by the standing orders. Let me say that again: we abide by the standing orders. We do not let anyone dispense with the standing orders to achieve their desired outcome because they did not like what we said.

It is also noted that we need a bipartisan approach. I do not like the word "bipartisan". We do not have two parties; we have a plurality of parties. We all have a voice here. We will take the idea of being bipartisan and note there was actually bipartisan—not "tripartisan"—support in the committee, and there was a difference of opinion. I was not there and I am not now. But they tried again, did they not? We have had a number of attempts to have Mr McKechnie appointed, and a very respectable committee, staffed by very respectable, honourable members, has twice reviewed this and twice said no. This is the important fact to remember, not the personality of Mr McKechnie and not even, indeed, how the CCC is functioning. That is not our job. It is not a failing of the old Parliament. It is not even a failing of this Parliament, because what has happened has been a complete and correct approach, according to the standards that we have had for quite a long time. I think it is a sad reflection that we now have to consider the integrity of our committee to appoint someone simply because they failed the first and second time. I have every confidence in the four members of the Joint Standing Committee on the Corruption and Crime Commission. I know for a fact that Hon Dr Steve Thomas and Hon Klara Andric are honourable and worthy people. Similarly, I am sure that Mr Matthew Hughes, MLA, and Mr Shane Love, MLA, are both honourable and worthy people, too. I must therefore trust in the outcome of that committee process, even if the outcome is an unfortunate deadlock; and, if I must trust it, why not the Premier?

Our predecessors put in place the requirement for a bipartisan approach. They relied upon the committee to ensure, for good reason, that checks and balances are required when such an important organisation is headed by one man who has been granted extraordinary powers. We should not abandon these checks and balances because they inconvenience anyone or any organisation that might argue that they have more powers than any other citizen in Western Australia. We should cherish these checks and balances and cherish the committees and work with them, as, indeed, we work with all to achieve compromise.

I am going to plead with the government to show some grace. Work with the Parliament. Work with this house. Do not dictate to us. Dictating to our house is simply unacceptable. As I understand it, there were three candidates suggested. All three would be worthy and honourable. It is clear to everyone, I think, that Mr McKechnie no longer has the bipartisan confidence of this Parliament. To continue to push for that I think is not only arrogant, but also dangerous and foolhardy for the future.

I would urge all colleagues to take this message back to Mr McGowan. We will work with him. We want to work with him. We want to work with the CCC candidate who will be agreeable to all. We need to work together in the spirit of bipartisan support for the people of Western Australia we represent. We need to have unfettered confidence in this. All that needs to happen now is for the Premier to choose a second name from those three provided to him and for the joint standing committee to again deliberate and come to a decision. I am confident that such a move would meet with success in short order and we could all agree with that. It would allow us to get on with the challenge of scrutinising other bills and doing the proper work of helping the people of WA to achieve the life they desire. I would welcome that and I presume that all here would also welcome it.

HON DR BRAD PETTITT (South Metropolitan) [12.47 pm]: I was not intending to speak on the Corruption, Crime and Misconduct Amendment Bill 2021, but I want to make a very brief statement with two points. First, I have no reason to believe that Mr McKechnie would not be a highly competent commissioner. Second, this important and powerful role should be one that has bipartisan or, as Hon Dr Brian Walker said, multipartisan support and be above party political differences. It is simply for the latter reason that I cannot support the motion as moved.

HON NEIL THOMSON (Mining and Pastoral) [12.48 pm]: I do not have a lot to say on this. I do want to speak from the perspective of a former public servant who had a very senior role in government and various other roles, and the importance of the Corruption and Crime Commission and the amazing work that it does for our state. Then, if I may, I will lead to my points on this appointment.

Without going into any specifics, in my previous life, I was fortunate not to be involved in too many investigations. As a public servant, one supports matters being referred to the Corruption and Crime Commission. Those matters are of grave importance for good public order and the integrity of our public sector. As I said, I have been fortunate not to have been involved in many, but I have been involved in some. I have been intimately involved in some of those investigations, obviously, not that I would want to disclose to this place the detail of any of those. But I must say it was an experience that gave me great confidence in the role of the Corruption and Crime Commission. However, like all organisations, we are dealing with human beings, we are dealing with a bureaucracy, and we are dealing often with judgement calls and the collection of evidence over a period of time. Some of those investigations took several years. We have seen the importance of this in recent times in the Department of Communities, for example, with people involved in activities that are quite sad to see at a senior level in government.

The role of the CCC is to assess and investigate and expose serious misconduct in the Western Australian public sector. That is vital. That is absolutely essential to ensure the confidence of the Western Australian community in the delivery of services by the executive and to ensure that public moneys are spent in a way that delivers fair and equitable outcomes in accordance with a transparent process.

The important part is that the CCC can assist the WA Police Force in the combatting of organised crime when required. The CCC has incredible powers of direction. I have been subjected to powers of direction as a senior public servant in relation to what I can say and what I cannot say. I have been privy to very delicate investigations, unfortunately, of those in the public sector who may not have been doing the right thing, and as a person in a position of responsibility I have assisted the commission in collecting evidence and providing statements to the commission and supporting the commission. It is absolutely vital that we ensure that the level of governance in our state is maintained to the highest degree. However, obviously things fall through the cracks and behaviours arise and things occur that are not in accordance with acceptable standards. That requires a multilayered approach. In the case of the public sector, that starts with the rules that govern the public sector and the quality of our management systems and the rigour that the senior public service, in my case, goes through in assessing what is going on and investigating and reporting matters.

The CCC has incredible power. It has the power to effectively require evidence to be delivered. It also has the power to undertake covert and overt investigations. I am not an expert on that, but, as I said, I have been in support in my role as a public servant of inquiries that have led in some cases to action and in other cases have not led to action. In some cases, it might just lead to a requirement for the public sector to put in place better controls to ensure that whatever actions have occurred—whether it be misconduct, or maybe not misconduct but something in the realm of misbehaviour—do not occur again.

That is my experience. I have seen that firsthand. I commend the staff of the Corruption and Crime Commission. They have a very difficult job. I commend all those who sit in a position of having to make decisions and take evidence and make the final call, and particularly the role of the commissioner, who sits at the top of that important organisation and has enormous powers to make determinations about serious misconduct. The whole purpose of the CCC is to help secure and maintain public confidence that in the actions of government and of our public service in the management of serious issues like organised crime, these matters are being properly assessed and addressed.

One issue that comes up is bipartisanship. I have had some discussions very recently on this issue. There are some things that sit above politics. This matter is one of those. This matter is about the confidence that we can have in the security and integrity of our systems of government and the way we operate, the confidence that we can have in the integrity of members of this place and the way they behave, and the confidence that we can give to our community that matters will be dealt with impartially, quickly and effectively. That is absolutely vital. Therefore, the issue of bipartisanship in this appointment should be maintained. I would call on the Premier and those who support this bill to reconsider. This issue has become very much a partisan issue, and that is unfortunate. I would ask that we reconsider this appointment and that we come back to this idea of bipartisanship so that that issue of confidence can be held in the highest regard.

I am talking about the views of the Liberal Party. Members opposite have been at great pains to say that there are not many supporters of the Liberal Party, and they can all have a little laugh about that. In the context of arguing about things like the Agricultural Produce Commission, retail trading hours, or even social issues, it is fine to have our argy-bargy and our debates, and we can throw comments across the floor, but we are talking here about the confidence that we can have in the integrity of our most important crime fighting body. In saying that, I mean no disrespect to WA Police Force, because it is at the operational end of all that. It is at the pointy end. It gets to do the prosecutions when they arise. However, in relation to those very sensitive matters that were highlighted recently, like the very sad case in the Department of Communities, when millions of dollars disappeared into someone's gambling habits, and we could point to a number of other examples, we would never want to politicise these issues, because these issues erode, or corrode, the confidence that our taxpaying public, our electors and our community have in the functions of government.

I thank Hon Dr Brian Walker for his comments today. I thought they were very considered. We do not have the numbers to defeat the bill. I expect that this bill will pass by a large majority of members. But I just ask that at this eleventh hour, we stop and pause and consider the implications of what we are doing in relation to maintaining the confidence of people in the good governance of Western Australia. Thank you.

The ACTING PRESIDENT (Hon Dr Sally Talbot): Members, we are considering the Corruption, Crime and Misconduct Amendment Bill 2021. The question is that the bill be read a second time. I am going to give the call to Hon Peter Collier so that he may make his introductory remarks. Members will note that we go from the time on the face of the clocks in the chamber, not their iPhones.

HON PETER COLLIER (North Metropolitan) [1.00 pm]: Thank you, Madam Acting President. Can I just say at the outset that I will not be supporting the Corruption, Crime and Misconduct Amendment Bill 2021, along with the opposition alliance, for a number of what I think are very pertinent reasons, and I will outline those in quite a comprehensive fashion after the lunch break.

Sitting suspended from 1.00 to 2.00 pm

Hon PETER COLLIER: Thank you, Mr Acting President. I repeat at the outset that I most definitely will not support this Corruption, Crime and Misconduct Amendment Bill 2021. I find it yet again an offensive intrusion on the integrity of Parliament and an example of another day of trashing the conventions of Parliament. In this instance we have a one-page bill that says —

> (4B) Despite subsection (3), John Roderick McKechnie is reappointed as Commissioner for a period of 5 years commencing on the day on which the *Corruption, Crime and Misconduct Amendment Act 2021* section 4 comes into operation.

It is unprecedented that we have a bill that names someone—that usurps all the processes and names someone. It is unprecedented. Members opposite are covering new ground yet again. They are creating yet another precedent that trashes the conventions of the chamber. Just look at my comments of yesterday to understand why that does not surprise me.

I will not go through the entire process for the appointment of the head of the CCC. Suffice to say, a process was put in place by a previous Labor government that has worked very effectively. Part of that process, of course, is that three applications are provided to the Joint Standing Committee on the Corruption and Crime Commission, which determines whether a person's name is forwarded to the Premier for confirmation. The previous joint standing committee could get neither bipartisan nor majority support. When the committee told the Premier that, he lost the plot. The Attorney General literally lost the plot as opposed to accepting the will of the committee. They lost the plot; they went absolutely feral. They called us corrupt, terrorists, underhand and clandestine. Every sinister adjective we can imagine was thrown at the Liberal Party, because it was the Liberal Party's fault, despite the fact that a Greens member was also a member of that committee. However, the government saw it as an opportunity to lambaste the Liberal Party. That went on relentlessly. The then Leader of the Opposition suggested the submission be put back to the committee for a second deliberation. It was and the committee came back with the same result. Well, they went atomic. It was the atomic solution that I talked about yesterday. I have a few examples of this to show that I am not exaggerating, and there is a plethora of them. There are dozens and dozens of absolutely offensive comments made in Parliament, in the media and publicly. This is the Premier on Thursday, 14 May. It states —

> We are trying to get Mr McKechnie reappointed and all the arguments we hear do not address the main issue, which is him. The Leader of the Opposition came with all these reasons about how we had done things wrong and that sort of thing, but clearly that is not true. Clearly, what has occurred here is that the Leader of the Opposition cannot control her own party and that is why we are in this position.

As I said yesterday, in the Liberal Party, our leaders do not tell us how we should vote or act on a committee.

> The Leader of the Opposition cannot get a Liberal Party member of Parliament in the upper house who has lost preselection, who, frankly, barely anyone has ever heard of to agree to her position.

How patronising of the Premier to make a comment like that about a member of the upper house because the Premier could not get his own way. The Premier said also on 13 May 2020 —

> 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.

Again, at that stage he was quite subtle in terms of the corruption but not so subtle as time wore on. On Sunday, 26 October 2020 when asked at a media conference about John McKechnie, the Premier said —

> 'We want him re-appointed. It's wrong, it's outrageous. It's bordering on corruption.
>
> You can't give in to terrorists. You give in to terrorists they just continue to terrorise and that's what the Liberal Party is doing,'

Give me a break. I have been through this on many occasions before. We are not terrorists; I am not a terrorist. I find that highly offensive. Members opposite get bent out of shape when I refer to them as bolsheviks, yet they call each other "comrade".

Hon Alannah MacTiernan interjected.

Hon PETER COLLIER: Do you think it is okay to call us terrorists? Keep saying that and I will ask for it to be withdrawn. Keep it up. Al Qaeda are terrorists; Liberal Party members are not terrorists. To assume that that somehow will make us change our mind is naive in the extreme. What about this one?

Hon Darren West interjected.

Hon PETER COLLIER: Grow up.

Withdrawal of Remark

Hon DONNA FARAGHER: I heard Hon Darren West refer to me as a terrorist and I ask that he withdraw it now.

Hon DARREN WEST: My comment was in jest and I meant no offence or disrespect to the member and I withdraw the comment.

Debate Resumed

Hon PETER COLLIER: Thank you, Mr Acting President.

Does the member not have some business he needs to be doing?

On Tuesday, 14 October 2020 the Attorney General accused the Legislative Council Liberals of delivering their verdict on Hon Jim Chown when he said —

> 'They told him to get rid of that McKechnie. Get rid of him behind closed doors and don't give a reason. What this bill is going to do—because I anticipate that it will pass through the Legislative Assembly—is that it is going to flesh these people out.'

When the government tried to bring in this bill originally, it tried to usurp the parliamentary process so it thought it would bring in a bill and say, "Up you" to the committee system. It goes on and on. The Attorney General said in the chamber on 28 May 2020 —

> The CCC commenced an operation and put out an interim report. The Operation Betelgeuse interim report—

It is important that members listen to this because the language the Attorney General uses is very, very closely aligned to language that the now candidate for the head of the CCC used a few months later. I ask members to listen to this now —

> I stress it was an interim report—revealed that there was a cartel within the Liberal Party, called the "Black Hand". I do not think the "Black Hand" was known to Liberal members in the Legislative Assembly. There were factions in the Labor Party: the left, the right and, where I was in my first term, the left right out! But those factions are known to everybody. When I first went along to the state executive, I saw the left faction sat on the left, the right sat on the right, and the centre sat in the middle.

It goes on. Again, that allusion to the "Black Hand Gang" and the sinister little subgroup of the Liberal Party is worthy of note for when I talk about it a little bit later. Also, on 15 April 2020, Gareth Parker said to the Premier —

> 'It is an offense and a breach of Parliamentary Privilege for the committee to reveal its deliberations. How are you 99.9% sure that it is Jim Chown?'

The Premier said —

> 'Well the idea that the government members of the committee would not be supportive of the Premier's recommendation I think is very unlikely.'

That is in itself is very telling. Gareth Parker said —

> 'Have they told you that?'

The Premier said —

> 'No. I haven't spoken to them. It's very unlikely. Al I'd say is we are trying to do the right thing about busting corruption in Western Australia. Mr McKechnie has been outstanding. We want to reappoint him. We are trying to do the right thing by getting rid of corruption in our state and we are using every measure at our disposal to try to get him reappointed. His position expires on April 28th. Going to the parliamentary committee with someone of that stature and ability. I think most people would have thought was just a formality. The idea that he was rejected by the Liberal MP on the committee I just find astounding and so….'

Gareth Parker said —

> 'I've said repeatedly that Mr McKechnie should be reappointed on this programme. But did they come back to you with an alternate name?'

The Premier said —

> 'No, so in effect what the Liberal MP on the committee has done has said go back through the reappointment process. We are not doing that. Mr McKechnie is the nominee. He will be the nominee. Until such time when he is reappointed there won't be a head of the CCC. So I'm not going to allow the Liberal Party in this state to scuttle the best appointed to the CCC to run anti-corruption matters in WA. So the ball is in the Liberal Party's court. They need to help us get this appointment through.'

Yet again, the Premier is making this highly political and making John McKechnie's appointment absolutely untenable by saying, "It doesn't matter what you do, we are not going to abide by it. We are going to have McKechnie as the head of the CCC." That is why we are now here. That is why we are debating this bill. They will not abide by the rules of the Parliament so they are just going to trash them.

This next quote is overtly political. It is extraordinary. On 28 May 2020 the Attorney General, in the Parliament, said —

> The election is 40 weeks away. This will be a much shorter time than the 54 weeks it took the Liberal government to install Mr McKechnie. The people of Western Australia will have a clear choice at the forthcoming election. If they vote Liberal, they will shut out the person who the Leader of the Opposition, the member for Nedlands, the member for Dawesville et al say is the most outstanding nominee. If they want to shut out the best corruption commissioner the state has ever had, if they want to cover up and bring to a stop Operation Betelgeuse and stop those warnings from coming, and if they want to cover up corruption, they should vote Liberal. If they want Mr McKechnie, the best corruption and crime fighter the state has ever seen, they should vote Labor. That will be the choice.

There it is in black and white. The Attorney General said it. It is a political position. It is a political appointment. We do not need any more clarity than that. It is there.

Then, to make matters worse, he continued after the election. On 16 June 2021, he wrote an extraordinary inflammatory opinion piece. I cannot believe that the Attorney General wrote this, it is just extraordinary. It states, in part —

> Mums and dads who get unwanted attention from the Australian Taxation Office can't just sack the Commissioner of Taxation. Motorists caught speeding can't impound the multanova. So why should politicians get away with ending the career of WA's corruption watchdog in the middle of an investigation into MPs rorting their entitlements?
>
> It's just dodgy. Today the McGowan Labor Government will introduce legislation to reappoint John McKechnie QC as Western Australia's Corruption and Crime Commissioner.

Then he goes on —

> A subsequent report by the CCC in November 2019 revealed that Liberal members of the Legislative Council call themselves the "Black Hand Gang" and used taxpayer money to fund lavish functions at high-end restaurants.
>
> The Legislative Council whip at the time was Phil Edman, who became nervous when the CCC seized his laptop computer. "It's got everything, all the emails between all of us, Black Hand Gang dinners, it's got the video," the CCC captured him telling his former colleagues.
>
> "That McKechnie will expose it all." Funnily enough, Mr McKechnie's support among the Opposition nosedived shortly afterwards when his contract came up for renewal by April last year.

It goes on and on and on. Again, the insinuation there, quite clearly, is that we are protecting Phil Edman; we are protecting the laptop. As I said yesterday, nothing could be further from the truth. I will never stand in the way of the CCC having the laptop—never. It cannot have the privileged information. I stated that yesterday. I challenge any single person in this chamber to say that the CCC can have their privileged information or anyone can have their privileged information. That is all we have done. All we have done is to ensure the integrity of the Parliament.

It goes on and on and on. There are so many quotes, I want to move on. The Premier continued it yesterday, 23 June, when according to the uncorrected *Hansard* he said, in part —

> That was what we committed to. What is going on here is actually corrupt. The reason the Liberal and National Parties do not want Mr McKechnie reappointed is that he investigated their members; that is why.
>
> …
>
> You are totally and utterly conflicted. He investigated the upper house Liberals. He found corruption in their ranks and so now the upper house Liberals cannot stand him and do not want him reappointed. That is actually corrupt. That is corrupt on the part of the Liberal Party. We will not stand for that. We will not stand for that and I will not stand for that—that level of corruption.

The Premier is calling me corrupt. I tell the Premier: I am not corrupt. I have not had anything more than a speeding fine. I tell him right now that if standing up for the conventions of the Parliament makes me corrupt, so be it; I will do so gladly. But I am not corrupt and I can say quite categorically, hand on heart, that I have great confidence in saying that none of my colleagues is corrupt. As I have said, if there is an instance whereby the Premier can find evidence that any of us have been implicated in corrupt behaviour, he should reveal it. Not agreeing to the procedures of the Parliament does not make us corrupt. It simply does not. It might make for nice political fanfare, but that is not accurate.

With that, of course, they followed the process. The Premier then decided that what he would do is find a way to get his own way. After the proposal for Mr McKechnie's appointment had gone to the committee twice, the Premier

wrote a letter to the Leader of the Opposition, saying, "Come on, let's get rid of these minor parties and let's, you and I, just have an agreement so we can get Mr McKechnie across the line—bipartisan support", sidelining the committee. A letter from the Premier to Hon Liza Harvey, in part, says —

> The interim report released on 17 December 2019 was critical of expenditure by Mr Edman in respect of social activities of a group which exists within the Parliamentary Liberal Party and particularly the Legislative Council, known as the "Black Hand Gang" (a name associated with secret criminal groups, and which has no doubt been adopted in jest). However, no member of the public should be able to suggest that the reason why Commissioner McKechnie QC does not have bi-partisan support is due to this investigation. It is therefore critical that Commissioner McKechnie QC should now receive bi-partisan support, to avoid any diminution of public confidence in the great institution of Parliament.

Oh my goodness! You have to be joking. He wrote that letter. Of course, that is garbage. Again, it is talking about this sinister "Black Hand Gang". I make one thing perfectly clear, again for the public record—I went public on this and I did media on this and I mentioned it in Parliament—the "Black Hand Gang" is a colloquial term that has been used for decades for all members of the Parliamentary Liberal Party in the Legislative Council. It is not some sinister little group within the Parliamentary Liberal Party that involved Phil Edman. It is nothing like that. But every single piece of correspondence, every time they went on the news, and as we will find out in a moment, and in everything that was carried through to Mr McKechnie alluded to the fact that it was this sinister little group. It was not.

With that Hon Liza Harvey wrote back to the Premier and suggested that he resubmit the nomination, as I mentioned earlier. They did. The committee said thanks, but no thanks. Again, as I said yesterday, we do not know what the committee knows. No-one knows unless someone from the committee leaked something. We do not know why the committee said no to Mr McKechnie, not once but twice. They said no twice.

Then, not accepting defeat, not saying, "Actually we need to abide by this decision", the Attorney General decided that he would write a letter to the Leader of the Opposition and try to do a sweetheart deal with the opposition. In that letter he said —

> Following the conclusion of the second reading speeches on this Bill, I had discussions with a number of senior Liberals who are looking for a compromise way forward other than to complete all stages in the Legislative Assembly and move on to the Legislative Council, where the Hon. John McKechnie QC's good character may be undermined by some members.
>
> …
>
> As one senior Liberal commented to me, this is a "sensible and orthodox" way of going forward and that Mr McKechnie QC was regarded as an outstanding appointment to that position when first appointed by the Barnett Government. It would allow for the reappointment of Mr McKechnie QC whom you have indicated your strong support for.
>
> The Premier has asked me to write to you seeking your concurrence with this approach, in which event the Bill will be brought back on in the Legislative Assembly and during consideration in detail the attached amendment would be moved and the clause naming Mr McKechnie QC deleted.

Again, the government was trying to bypass Parliament and have a little sweetheart deal with the opposition across the chamber. The Premier and Leader of the Opposition would shake hands and say, "Yes, we'll do it." They would sideline the crossbench and the Greens and say, "You don't matter; you are irrelevant. We will do it whether you like it or not." That is absolutely offensive. Not only that, I got text messages from the Attorney General personally asking for my support for this. I absolutely ignored them. All I am saying is that they will stop at nothing. They do not seem to understand that we have procedures here in Parliament. As I have said over and again, you do not stamp your feet when you do not get your own way and you do not have a hissy fit; you just accept the conventions of the Parliament. Perhaps, just perhaps, you do not get your own way all the time.

You do not sack the former head of the joint standing committee because she did not do what she was told to do. You do not sack the President of the Legislative Council because she did not do what she was told to do. Perhaps, just perhaps, they were doing what they should have done.

The opposition got some advice on that bill because the second reading speech alluded that somehow there was something inappropriate. The legal advice from Grant Donaldson read, in part —

> My *second* observation concerning the Second Reading speech arises from the following assertion:
>
> > "In view of the resounding support of both the nominating committee and the Leader of the Opposition for the reappointment of Mr McKechnie as the continuing Corruption and Crime Commissioner, the government has no intention of putting any other name forward to the joint standing committee and therefore there exists an impasse in the appointment process."
> >
> > …
>
> It is trite to observe that it matters not that the Leader of the Opposition and the nominating committee support the reappointment of Mr McKechnie.

> To the extent that there is an "impasse" in the appointment process, it arises because the Premier will not recommend a candidate other than Mr McKechnie.
>
> There is no failure in the processes prescribed by the Act, or indeed in the design of such processes. That the Joint Standing Committee might not, by majority and in a bipartisan way, support appointment of the Premier's recommended candidate is an intrinsic part of the mechanism for appointment, and has been from the commencement of the Corruption, Crime and Misconduct Act 2003.

Hear, hear! Everything that happened was absolutely appropriate, apart from what the Premier and Attorney General were trying to do. They were trying to bypass the procedures. It is almost: why on earth are the Premier and Attorney General so intent on appointing Hon John McKechnie? As I have said in this place before, I have never had an issue with John McKechnie. I have met him a couple of times, vaguely, at some social events, but I cannot remember ever having a conversation with him. I had nothing against him, but the Premier and the Attorney General were making his position untenable. There is no way he could then be seen as impartial, as a direct result of the intervention of the Attorney General and Premier. That of course made us more suspicious than ever. Having said that, if the joint standing committee came back and said it had reconsidered and agreed that Hon John McKechnie should be the appointee, I am sure that as a party we would have agreed to that, but we did not have that. Not only that, there is a notion that somehow the CCC went into freefall since John McKechnie left; that it was not doing anything and it had become redundant. Rubbish. Listen to the Joint Standing Committee on the CCC public hearing on Wednesday, 7 October when the CCC was interviewed. The transcript states —

> **Hon JIM CHOWN**: Mr Ellis, congratulations on your first annual report on behalf of the commission. Obviously, you are an extremely busy person, and taking up this role as acting commissioner has probably put a major burden on your leisure time as such. In regard to the matter where you have stated that it creates uncertainty for the commission in not having a full-time commissioner, have you expressed this opinion in writing to the Attorney General?
>
> **Mr Ellis**: We have expressed to the Attorney General that it is desirable for a full-time commissioner to be appointed. We have also expressed the view that it is desirable for there to be a second acting commissioner—sort of a tag-team approach. As you would be aware, that is not an appointment that can happen overnight. The same process needs to be followed.
>
> **Hon JIM CHOWN**: It has been nearly six months, acting commissioner. And what was the response?
>
> **Mr Ellis**: Is it appropriate for me?
>
> **The CHAIR**: Absolutely!
>
> **Mr Ellis**: My understanding was that he was eager to address the issue. No doubt he will be able to say what his priorities are, but my understanding of his priority was to procure the reappointment of former Commissioner McKechnie.
>
> **The CHAIR**: From my recollection—Mr Warnes might be able to help me—the issue about having a second acting commissioner has been a live issue for a long time, as I understand it. This is not a new thing.
>
> **Mr Warnes**: I think previous to Mr Ellis's first appointment, there were two commissioners. Certainly when I started at the commission, they were in that transition to one, with Mr Douglas finishing his term and Mr Shanahan continued. Since that period, we seem to have only one acting commission. It has been great to have an acting commissioner when former Commissioner McKechnie had a conflict of interest with matters—Scott was able to jump in—but we do not have that luxury now. We are fortunate that we have not had that and been confronted with that particular issue yet, but it is around the corner I am sure.

As I said, it is not unusual to have just one acting commissioner. The transcript continues —

> **The CHAIR**: While we are on that matter, there have been some indications, in both the report and I think publicly, that the commissioner has ongoing investigations into electorate allowance matters, if I can put that in broad terms. Given that there is no decision at this stage from the court, how active is that investigation, or is it effectively in suspension until you get more legal guidance?
>
> **Mr Ellis**: We are still actively pursuing that investigation.

This nonsense that the investigation is stalled as a result of no John McKechnie is rubbish. That came from the CCC: it is still actively pursuing that investigation, and good luck to it. Members should remember this for a point I am going to raise in a moment. I continue to quote the transcript —

> **Hon JIM CHOWN**: Can I just ask why the Attorney General received a full list of CCC investigations?
>
> **Mr Ellis**: I beg your pardon.
>
> **Hon JIM CHOWN**: Can I just ask why the Attorney General received a full list of investigations underway within the CCC?

Hon ALISON XAMON: That came out in the course of a line of questions within the Legislative Council. The Council was advised that the Attorney General had requested and received a full list of ongoing investigations from the CCC.

Mr Warnes: I do not think he got a full list of investigations. He got an indication of some of the serious investigations that we were undertaking by nature of them, not the specifics that would be operational.

Hon ALISON XAMON: I am just recalling that this has been the source of some debate within the Council.

It goes on. The Attorney General got a list of the investigations. We know that because in a letter from the Premier to the Leader of the Opposition he mentioned they had got a list of the investigations the CCC was looking at. The transcript continues —

Hon JIM CHOWN: On any previous occasion has an Attorney General requested such information from the CCC to your knowledge?

Mr Warnes: Not to my knowledge.

Hon ALISON XAMON: This is the first time.

Hon JIM CHOWN: This is without precedent.

Mr Warnes: I guess, administratively, he wanted to know the impact of not having a reappointed commissioner and we were giving him a sense, administratively, on what would happen at that point in time when we were trying to understand what the impact was.

The CHAIR: Clearly, you failed to convince him.

Mr Warnes: Clearly.

The notion that the CCC has folded and is not doing anything is garbage. Another CCC report was tabled in this place today; it is obviously working. Its investigation into Operation Betelgeuse is continuing in earnest. Not only that, the Attorney General has asked for a list of operations from the CCC, for the first time ever, and was provided it. This relationship between the Attorney General and the head of the CCC is very, very cosy. This excerpt from the procedure and privileges committee's sixty-first report was read into *Hansard* today by Hon Nick Goiran. This message shows the negotiation between the Attorney General and the head of the CCC, a position that is meant to be completely impartial. I quote —

> Finally, in an sms message sent by the Commissioner of the CCC to the Attorney General dated Monday, 22 July 2019, the Commissioner wrote:
>
> > The DPC has delivered a USB in accordance with the requirements under the CCM Act. Any privileged material was identified and removed prior to delivery. I have ordered that the USB remain in the secure exhibit room. In the absence of any indication to the contrary I will release it to the investigators later this week. Enjoy your last night in Bali.

There is evidently a strong cosy relationship between the Attorney General and the former head of the CCC. That leads one to wonder why the Premier and Attorney General are so insistent on reappointing John McKechnie. He had a good term in office—he had a term in office; whether it was good is open to interpretation—he is pushing 70 and it is time for retirement, potentially, and to go into other things. But no. For some reason, the government decided, "No, we're going to have him whether you like it or not, and if we cannot get it through the normal procedures, we're going to bulldoze it through by taking control of the Parliament", which is exactly what is happening today and exactly what everyone is a part of, and it is something that government members will have to live with. This is an extraordinary precedent. With that, as I said, one has to ask: is there something? Up to that point, I was willing to give John McKechnie the benefit of the doubt. Perhaps it was just the Premier and Attorney General carrying on with their vitriolic attacks on the Liberal Party for nothing other than political purposes, saying that the Liberal Party is tainted with corruption. It played out nicely in the media and for most people who do not understand, they think that somehow the Liberals are protecting corruption and that we dominated the Council, which we did not. They kept saying that the Liberals dominated the Legislative Council. Members need to remember that we had nine members out of 36 members. We did not dominate the Council at all. It just so happened that every other party agreed with the Liberal Party. Given that every other party, all seven of them, agreed with us, perhaps the Labor Party needs to do a little soul-searching.

As I said, I was willing to give John McKechnie the benefit of the doubt until he delivered a speech on 25 November 2020 at St George's Cathedral. Just how far he has been drawn into the web of the Attorney General and the Premier is exposed in this speech. I say quite categorically that, as a result of this speech, John McKechnie, quite frankly, cannot be the head of the Corruption and Crime Commission. He has rendered himself ineligible as the head of the CCC. He is evidently not impartial. I will read parts of his speech. He said —

> As you no doubt know, I was not reappointed as Commissioner when my 5 year term concluded. Since 29 April 2020 the Commission has not had a full time Commissioner. Unless the Liberal party dramatically

changes its stance, this state of affairs will continue indefinitely. Because it is nothing less than an attack on the functioning of the Commission, it is important for the community to understand what has happened. As you will hear shortly, there is no explanation as to why it has happened.

Listen as I read through this, members, to see whether there is any connection or similarity between the language used by John McKechnie and that used by the Attorney General and the Premier. He continues —

No, I view the decision not as a personal attack, but rather a deliberate and partially successful attempt to lessen the effectiveness of the CCC.

…

Under the CCM Act, before an appointment or reappointment of commissioner or acting commissioner can be made the JSC must reach majority and bipartisan support: s9 (3)(a).

• The current membership is Margaret Quirk (Labour) (Chair);

• Jim Chown Liberal (Deputy Chair);

• Matt Hughes (Labour);

• Alison Xamon (Greens).

Section 9 (3a) seems to have been added to the bill during debate and without much thought. It directly contradicts s 9 (4) which requires only that the Premier consult with the JSC. I add in parenthesis that the CCM Act is not the finest example of the draftsperson's art. It is, in places a mish mash of concepts. The fact that 2 contradictory sections appear next to each other begs a question about legislative scrutiny. The Legislative Council prides itself as being a house of review.

Because of this poorly thought out addition, it is open for two members to emasculate the CCC forever by declining to approve an appointment. If a member of the JSC was aware of an investigation into their actions or those of a friend, that person, with one other, could stultify the appointment of even the most qualified person.

One does not need a PhD to work out what he is insinuating; that somehow the decision was made to protect their friends. He continues —

Aah but you say, surely there are protections built into the process to ensure that any decision is fair and accountable. Well, no actually.

In the present case, I was the first Commissioner to complete a full term and to offer to continue. The nominating committee, the Chief Justice, Chief Judge and community representative assessed me as the outstanding candidate. Two other candidates were assessed as suitable.

The Premier put forward my name to the JSC for its consideration. The JSC was unable to give majority bi partisan support, effectively rejecting the nominating committee's unanimous recommendation.

The former Leader of the Liberal party, Ms Lisa Harvey then wrote a strong letter in support of my reappointment. In a stunning demonstration of her lack of authority within the party, the JSC rejected the nomination a second time.

So this guy is not biased in any way? He is not passing a value judgement on this? Listen to the language. This speech was given by a candidate for the role of commissioner of the CCC. He continues —

Why did the nomination get rejected? Only the 4 members know. A media release put out by 3 members but disavowed by Mr Hughes said reasons would not be given as it would disclose confidential third party communications and interfere with the operations of the Commission.

The latter reason is complete nonsense. As to the former, a letter to the Chair Ms Quirk seeking basic procedural fairness—to know what was said about me—has gone unanswered.

Mr Hughes has stated in Parliament that he saw nothing which would suggest rejection of the Commissioner. So real questions remain as to whether there ever were any third party communications.

Listen to this! He continues —

The JSC could answer these questions but has chosen not to do so.

Apart from the 4 of them, nobody else knows. The JSC deliberations are confidential and so cannot be shared. The Liberal party unsuccessfully moved to refer Mr Hughes to the Privileges committee for disclosing confidential information from the JSC (he didn't).

It would then be extreme hypocrisy if confidential information was shared by a member of the JSC with members of the Liberal party. There is nothing to suggest that any member of the JSC has in fact breached its confidentiality requirements. That means of course that the rest of the Liberal party have locked themselves into a position concerning an appointment vital to the functioning of an effective anticorruption agency without knowledge as to the facts. How have we come to this?

Perhaps we believe in Parliament, Mr McKechnie, and that you are not above Parliament. The speech continues —

> The appointment of a Commissioner should not be a matter for party politics, though it has been on occasions in other jurisdictions. If the JSC has reached its position for party political reasons, why not say so? After all that is the purpose of the JSC and why it has members of parties other than the current government. Refusing to appoint a Commissioner in these circumstances may be likened to refusing to accept the results of a free and fair election—destroy a norm of governance without regard to the wider harm that will cause.

If that is not hypocrisy in the extreme, I do not know what is! He continues —

> The government through the Premier, has insisted that there is and will be no other nomination considered by it. The Liberal party, which caused the present situation, could have resolved the issue months ago but has not done so.

Again, he is leading into language used by the Premier. He is saying to the Liberal Party, "Tell your guy on the committee to do what he is told", which is exactly the language used by the Attorney General and the Premier. The speech continues —

> Ms Harvey refused to put an amendment to the CCM Act proposed by the Attorney General to the party room for consideration. Now the clock has run out. Those who are happy to have a diminished CCC have won.

That is garbage, Mr McKechnie! Quite frankly, John McKechnie needs to do some soul-searching. He has been drawn into the evil web of the Premier and the Attorney General. They had a hissy-fit and spat the chewy because they could not get their own way and that is why we are sitting here, once again, breaking precedent on the appointment of the CCC commissioner. Mr McKechnie should be impartial, but he has been drawn into their web. It goes on —

> Mr Chown and Ms Xamon are both members of the Legislative Council.

There is better to come, so listen. This speech was given by John McKechnie. He continues —

> In December 2019 the Commission published a report into misconduct risks in electorate allowances for members of parliament. In that report an opinion of misconduct was formed in respect of a former Liberal member. The report also mentioned the existence of the Black Hand Gang, a name given to themselves by a group of Liberal Legislative Council members. The report foreshadowed further investigations.

Again, he has been drawn into that web. He is assuming that there is a little sinister group, an idea perpetuated by the Attorney General and the Premier. John McKechnie has been sucked in by it. It is wrong, Mr McKechnie! He continues —

> The liberal member possessed a laptop computer which was lawfully seized by the Commission under warrant. This is how he described some of its contents:

John McKechnie said this stuff in a speech at St George's Cathedral —

> And there's enough stuff on that f****** computer to bury f***** a lot of people and ruin their political careers forever...There's videos and pictures and lots of lovely little collections that I've got on there.
>
> In other States, Parliaments have closely co-operated with anticorruption agencies while preserving parliamentary privilege. This is what one would expect from the legislative arm of government—a willingness to fully co-operate with a law enforcement agency while preserving the important though limited role of parliamentary privilege.
>
> Not so in WA. The Liberal dominated Legislative Council responded to the investigation by seizing exhibits from the Commission especially the laptop computer. It targeted ordinary public servants in hearings. Instead of seeking to work with the CCC, remarkably the Legislative Council launched legal action in the Supreme Court naming the CCC as Defendant. The litigation is ongoing.

I need to make two vital points on that. Evidently, John McKechnie is starting to believe the mantra that he can walk on water, which has been prophesised for months on end by the Premier and the Attorney General. He is starting to believe in his own infallibility, which is a shame, because it has affected his judgement. He is using the stuff about the "Black Hand Gang" as though he does not know. Remember that he made that speech in November 2020, months after all this started—almost a year. I wrote to John McKechnie for his benefit, because he should know better. Not only should he know better, but he does know better. I wrote to him 12 months before, on 20 December, regarding the CCC report and explained the composition of the "Black Hand Gang". I will not read the whole lot, but I will quote my letter in part. It states —

> The "Black Hand Gang" reference has attracted media interest over recent days.
>
> By way of clarification, the "Black Hand Gang" is a collective label or group nickname that has been applied for some 40 years to refer to <u>all</u> Liberal Party Members of the Legislative Council.

I did that to provide clarity for him. I did not care whether he continued the investigation just as long as he understood what the "Black Hand Gang" referred to. I got a response from Ray Warnes. It said —

> Dear Mr Collier
>
> …
>
> Thank you for your 20 December 2019 letter to the Corruption and Crime Commissioner clarifying the membership of the "Black Hand Gang".
>
> The Commissioner has asked me to respond on his behalf as he is currently on leave.

So, he had seen the letter and was responding. It continues —

> The reference to the report to the "Black Hand Gang" is in the context of examples where electorate allowances are alleged to have been used inappropriately by a former Member of Parliament. The examples, along with other instances highlighted in the interim report, illustrate a serious misconduct risk for the Government and Members of Parliament to consider.
>
> Your clarification of membership will be useful should there be any further reference to the "Black Hand Gang" in future reports on the misconduct risks in electorate allowances.

Do members know how useful it was? He still did not know what was going on 12 months later as he mentioned it in a speech at St George's Cathedral. That is how useful it was. My clarification was not useful because it did not fall into the mantra that somehow there is a sinister little group of Liberals who have acted inappropriately and that all their buddies on this side of the chamber are protecting them.

As I have said over and over again, they can have the laptop. If there has been any illegal action, they will suffer the consequences. My colleagues all agree with that. We have never ever said anything to the contrary. We all agree with that. That is not an excuse to completely usurp the processes and procedures of this chamber. Do not use that as an excuse—that political high ground that the Premier and Attorney General use day after day, in unedifying displays, to try to categorise everyone on this side of the chamber as corrupt. They use that as an excuse to pass this insulting piece of legislation today.

What we have here today is a precedent that will live forever. Members opposite are going to be part of a government that sets a precedent that means if a government cannot get its own way, it will change the rules. That is what they are going to do. As I said, they have a man who is evidently now inappropriate for the position; he is tainted by the political paint that they have garnished him with. In addition to being of the same colour, he is speaking the same language as members opposite. That is terrible. The head of the Corruption and Crime Commission is sacrosanct. The head of the CCC should be above politics. Everyone knows that. As a direct result of the actions of Labor Party members—particularly the Premier and the Attorney General—consistently, unambiguously and over a long period of time, they have made John McKechnie's position as head of the CCC absolutely untenable. The CCC will have absolutely no moral authority if he becomes head of the CCC again. As I said, we are being asked to pass a bill that is unprecedented. It appears that precedents and convention mean absolutely nothing to this mob—it is their way or the highway, which is such a shame. As far as members on this side are concerned, we, as a group, really do respect the institution of Parliament.

In closing, I want to make a few things clear. As far as this issue is concerned, we respect the procedure for the reappointment or appointment of the head of the CCC. We respect that process. We respect the Joint Standing Committee on the Corruption and Crime Commission and its deliberations. We respect the fact that the chair of that committee was a Labor member. We respect the fact that the committee made the decision not once, but twice. In addition, we respect the process to have another go. That did not happen. We do not respect the fact that the government did not agree with the committee so it tried to bypass committee procedures and go its way or the highway. We do not respect the constant lambasting from the Premier and Attorney General that somehow categorises members on this side of the chamber, particularly Liberal members, as terrorists or corrupt. We did not control the Legislative Council in the last Parliament. I was Leader of the Opposition in the Legislative Council. As I said before, trying to get people on our side to vote on legislation or motions was like herding goldfish. It was very, very difficult. In this instance, it was not an issue at all. Every single non-Labor member, including the Greens, supported us on this issue. It was nothing to do with the Liberal Party controlling the Legislative Council. If the Leader of the House had been able to secure one vote and the Greens, she would have got it through, but there was no negotiation at all. That is in their DNA—the atomic solution. They get their own way or they just blow up. That is what we have here. Labor Party members cannot get their own way, so they are going to blow up, stamp their feet and go out to the media ad infinitum and call the Libs corrupt. Their justification for putting John McKechnie back in that position is that the Liberals are corrupt. Quite frankly, if I were John McKechnie, I think I would do some serious soul-searching on this issue. It is evident from the speeches made thus far that the only members who are going to support this bill are Labor Party members, yet again. Rather than lambast everyone else, they should read the tea leaves and say, "Perhaps this is not a good idea." The government should go back to square one and follow the integrity of the Parliament.

HON MARTIN ALDRIDGE (Agricultural) [2.47 pm]: I rise to speak to the question that the Corruption, Crime and Misconduct Amendment Bill 2021 be read a second time. I think members who have spoken before me today have set out quite well the history of this issue and where we have come from regarding the appointment of a Corruption and Crime Commissioner following the expiry of the term of Hon John McKechnie.

This is quite an extraordinary bill in many ways. It is extraordinarily short, with just four clauses to consider when we reach the Committee of the Whole stage. It is extraordinary in the way it seeks to change the convention by which Western Australia has traditionally appointed a commissioner of the Corruption and Crime Commission. This is of great concern. Of more concern is the way in which we have reached this point. That is what I want to go to today. I want to get to the point of why I cannot support the bill and why other members should not support the bill.

Before I go any further, I acknowledge in the public gallery the students and staff from Central Midlands Senior High School in Moora, and welcome them to the Legislative Council.

It seems to me that because government members have not been able to get their own way in the statutory process for appointing a commissioner, they are no longer prepared to accept any other outcome than the appointment of John McKechnie. Members who have a copy of the Corruption, Crime and Misconduct Act 2003 need only turn as far as page 15. I refer to section 9 in part 2 of the CCM act, which provides, in part —

> (1) There is to be a Commissioner who, in the name of the Commission, is to perform the functions of the Commission under this Act and any other written law.
>
> …
>
> (3) The Commissioner is to be appointed on the recommendation of the Premier by the Governor by commission under the Public Seal of the State.
>
> (3a) Except in the case of the first appointment, the Premier is to recommend the appointment of a person —
>
> (a) whose name is on a list of 3 persons eligible for appointment that is submitted to the Premier by the nominating committee; and
>
> (b) who, if there is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support.

Subsection (6) provides —

> The office of Commissioner is not an office in the Public Service.

When we get to the Committee of the Whole stage, it will be interesting to find out why the other two eligible candidates who were submitted by the nominating committee were ineligible to be recommended for appointment by the Premier to the joint standing committee. As members would be aware, "nominating committee" is defined earlier in the act at section 3 as follows —

> ***nominating committee*** means a committee consisting of —
>
> (a) the Chief Justice; and
>
> (b) the Chief Judge of the District Court; and
>
> (c) a person appointed by the Governor to represent the interests of the community;

Why were the other two people who were put forward to the Premier not worthy of nomination to the joint standing committee of the CCC to be appointed commissioner? I will speak about this matter later in my contribution, but I do not think the case has been made. In fact, the case has far from been made for why section 9 of the CCM act should be ripped up and put in the bin by the Corruption, Crime and Misconduct Amendment Bill 2021. Members who are voting for this bill need to stand in their place this afternoon this evening or maybe tomorrow morning and put on the record why they believe section 9 needs to be torn up and put in the bin and why Mr McKechnie, one of three eligible nominees put forward by the nominating committee, should be the one appointed. The Parliament is effectively conducting the interview process for the commissioner of the CCC, instead of the process that would normally take place under section 9 of the CCM act. We are conducting the job interview and, at the end of it, the 36 members of this chamber, along with the other place, will decide the outcome. How many members have met Mr McKechnie?

Hon Darren West: His daughter lives in Carnarvon.

Hon MARTIN ALDRIDGE: Hon Darren West has indicated he knows Mr McKechnie. I look forward to his contribution in 38 minutes, setting out the reasons why Mr McKechnie is the most eminent person to be appointed the Corruption and Crime Commissioner. If we are moving towards a US Senate–style confirmation system for the appointment of these types of offices, I want to know from the government when we will have an opportunity to examine the nominee. Will the parliamentary secretary allow a committee of this house to conduct that examination on behalf of this place? This has to be done. The highest priority of the McGowan government, with absolute control, is to appoint this commissioner tonight, so will the parliamentary secretary support a resolution that calls the Premier's nominee to the Bar of the house so that we can examine him?

The parliamentary secretary has two options. We are the ones who are now taking responsibility, through this amendment bill, for interviewing and approving the nomination for the Corruption and Crime Commissioner, an office that has extraordinary powers. I ask members who are not that familiar with the operations of the CCC to turn to part 6 of the act, which commences at page 100. Extraordinary powers exist within the office of the commissioner, powers not even our police have, that do not have judicial oversight and that he can exercise alone. That is why we have a parliamentary inspector and a joint standing committee to oversight the CCC; from a very early time, the need for regulation of these extraordinary powers has been recognised.

I draw members' attention to section 100, "Power to enter and search premises of public authority or officer", which states —

> (1) An officer of the Commission authorised in writing by the Commission may, at any time without a warrant —
>
> (a) enter and inspect any premises occupied or used by a public authority or public officer in that capacity; and
>
> (b) inspect any document or other thing in or on the premises; and
>
> (c) take copies of any document in or on the premises.

Members opposite wonder why the Standing Committee on Procedure and Privileges took the extraordinary actions that it did by commencing action and proceedings in the Supreme Court of Western Australia. It is because, members, you are public officers. Your electorate offices belong to the Department of the Premier and Cabinet. Under section 100, the commissioner or an officer of the commission can enter, inspect and seize without a warrant. That is not the reason alone. That power has existed for a long time. I will come to the sixty-first report shortly, but that is the reason that the Legislative Council has taken action in the Supreme Court against the CCC and others in respect of the powers it has exercised against Parliament.

I really hope that the parliamentary secretary will give some regard to the two suggestions that I have just given him, because I cannot, and I cannot see how any other member of this chamber could, endorse by statute the nomination of a person, whom most in this chamber have probably never set eyes on, to the highest paid public office in Western Australia with unquestionably the most significant powers available to them. On what basis are members sticking up their hands this afternoon, this evening or tomorrow morning to say that they are satisfied individually that the decision that the government is about to take is the right one?

As I said, we are heading towards a half-baked United States–style confirmation system without the ability to examine the outstanding nominee, as the government calls him. There are two options. We can allow one of Parliament's committees to conduct inquiries on our behalf, which probably would be my preference, or, if we do not want to impede debate, let us issue an order and have the outstanding nominee appear before the Bar of the house. Then, whether prior to the conclusion of the second reading or maybe when we enter the Committee of the Whole stage or maybe at some other time, members can examine this outstanding nominee and ask him why we should support this extraordinary amendment bill that the government seems intent on ramming through Parliament this evening.

I will turn to a few different documents in a moment, but I want to start with the second reading speech. We do not have to go far. In the first paragraph it states —

> It seeks to restore Hon John McKechnie, QC, the best corruption fighter Western Australia has ever had, as Corruption and Crime Commissioner.

This statement is quite interesting; it depends on which lens you look at it through. Another point of view could be that in the five-year term of Commissioner McKechnie we have seen some of the most significant cases of corruption in our state's history, under his watch. How operationally effective has the commission been in deterring and preventing corruption when, during his term, we have seen some of the worst corruption in our state's history? As far as I can tell, none of that was covertly uncovered by the CCC, either.

Moving on to the second paragraph of the second reading speech, it states —

> In 2013–14, the last financial year before Mr McKechnie, QC, was appointed by the Barnett Liberal–National government, reports from members of the public accounted for just 12 per cent of total allegations investigated by the CCC. In 2019–20, when the term of Mr McKechnie, QC, expired, the proportion of allegations to the CCC from members of the public had risen to 45 per cent. It is difficult to think of a more ringing endorsement of the leadership of Mr McKechnie, QC.

I am not quite sure how those facts—if, indeed, they are facts—prove the case that this is a ringing endorsement of the leadership of Mr McKechnie, QC. Is it that corruption has been out of control under the watch of Mr McKechnie? Further along in the second reading speech, there is talk about the corruption that has been uncovered by the state's best corruption fighter. It starts on the second page of the second reading speech and goes through a list of examples: the North Metropolitan Health Service's procurement issues, involving a public servant billing taxpayers $170 000

for home renovations while accepting $200 000 worth of travel; Craig Peacock, who fleeced taxpayers of more than $500 000 by double-dipping his allowances; Sir Charles Gairdner Hospital clinical trials manager Judith Innes-Rowe who, at the estimate of the State Solicitor's Office, ripped off taxpayers to the tune of more than $1 million in false representations of overtime; and Paul Whyte, who siphoned an estimated $22 million. We need to keep in mind that this all happened on Mr McKechnie's watch.

The last sentence of that paragraph states —

> The failure to reappoint the commissioner who presided over these operations, which have saved taxpayers tens of millions of dollars, has been a further stain on Western Australia.

This is the parliamentary secretary's second reading speech, so when we get to clause 1 in committee, I will want to know how much of the money he claims has been lost through corruption has actually been recovered. It is claimed in his second reading speech that the best corruption fighter in Western Australia has saved taxpayers tens of millions of dollars. As far as I can tell, corruption is out of control. Have we recovered any of that money? At the estimate of the State Solicitor's Office, the state was fleeced of $22 million by Paul Whyte. How much of that has been recovered?

Further along in the parliamentary secretary's second reading speech there is the following statement —

> The inability to reappoint Mr McKechnie was met with public dismay and scepticism.

I think someone is making things up at this point. This is a long-running issue, and I am not sure that I have had one contact from a constituent on it. I think the media has taken great interest in it and I think the Attorney General has great interest in it—mostly, if not exclusively, for political benefit, leading into an election campaign. I am not sure that that statement is true. The second reading speech states —

> WA Labor went to the March election promising to restore Mr McKechnie, QC, as commissioner. After the election, on advice, —

I pause there; I would like to know, parliamentary secretary, on whose advice, and whether the parliamentary secretary will table that advice —

> it was determined that the best way to proceed would be to re-commence the appointment process set out under section 9.

On page 5 the second reading speech states —

> I advise the house that on 2 June, the joint standing committee replied to the Premier advising that it had met on that day and had been unable to achieve majority and bipartisan support for the appointment of Mr McKechnie, QC. This indicates that the representative on the joint standing committee from the National Party was unwilling to provide bipartisan support.

How does the government know that?

Hon Darren West: Member, it says "indicates".

Hon MARTIN ALDRIDGE: How does it indicate? Could it not be possible —

Hon Darren West: You asked how we knew. It says "indicates".

Hon MARTIN ALDRIDGE: Yes. If the honourable member still believes in privilege—I am not sure that he does—the deliberations of any parliamentary committee are privileged and confidential to that committee, unless released by that committee. They are starting to get a bit noisy on the other side. I thought they were all on a gag order, but they should feel free to chime in. I have 25 minutes left.

Hon Darren West: You were confusing an indication with knowledge. I just wanted to point that out to you, member.

Hon MARTIN ALDRIDGE: Hon Darren West, could it not indicate that the Labor Party did not support Mr McKechnie's nomination? Could that be possible? We have no reply from the crossbench of the Labor Party. It has all gone quiet again.

One or two things could be happening here. One is that the Joint Standing Committee on the Corruption and Crime Commission is once again leaking to the government, which is probably most likely, or this second reading speech is just making things up to suit the government's argument. It states —

> This indicates that the representative on the joint standing committee from the National Party was unwilling to provide bipartisan support.

The government cannot possibly have that knowledge unless, of course —

Hon Darren West: It doesn't say that!

Hon MARTIN ALDRIDGE: The member probably has not even read the second reading speech, so my advice to him is to pipe down until he does. The only thing that would plausible would be if the joint standing committee

had written to the Premier and said, "Dear Premier, we met on 2 June 2021 as a committee, and the National Party representative on the Joint Standing Committee on the Corruption and Crime Commission was unable to provide bipartisan support." I doubt that that would be the case. I think correspondence has been tabled, so I will go and check it, but it cannot possibly indicate that. The government could speculate on which member of the committee did not provide bipartisan support, whether it was a Labor member or National Party member, but it cannot indicate that—unless, of course, one of the two Labor members has been informing the government about the deliberations of the joint standing committee again.

We had a debate recently that considered the comments of the member for Kalamunda. I do not want to go over that debate, because this is a very time-limited occasion. In preparing my contribution to that motion on notice, which, sadly, was defeated by the Labor Party yesterday, I came across some wise counsel from the member for Girrawheen on Wednesday, 13 May 2020, during a debate on the referral of the member for Kalamunda to the Procedure and Privileges Committee. The record will reflect that the Labor Party used its numbers to protect its member. On this occasion, 13 May 2020, the then member for Girrawheen, who I think at the time would have been the Chair of the Joint Standing Committee on the Corruption and Crime Commission, said —

> 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.

You cannot make up this stuff, members. Unlike the second reading speech, elements of which I think are made up, 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 houses 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 member for Girrawheen continues to quote from a submission from Mr McKechnie —

> 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.

It sounds to me as though Commissioner McKechnie, in 2016, was very much in favour of the current system. The member for Girrawheen continues —

> 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.

Tune in, members, because this is an important section —

> 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 —

I pause to say, unlike recent occasions —

> 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.

I want all members to reflect on the words of the then member for Girrawheen, now member for Landsdale and the former Chair of the Joint Standing Committee on the Corruption and Crime Commission, from 13 May 2020. I do not think I could have set out the case for opposing this bill any better than she did on that occasion. How has she been rewarded by her party and her government? She is no longer Chair of the Joint Standing Committee on the Corruption and Crime Commission.

I think that quote is salient because the then member for Girrawheen quoted from a submission of Mr McKechnie in 2016 in which he advocated for the removal of the nominating committee and that a power of veto be given to the Joint Standing Committee on the Corruption and Crime Commission. That is what he advocated for in 2016, but now it would appear that he is quite happy to change his tune as long as he gets his job back, and why would he not? He is the highest-paid public officer—I will use that language because he is not a public servant—in our state. Members need to satisfy themselves—I am not sure how they will do it because I suspect that none of them have met the man—that it is appropriate to tear up section 9 of the CCM act. That is the first decision members have to make. The second decision is whether Mr McKechnie is, out of the three candidates put forward by the nominating committee, the one who should be appointed to the highest-paid and most powerful public office in the state.

I really look forward to the contribution of members who support the passage of this legislation, because I honestly do not know how they can answer those two questions, unless cooler heads prevail and members accept the two genuine suggestions that I have put forward in good faith. A subcommittee of this place could be established to examine this issue and the nominee. Maybe we could establish a select committee with cross-party representation. It could be a bigger than the usual select committee to ensure that we have the multi-partisanship that Hon Brian Walker spoke about. We could then come back in the future—keeping in mind that an acting commissioner has been in place for some time and therefore this is hardly a matter of state urgency—and all look each other in the eye and say that this decision is being made for the right reasons. I suspect that none of those suggestions will be taken up by the government and I suspect the simple retort will be, "Well, if not McKechnie, then who?" I think this is a problem that the government needs to take responsibility for. The government alone has completely corrupted the appointment process for the Corruption and Crime Commissioner. It is a process and a position that should never have this level of debate about it because when it does, we get it wrong. It does not work. I want to quote a former member of this place who I think put the role the government has played in corrupting this process in a set of words, briefly, better than I could this afternoon. It was Hon Michael Mischin in his final speech to this place on 11 May 2021 when he said —

> In the case of the appointment of a Corruption and Crime Commissioner, the government sought a particular person's appointment—the government would say "reappointed". Let us face it, it is an appointment. Each appointment goes through a process set up by this Parliament that, back in the days when the act was passed, was considered by this house, by a committee, which decided that leaving it in the hands of government ran the risk of making it a political appointment. So, it set up a system—an imperfect one—which was a three-stage system. One involved a nominating committee and a submission of three names to the Premier, that is stage 2, but also that a joint standing committee consider those nominations and accept or reject them. Everyone has abided by that over the years, but this government has chosen to disregard that. On the strength of stage 1 of the process and the Premier desiring that particular person, it dispensed with convention and decided that it would move heaven and earth, and even legislate specifically, to name a person it wanted to be commissioner. That is notwithstanding there was no bipartisan or majority support for that person by the joint standing committee.
>
> I know the focus has always been on the Liberal Party blocking the appointment—that has been the political theme—and, regrettably, it was also something that was taken up by the ex-commissioner. The Liberal Party was blamed, ignoring the fact that there was one other parliamentarian with responsibility on that committee. At least two people out of that four-person committee did not support that nomination.

> Sadly, another convention has been broken: one member of that committee decided to grizzle about the process in public. Rather than having it investigated in order to see whether a breach of privilege was involved or there was a crossing of the line, after he had shown to the other members of the committee that anything they say might end up being revealed to the public, have we had an inquiry into it? No; it was blocked by the numbers in the Assembly. So much for that and that level of accountability. In fact, that member was hailed by our Attorney General as being courageous and a hero for doing so. That set a precedent. I know Hon Pierre Yang is concerned about precedents—that is another precedent that has been set.
>
> For political gain, we have had misinformation about the process. We have had the Attorney General seeking and obtaining from the then commissioner, who he wanted to reappoint—the evidence is that is unprecedented—a list of ongoing and prospective investigations by that commissioner. What an astonishing thing to do! The pretext is, "It makes me understand just how important this particular person is," but it also tells our Attorney General who is being investigated, who is going to be investigated, who is not being investigated and who is not going to be investigated, if that commissioner is reappointed.
>
> We have had the Premier breaching another convention—just because he can, he told us, in answer to a question that I asked in this place—revealing the names of the unsuccessful applicants in order to humiliate and embarrass them. I add to that that in a speech last year, the ex-Corruption and Crime Commissioner said, to an audience, that he was not only the "outstanding" candidate but also that the others were only "suitable". That is what he told his audience. What an appalling way to treat unsuccessful applicants for a position!
>
> We are going to restart the process now, which is supposed to legitimate what has been done. But who would be inclined to put their name forward knowing that the government does not want anyone except its chosen appointee and might very well reveal the identities of those unsuccessful applicants, and indeed whether the nominating committee thought they were "outstanding", "suitable", "so-so", "unacceptable" or "mad"? Seriously! That was a disgraceful breach of trust.

There have been many debates about this up until that point. But it was not until Hon Michael Mischin put that together in his final speech on 11 May 2021 to this place that it actually clicked for me—that is, hitting the reset button now requires the government to rebuild trust in the process that if someone puts their name forward to the nominating committee, it will not be revealed. An opinion will not be expressed on whether a candidate is outstanding or just suitable. The outstanding candidate said in public that the rest of the field was only suitable. I am surprised that the Labor Party actually supports this sort of behaviour.

Having said all that, if members still need a reason to contemplate whether they should support this extraordinary legislation, I ask those who have not had the opportunity yet, given we have only one hour under our standing orders to consider this, to turn to the sixty-first report of the Standing Committee on Procedure and Privileges. I do not need to table exhibit A because it has already been tabled by Hon Kate Doust. Just like the member for Landsdale, Hon Kate Doust has been dealt with by the Australian Labor Party. The Standing Committee on Procedure and Privileges' sixty-first report sets out quite clearly why members should question whether they should support the second reading of the Corruption, Crime and Misconduct Amendment Bill. Maybe over the winter recess, which we are soon to embark on, members could take this home and, rather than buying a good novel, I can recommend the sixty-first report of the PPC to Hon Darren West. We will have a short quiz when he comes back to make sure that he has digested the contents!

I will not have an opportunity today to read this extensive report, but some of the transcripts attached in the appendices to this report are quite telling. Keep in mind that Hon Nick Goiran pointed out previously the actions of the CCC in previous reports—I am referring now to the inquiry into the matter referred by the Leader of the House, often referred to as the Home–Turnseck matter—when the actions of the CCC in performing its functions were contemptuous of this house. Just read the executive summary; there are 24 paragraphs. Members could knock it out before dinnertime. Read the executive summary. The Legislative Council has just engaged in a two-day trial in the Supreme Court on behalf of members, and the decision is reserved. There is no need to rush this process. We have not even considered the recommendations of the sixty-first report yet, in which, I remind members, recommendations 2 and 3 recommend to the house the re-referral to the procedure and privileges committee for inquiry and report on the actions of Ms Emily Roper, Mr Darren Foster and others.

I see that there is no urgency for the government to bring on recommendations 2 or 3. This report was tabled in May 2021 and there have been several sitting weeks since then. The sixty-first report was considered and discharged from the notice paper. I ask members to balance the rhetoric of the Attorney General, particularly in debate in the other place on this bill, by reading the executive summary. I challenge them to point out where a part of this report is in error. If there is not a case for us not to support the reappointment of former commissioner McKechnie, there is at least a case for us to pause. We are about to go into the winter recess. It could allow members time to read the sixty-first report of the Standing Committee on Procedure and Privileges. It could allow the house to consider in particular recommendations 2 and 3, but also recommendation 1 of the report. That does not seem to be a high

priority for the government. The recess could allow a select committee time to examine this very short bill, and, more importantly, time to examine the most outstanding nominee, all while the CCC continues to do its work with an acting commissioner.

I look forward to the parliamentary secretary's reply, particularly on the questions that I have asked around the second reading speech. I particularly look forward to his response on the two suggestions that I have made about a path forward to resolving this matter. But I think, ultimately, it is up to the government to restore trust and faith in both the appointment of a Corruption and Crime Commissioner and the Joint Standing Committee on the Corruption and Crime Commission. I do not think that will take place under this government while it continues to have absolute control of the Parliament. It has shown its actions to be contrary to trust and good faith. That is why we are here on the final day before the winter recess debating this bill as the highest priority of the government.

HON TJORN SIBMA (North Metropolitan) [3.32 pm]: I rise again also to voice my opposition to the Corruption, Crime and Misconduct Amendment Bill 2021. In contemplating what might constitute this address, I was undecided about where I would begin my remarks. I might take up, somewhat, from where Hon Martin Aldridge left off, by examining more closely the content and the claims made within the second reading speech, presumably drafted by the Attorney General or one of his officers, and read into this place dutifully by the parliamentary secretary. A number of claims made within that second reading speech are absolutely debatable and misconstrue the order of events, and they put a certain complexion on issues and cherrypick evidence and the like. But I found a stunning claim that is demonstrably untrue, and it attempts to encapsulate what this bill is about. It states —

> Put simply, this bill is about righting a wrong. It is absolutely wrong for the tenure of Western Australia's most respected and decorated corruption fighter to be prematurely ended by opposition MPs at a time when the CCC is investigating opposition parliamentarians over the misuse of entitlements. It cannot be allowed to stand.

There are many problematic concepts and accusations embedded within those two short sentences. However, I draw members' attention to the second claim that it is absolutely wrong for the tenure of Western Australia's most respected and decorated corruption fighter to be prematurely ended. Leaving aside whether that claim can be substantiated—whether Justice McKechnie is the twenty-first-century version of Eliot Ness—the claim that is being made is that it was the opposition, previously, who prematurely ended his tenure. That is absolutely incorrect. His tenure of appointment concluded through the elapse of time; it was not ended prematurely before his contract came to an end. That statement was completely wrong. It seems as though the government has been prepared to elevate the career ambitions of one particular individual unfortunately at the expense of the political careers of two of its most respected women: Hon Margaret Quirk and Hon Kate Doust. That their careers should have been prematurely ended at the expense of the elevation of, or the purported elevation of, or the attempt to elevate, this man beggars belief and is strange given some members' commentary on the membership of the Weld Club—it really is. I find it a very discordant note.

There are a number of problems with the approach to this bill that I will examine in some detail, but I must also note in passing a phrase that goes along the lines of "Pride goes before destruction, and a haughty spirit before a fall." We have seen evidence in even the last few sitting weeks of a very buoyant Labor Party that is basking in its electoral glory, and why would it not? But that has come with the continuation of snide remarks that we just wash off. More problematically, what it accommodates is a will to power—a might makes right that because they have the numbers, that is the only justification this chamber or any other chamber need worry itself with.

I am seeing very early evidence of a vulgar display of power by this government—continual vulgar displays of power—and I think that that will ultimately be at the government's peril. Hon Peter Collier made the observation, and it is a truism—there is nothing contentious in the statement—that the seeds of its own destruction are sown in the Parliament, and the government is absolutely sowing those seeds as frequently and wantonly as it possibly can. I choose the word "wantonly" with some reason, because this bill demonstrates a wanton disregard for convention—an absolute wanton disregard for convention. It is, frankly, a legislative outrage, and it is driven by nothing more than political opportunism and, sadly, I think, a measure of personal vendetta as well.

To have a bill of no more than four clauses that seeks to name a particular individual to be appointed to one of the most sensitive positions within the architecture of the state is absolutely telling. It would come as no surprise to members that if we were to explain to people exactly what this bill was about, we would effectively be saying that the government is naming its man. That is not an elaboration or artifice; it is not a glib turn of phrase. The government is naming its man—the man it wants and the man whose career is more important than the careers of Hon Kate Doust or Hon Margaret Quirk. This is, effectively, the poachers appointing the gamekeeper. This is not about the Liberal Party attempting to protect ex-members of the Liberal Party. If that were the case, the proposed reappointment of Mr McKechnie would have been thwarted not once but twice by differently constituted Joint Standing Committees on the Corruption and Crime Commission. In fact, the prospect of such a bill, when considered last year in the fortieth Parliament, was also sadly rebuked by members of the Greens, the Liberal Democrats, Pauline Hanson's One Nation, the Shooters, Fishers and Farmers Party and the like. Today we heard excellent contributions from Hon Dr Brad Pettitt, Hon Wilson Tucker and Hon Dr Brian Walker on statements of principle.

They emphasised different elements of some fundamental principles that are fundamentally the same. That should demonstrate that this is not a protection racket—that the government cannot reduce opposition to this bill to the flimsy attempt at character assassination that has been perpetuated by not only the Premier, repeatedly, but also an increasingly erratic and unorthodox Attorney General. That lie no longer stands. It is being completely blown up today. This is an issue of principle. It is fundamental outrage at the government's contempt of convention and the bypassing of an established process.

It strikes me, as both a practitioner and an observer of political life for some time, that the Premier has not received wise counsel against a move such as this. I do not think it is wise for any Premier, of any political hue, to so stridently advocate for the appointment of a single individual, because they do not know what is coming next. If the roles were reversed and I could go back 10 years with a Liberal Premier in this position, that is not the kind of advice that I would give him. What has this done? This has absolutely politicised the process of appointment. If there is one process of appointment in this state that needs to be sacrosanct, it is the appointment of the Corruption and Crime Commissioner. That should be fundamentally clear to everybody—absolutely. Subverting that process has done damage. It damages trust in the CCC. Like any organisation, it is subject to fallibility. Of course it has been fallible, and of course it will be, but largely speaking, the public has a regard for the CCC as a watchdog. What is its trust predicated on? It is probably predicated on the fact that that organisation is impartial and it is led by somebody who is impartial, who brooks no fear and no favour. They get on with the job, follow the evidence, take it wherever it leads and are focused on the right set of priorities. This bill absolutely trashes the integrity of the CCC. It also damages the position of the head of that organisation, the commissioner of the CCC. It does so because it has transformed that position into a political pawn; it made it the subject of a political commitment during an election.

I am not necessarily convinced that the electorate of Western Australia went out in March and voted for the government on the basis that it was going to appoint one John Roderick McKechnie, as named at clause 4 of this bill, to that position. I think they may have been preoccupied by one or two other matters. Nevertheless, it was an election commitment. Something like that should never be an election commitment. Labor should not make this an issue of political discretion or a point of difference. If that has not compromised not only the institution but also the prospective nominee, I do not know what does.

Hon Martin Aldridge: What office is next?

Hon TJORN SIBMA: Indeed, one might ask that question: where does it stop?

More broadly, it damages the integrity of good governance in the state of Western Australia. It is a really important signal that I doubt other jurisdictions, both nationally and internationally, will miss. Delving not so much into ancient history but into modern history, I thought if there was one major political party in this state that would look askance at direct involvement in the appointment of corruption bodies, considering the track record of a number of its members, and very senior members at that, it would be the Australian Labor Party in Western Australia. But no, the temptation of power and to throw that power around at every available opportunity is indeed an opportunity this government will never miss.

Why do we need an independently appointed commissioner rather than a commissioner rammed through this chamber on this basis? It is because the government is so powerful. It is because the Premier is apparently still so overwhelmingly popular. It is because he is also the luckiest and most powerful Treasurer in the country, aside from the federal Treasurer. It is because he controls both houses of Parliament. It is because, with one exception—the Standing Committee on Estimates and Financial Operations—the government controls every single committee in this Parliament. There are sensible members opposite who I know are constrained in what they can say and contribute to this debate. This will be their own personal undoing over the next four years, I guarantee it, but I hope they will at least acknowledge that it would be sensible, in light of the very powerful position that their government holds, and particularly their Premier and the first law officer of this state, that perhaps we should have an oversight, anti-corruption watchdog that is effectively not in the government's direct employ and appointment. I thought that prudence would dictate that there are limits even on the exertion of the government's power, no matter how tempting that exertion may be. It would not be.

Why is that? Remarks were made about the degree to which the CCC previously disclosed its current and prospective investigations to the first law officer of this state. That, I must say, is a very troubling piece of evidence, because there should absolutely be complete and utter separation between the interests and the day-to-day behaviour and execution of duties of the Attorney General and the conduct of the CCC. In fact, never the twain should meet, particularly in operational terms. But we have seen at least on one occasion, by virtue of the tabling of the sixty-first report of the Standing Committee on Procedure and Privileges, that there is indeed a strong relationship between the Attorney General and one John Roderick McKechnie and that, in a way, reflects poorly on both individuals and should give rise to concern. —I make that observation, not to be personally critical, but to identify that issues, decisions, contracts and commercial decisions made by this government over the course of the last four, nearly four and a half years, which, ostensibly, invite more than a measure of curiosity. That is not to say that corrupt practice has taken place in any of the instances that I am about to outline; rather, I will identify decisions taken by the government that benefit either big business or big unions that do not automatically avail themselves of

justification to be in the public interest and perhaps need an independent watchdog to look into them. I am not going to contest the policy merits of the decisions; all I say is that they invite speculation. They are issues that have been raised in the media over the course of four and half years. They are a select group; by no means are they exhaustive.

One is the estimated $300 million value of road construction contracts awarded without public tender upon the cancellation of the Roe 8 and Roe 9 projects in early 2017. Another is the full consequences of the at least $200 million contract between the Public Transport Authority and the Huawei–UGL consortia for radio replacement projects, which stalled. Another is a number of individual projects, commercial redevelopments, undertaken in partnership with commercial entities by DevelopmentWA. I need not cite specific project examples. There is also a lack of transparency, openness and accountability about the unsolicited bids process, which may or may not just happened to favour Labor Party donors. There is also that very strange and abrupt change to our domestic gas reservation policy last year, which caught all of industry by surprise and benefited a particular entity. Deals have been made; I do not say the word "deals" in a pejorative sense. My problem is that there is absolutely no openness or transparency about their conduct. They are transactions of a kind between the government and the bigger and more powerful unions, which resulted in the cancellation of non-clinical service delivery by Serco at Fiona Stanley Hospital. There is also the abrupt in-housing again of various water service delivery lines in the Water Corporation, directed by Minister Dave Kelly. That is not to say that either of those decisions were wrong—although we would disagree with them in policy terms—or that they were corrupt, other than to acknowledge that they were significant deals and a significant shift in policy, practice and operations, about which the government has not necessarily been open, transparent and accountable. I labour these points because on a day-to-day basis, ministers make exceptionally important and consequential decisions and the public of Western Australia operates on the assumption and the confidence that an independent watchdog looks into these kind of matters. But what faith should the public have that that institution will be able to conduct itself freely and independently of government after that government has gone to an election with its preferred candidate? It begs the question: why this candidate? I cannot answer that question.

My problem with the government's management of this issue is that it has been nakedly politically opportunistic. Both the Premier and the Attorney General have engaged in language that is absolutely beyond the pale and, frankly, is defamatory, but, nevertheless, we have taken it on the chin, which is not to say that it is acceptable but it absolutely indicated their motivation. I do not believe that the government believes that its sole motivation is to appoint the best person possible. I do not know how any individuals could claim to be best possible person for this position, particularly when I reflect on the contribution made earlier by Hon Nick Goiran about four or five not insignificant matters concerning the performance of Mr McKechnie in his first five years. They are at least matters that demand an explanation. I would not be particularly encouraged to recommend a reappointment if I had been apprised of those issues and I was in the position to do so. They are very concerning.

I am minded to think that not only do I object in principle to the circumstances that led to this bill and the process by which the outcome is being sought, I am unconvinced that the individual named in this bill is a suitable person for the position, and I have come to this position very reluctantly. I do so because of Mr McKechnie's public contribution towards the end of November last year, which was a scornful, partisan diatribe that misrepresented facts and impugned a political party because he did not get his way. If government members are of the mind to appoint a person to a position like this because of an inestimable quality of judgement that they possess, I am in the sad position of saying that I am not encouraged by Mr McKechnie's judgement. I do not think that members opposite would be either if the roles were reversed. I have every reason to suspect that, individually, government members are people of integrity. I think they would personally find the proposition, the bill in front of us today, utterly offensive if we were in government and they were in opposition and our proposed candidate was the candidate that we took to an election. If we replaced every reference to the "Liberal Party" that Mr McKechnie referred to in his speech and replaced it with the "Labor Party", what would members opposite do? While they are throwing their weight around, I am sure that they still possess the capacity for moral imagination. I hope that they do at the very least; indeed, it would be sad if they do not.

There is also an issue of leadership here. I will focus on the leadership of the Corruption and Crime Commission because, even within the kind of alternative reality or alternative historical narrative that presents itself as the minister's second reading speech, there is a view put that the operations, functions and capacity of the CCC are absolutely dependent on Mr McKechnie being the commissioner—the head of that organisation. There is this view that, without him, the organisation will crumble and the CCC will be unable to continue with Operation Betelgeuse or any other investigative operation. That is the assertion that effectively has been made here and has been made repeatedly, no less than by Mr McKechnie himself. I do not think that anybody believes that. In fact, I have evidence to the contrary. This report was tabled today: *Review of the Office of the Auditor General's response to misconduct risks with access to confidential information*. It is a very slim, 28-paragraph report; nevertheless, it serves as proof of life. Is it not extraordinary that this organisation can outlive and outlast the previous commissioner of the organisation? How extraordinary.

I had the benefit of exposure to high-quality leadership as a very young person. I had that as a civilian member of the defence headquarters in Canberra, where I worked in very close proximity to three stellar, eminent Australians.

One was Rick Smith, a Western Australian, who was secretary of that department and an ex-ambassador to Beijing and Jakarta. He managed the response to the Bali bombings back in 2002. He is an absolutely stellar individual. I will also include here General Sir Peter Cosgrove and Air Chief Marshal Sir Angus Houston, who were both consequently Chiefs of the Defence Force in the early 2000s. Perhaps I was spoiled by exposure to high-quality leadership in the early stages of my career, because it set my expectations for everything else that has followed. I am sad to say that the contribution made by the individual named in this bill, Mr McKechnie, seems to undermine the capacity of that organisation. Any true leader knows that they are but a servant of the organisation they are at the helm of. They normally demonstrate a sense of gratitude and humility for the position that they hold. They understand that the essence of leadership is the management of human relations. They are there to extract the best out of the people whom they lead to ensure that the organisation, which they are but a custodian of, is improved by the tenure that they have been gifted. That was absolutely true of the three individuals whom I named. But the view of Mr McKechnie seems to be quite the contrary. It seems to be that without him there, the organisation is loose and adrift. That, frankly, is the ego talking. If anything, we need a commissioner who, after a very extensive career—some 30 or 40 years—is in a position at which they can set ego aside and think about what is in the best short, medium and long-term interests of the commission and that commission's mission of service to the Western Australian public. That is, sadly, not evident in the remarks of the government's proposed commissioner. At the conclusion of this very long sitting day, the government is going to get its man. I do not know whether its man will get the government. That is absolutely another issue.

At the very least, we have demonstrated that the entire approach to this bill has been opportunistic and politically transactional, and the government has initiated a game that has become bigger than it. This issue has mutated to a degree that now potentially imperils the concept of parliamentary privilege. Unfortunately, the government is setting new precedents apace. Each new precedent it establishes will give rise to another precedent. I think this has completely and utterly got away from the government now. If it has the power to bring in this legislation, surely it has the power to take it out. When I look at today's daily notice paper, I see that the government could potentially be getting on with at least one other bill. Should the time come and amendments are potentially moved, I know that the government will resist them. It will resist them for no good reason other than the fact that it can because might makes right, numbers tell the story, and it can do what it wants. Let it come to that if it will.

I would hope, though, that the government—perhaps those lions of the caucus room, who are lambs in this chamber—nevertheless get in contact with the Attorney and the Premier during the debate today and say, "Perhaps we should pull back from this. Perhaps this is not the highest priority. Perhaps this establishes a precedent that compromises the outcome that we purport to deliver." I think we are known by what we do but also by what we can do but we do not. The rule at the moment, whether it relates to the silencing of regional communities through the reduction in upper house members in country regions or to the speaking times that non-government members are permitted to have, seems to be that if the government can get away with it, it will. What is absent from any of this is any narrative, any reasonable justification, as to why the government is conducting these activities and is conducting them in this manner. In an attempt to tease out some of the details and background, again, members on this side of the chamber, whether they be from the Liberal Party, Nationals WA, the Daylight Saving Party, the Greens or the Legalise Cannabis Party, are treated with contempt and given non-answers to questions.

My other problem with this bill is its practical implementation and the precedent the government is establishing, not necessarily for reasons of principle, which I have already outlined, but for the effective application of the bill that it is trying to ram through today and elevate beyond any other concern facing Western Australians today. This is more important than fixing the health system, fixing the mental health system, coming to grips with homelessness or any of those problems. This is the most important order of business. Nevertheless, as the government brings this business forward, we ask questions along the way.

Bearing in mind Mr McKechnie's long career and without any insight into his personal circumstances, and also bearing in mind his own stated claim that he is the only person to have fulfilled a full tenure, one might ask what happens if Mr McKechnie is unable to fulfil each of those five years of his appointment? Perhaps there will be a change of personal circumstance or what have you. According to the uncorrected proof *Hansard*, I put this question through the Parliamentary Secretary to the Attorney General on Tuesday, 22 June —

> I refer to the Corruption, Crime and Misconduct Amendment Bill 2021. Will the government continue with the precedent of appointment that it is establishing by way of this bill and seek to introduce a further bill or bills naming a replacement commissioner to the Corruption and Crime Commission should the position become vacant for any reason before the conclusion of Mr McKechnie's five-year term?

The answer was —

> The government would only consider similar legislation to the Corruption, Crime and Misconduct Amendment Bill 2021 if the outstanding candidate, as chosen by the independent nominating committee chaired by the Chief Justice of Western Australia, was not able to be appointed by the method under the Corruption, Crime and Misconduct Act 2003. The Department of Justice is currently conducting a full review of the act, which includes the appointment process set out under section 9. This is being done with

> a view to Parliament having the opportunity to debate reforms to the current section 9 process, which has been the subject of multiple calls for amendment, including by Hon Nick Goiran as Chair of the Joint Standing Committee on the Corruption and Crime Commission in the thirty-ninth Parliament and Gail Archer, Senior Counsel, in her statutory review of the act.

Even within a single paragraph, the Attorney General can convey an alternative sense of reality. Truly it is a gift. Having young children, I have taken to watching young children's movies and I am reminded of Princess Elsa using her magic and its danger. I think the Attorney General deals in dangerous magic almost on a daily basis and reveals that in the quality and substance of the answers he provides to questions asked in this place. Today I asked him—I will get the answer back, hopefully—to what degree does that independent nominating committee chaired by the Chief Justice of Western Australia effectively choose the candidate? To the best of my understanding, having followed these issues for some time now and listened to the contributions of learned people, that committee does no choosing. "This is my preferred candidate. What do you think?" I am deeply interested in the intricacies of that process. There are many problems with that statement. How can the Attorney General provide that as an answer and say that this is an independent person chosen in an independent way when, lo and behold, that person just happens to be the candidate whom Labor pledged to deliver at the election? Labor cannot have it both ways.

I will commence my concluding remarks. I do not think that any individual is irreplaceable. I would like to think that I am, but I know that I am not.

Hon Alannah MacTiernan: I think you are.

Hon TJORN SIBMA: Thank you very much. That fundamental law of nature applies to each of us and if someone has been the custodian of a perennial institution such as the CCC, I think that person should go into and out of that task with a measure of humility. Humility has not been demonstrated by the proposed appointee and it is absolutely a human quality that is not possessed by either the Premier nor the Attorney General. It was certainly not conveyed in any meaningful sense in their public remarks. I might conclude on this point. Ex-colleagues of mine in the Liberal Party have stood up for process and principle in the full knowledge that their reputations would be sullied and impugned for doing the right thing. Our opposition to the bill is not predicated upon some fundamental political misapprehension of how this plays out in the public. The easiest thing in the world would have been for the Liberal Party and the Nationals WA, but particularly the Liberal Party, to just roll over and say, "You know what, have it your way." There is always a temptation to go the easy and cowardly route, but that is not the temptation that we have yielded to. We have done so in the face of absolutely contemptible vitriolic attacks by the Premier and the Attorney General.

Members opposite might find some of the language used by each of those individuals as particularly risible, or humorous and lighthearted. I suppose when you are winning the temptation is to feel that way and to laugh along at the joke. I am sad to say that at the end of the day the joke will be on the government. Despite having all the powers of state, this Premier will never be a statesman. He does not have the moral fortitude or the intellectual capacity to do that, irrespective of his popularity now. I say that because he has taken, with his partner the Attorney General, cheap shots at people no longer in this chamber who cannot defend themselves; as indeed I must say with some measure of reservation, the former Corruption and Crime Commissioner, with what has become an increasingly salacious brace of reports issued under his leadership.

I encourage the government to play the ball rather than the man, if it indeed has that capacity. It does have that capacity; it is up to the government to choose. It is clearly demonstrated that it has chosen wrongly, but before the end of this day it is not too late to pull back, and I urge it to do so.

The PRESIDENT: Perfectly timed, honourable member. Noting the time, I will leave the chair until the ringing of the bells. I note that Hon Sophia Moermond has sought the call.

Debate interrupted, pursuant to standing orders.

[Continued on page 2020.]

Sitting suspended from 4.15 to 4.30 pm

QUESTIONS WITHOUT NOTICE

IRON ORE ROYALTY REVENUE

359. Hon Dr STEVE THOMAS to the minister representing the Treasurer:

I refer to the 2019–2021 boom in iron ore prices.

(1) What is the current spot price of iron ore as measured by Treasury?

(2) What has been the average iron ore price to date for the 2020–21 financial year?

(3) What was the average iron ore price for the month of May 2021?

(4) What has been the total iron ore royalty revenue to date for the 2020–21 financial year?

(5) Is the prospect of the government receiving more iron ore revenues in the 2020–21 financial year than the $10.734 billion as predicted on page 21 of the March 2021 quarterly report "highly unrealistic" or "plausible"?

Hon STEPHEN DAWSON replied:

I thank the Leader of the Opposition for some notice of the question. The following answer has been provided to me by the Treasurer.

(1) The price is $US216.20.

(2) The 2020–21 average has been $US152.30.

(3) The May average was $US207.72.

(4) Up until the end of the March quarter 2021, it was $7.616 billion.

(5) A wide range of outcomes is plausible given the volatility in iron ore prices. Royalty collections for the 2020–21 financial year will be provided in the *Annual report on state finances* in September.

IRON ORE — EXPORTS — ENVIRONMENTAL PROTECTION ACT

360. Hon Dr STEVE THOMAS to the minister representing the Minister for Environment:

I refer to part V of the Environmental Protection Act.

(1) How many applications have been sought under part V of the EP act for licences and amendments to licences to export iron ore from ports in Western Australia since March 2017?

(2) Will the minister please list those applications and the tonnages involved?

(3) How many works approvals have been sought under part V of the EP act for the export of iron ore from ports in Western Australia since March 2017?

(4) Will the minister please list those applications and the tonnages involved?

Hon STEPHEN DAWSON replied:

I thank the Leader of the Opposition for some notice of the question. I have an answer here with a note: please note that the following response pertains to iron ore–specific ports only.

(1) There have been nine applications.

(2) I provide a list of the applications, including tonnages, which I table.

[See paper 349.]

(3) None has been sought.

(4) Not applicable.

Due to the complexity of compiling the information, I request that the honourable member place his question about common-user ports on notice.

WATER AND ENVIRONMENTAL REGULATION — WASTE REFORM

361. Hon TJORN SIBMA to the minister representing the Minister for Environment:

I refer to the Department of Water and Environmental Regulation's reform work undertaken since the release of the document *Closing the loop: Waste reforms for a circular economy*.

(1) What is the status of the department's consultations with stakeholders; for example, are these consultations ongoing or have they now concluded?

(2) Has the regulatory framework that applies to waste management and recycling sectors in eastern states jurisdictions informed the department's reform work in any way; and, if so, how?

(3) How close is the department to completing its reform work?

(4) Does the minister anticipate being able to deliver upon this reform work through legislative and/or regulatory amendments before the end of this calendar year?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer is provided on behalf of the Minister for Environment.

(1) The Department of Water and Environmental Regulation is progressing waste reform projects to address key issues with the waste legislative framework and state government commitments in the *Waste avoidance and resource recovery strategy 2030*. The projects include *Closing the loop: Waste reforms for a circular economy*; *Waste not, want not: Valuing waste as a resource … Proposed legislative framework for waste-derived materials*; the review of the Waste Avoidance and Resource Recovery Act 2007; and the review of the waste levy. Consultation was undertaken on all these reforms in 2020, with submission periods closing from July to December. The department has analysed the submissions received and is preparing advice to government. The *Closing the loop* consultation paper was prepared as a consultation regulatory impact statement and a decision regulatory impact statement is being finalised.

(2) Yes. A cross-jurisdictional review was undertaken for the development of the closing the loop reforms in the 2017 *Waste reform project: Proposed approaches for legislative reform* and the 2019 consultation on waste-derived materials. This work was updated in 2020 to inform the *Closing the loop* and *Waste not, want not* papers. Developments in national policy were also considered, including the national waste policy and the COAG ban on the export of certain waste materials.

(3)–(4) The McGowan government continues to progress waste legislative reform as a priority.

SUPERANNUATION SPLITTING LEGISLATION

362. Hon NICK GOIRAN to the parliamentary secretary representing the Attorney General:

I refer to superannuation splitting laws that allow superannuation to be divided when a marriage or de facto relationship breaks down.

(1) Is the Attorney General aware that de facto couples in Western Australia are not currently subject to superannuation splitting laws?

(2) Is he aware that on 3 December 2020 our federal Parliament enacted the Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020 to allow superannuation splitting or transferring between de facto couples in Western Australia upon separation?

(3) Will the McGowan government expedite the introduction of a bill to support the operation of this reform?

(4) If yes to (3), when is this intended to occur?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. I provide the following response on behalf of the Attorney General.

(1)–(4) The McGowan government is aware of the injustice stemming from the Family Court of Western Australia being unable to split superannuation for de facto couples. As a result of the WA Attorney General's approaches to commonwealth Attorneys-General dating back to 2017, the commonwealth government eventually acted to remedy the situation. The commonwealth Parliament passed the Family Law Amendment (Western Australian De Facto Superannuation Splitting and Bankruptcy) Act 2020, which received royal assent on 8 December 2020. Amendments to the Western Australian Family Court Act 1997 to facilitate the changes made by the commonwealth act will be introduced into the Parliament as soon as practicable.

METROPOLITAN CHILD DEVELOPMENT SERVICES — REFERRALS

363. Hon DONNA FARAGHER to the minister representing the Minister for Health:

I refer to the answer given to question without notice 335, which was asked on Tuesday, regarding the school entry health assessment.

Of the assessments undertaken during the 2020 school year, how many resulted in a referral to the following services provided by the WA Country Health Service —

(a) physiotherapy;

(b) occupational therapy; and

(c) speech pathology?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

The WA Country Health Service advises that the following referrals were made as a result of school entry health assessments during the 2020 school year —

(a) physiotherapy, 10 referrals;

(b) occupational therapy, 25 referrals; and

(c) speech pathology, 162 referrals.

BANKSIA HILL DETENTION CENTRE — TEACHING STAFF

364. Hon PETER COLLIER to the minister representing the Minister for Corrective Services:

I refer to the *2020 Inspection of Banksia Hill Detention Centre* report by the Office of the Inspector of Custodial Services.

(1) How many teaching staff have been employed at Banksia Hill in 2017, 2018, 2019, 2020 and 2021?

(2) How many support teaching staff have been employed at Banksia Hill in 2017, 2018, 2019, 2020 and 2021, with identified roles for each year?

(3) How much has been allocated for education delivery at Banksia Hill in 2017, 2018, 2019, 2020 and 2021?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The following information has been provided by the Minister for Corrective Services.

(1) The Banksia Hill education centre has a daily staffing level of 23.6 classroom teachers and 2.4 vocational lecturers. Similar to schools, Banksia Hill utilises a pool of casual teachers to cover vacant positions and relief permanent staff, where absent. Permanent and casual teachers are broken down as follows: for 2016–17, 19; for 2017–18, 18; for 2018–19, 20; for 2019–20, 20; and for 2020–21, 22.

(2) Dedicated education assistants are not utilised at Banksia Hill Detention Centre; however, the site does use a range of other positions to support classroom activities.

(3) With regard to budget operating costs for education services, the information is in tabular form and it might be easier if I seek leave to it incorporated into *Hansard*.

[Leave granted for the following material to be incorporated.]

(3) Budget Operating Costs for Education Services

2017/18 – $2,451,080

2018/19 – $2,567,585

20 19/20 – $2,627,300

2020/21 – $2,766,347

ASIAN RENEWABLE ENERGY HUB

365. Hon Dr BRAD PETTITT to the minister representing the Minister for Environment:

I refer to the recent decision by the Australian federal government's Department of Agriculture, Water and the Environment deeming the revised Asian renewable energy hub to be "clearly unacceptable" due to its impact on the nearby Eighty Mile Beach and migratory bird species.

(1) Considering this result, will the state public environmental review for this project be going ahead; and

(a) if not, why not; and

(b) if yes, does the minister have an estimated time of arrival for the environmental review document?

(2) Will negotiations with the federal government be ongoing; and, if not, will the minister encourage the proponent to resubmit?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following information has been provided to me by the Minister for Environment.

(1)–(2) The state environmental impact assessment is being undertaken by the independent Environmental Protection Authority. I am advised that since the decision of the commonwealth Minister for the Environment, the EPA has been in contact with the proponent. I understand the proponent intends to meet with the commonwealth Department of Agriculture, Water and Environment to discuss the implications of the decision and options for progressing the proposal. Following this meeting, the EPA will be in a position to consider the scope and timing of the state assessment.

GOVERNMENT REGIONAL OFFICERS' HOUSING — BROOME

366. Hon WILSON TUCKER to the Leader of the House representing the Minister for Housing:

I thank the minister for the answer to my question C314, asked on 16 June 2021. I refer to the six vacant Government Regional Officers' Housing properties that the department owns. How long has each property been vacant for the current period of vacancy?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question. The member will note a variation in the question numbers; that is because there is a variation in the question numbers between *Hansard* and this chamber, but it is the same question.

Of the six vacant properties listed in the response to question 281, only three currently remain vacant. One property has been vacant since December 2020, with the remaining two properties vacant since February 2021. The client agency determines the allocation of properties to their employees, not the Department of Communities. It is not uncommon that client agencies may have allocated vacant properties to enable them to recruit and deploy suitable employees, including health staff, teachers and police.

METRONET — THORNLIE–COCKBURN LINK

367. Hon SOPHIA MOERMOND to the minister representing the Minister for Transport:

I refer the minister to Metronet's Thornlie–Cockburn Link project and the major disruption of the Mandurah line from Sunday, 26 December 2021 until Friday, 14 January 2022.

(1) What additional services will be provided to alleviate pressure on the public transport system over the 20-day disruption?

(2) Will the minister compensate commuters by bringing forward the fare cuts promised by the McGowan government to commence prior to the disruption; and, if not, why not?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1) The Public Transport Authority is currently planning rail replacement bus services and other options to support passengers during the closure period.

(2) The McGowan Labor government is working to introduce the two-zone fare cap from 1 January 2022.

MEDICAL CANNABIS — OPIOID-RELATED MORTALITY RATES

368. Hon Dr BRIAN WALKER to the minister representing the Minister for Health:

I refer the minister to recent Australian Bureau of Statistics figures suggesting that Western Australia has consistently recorded the highest levels of fentanyl addiction and overdose in Australia.

(1) Is the minister aware of the paper that appeared in the *British Medical Journal* of 27 January 2021 entitled "Association between country level cannabis dispensary counts and opioid related mortality rates in the United States", which concludes that there is "a potential association between increased prevalence of medicinal and recreational cannabis dispensaries and reduced opioid related mortality rates"?

(2) If yes to (1), will the minister ensure that these conclusions are considered by the Department of Health in any future planning it might undertake in this space?

(3) If no to (1), might I offer the minister a copy of the paper for his consideration?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1) No.

(2) Not applicable.

(3) The honourable member is welcome to provide a copy of the paper to the minister's office, the Department of Health and the Mental Health Commission.

FIRE AND EMERGENCY SERVICES — LIGHT TANKERS — PROCEDURES

369. Hon MARTIN ALDRIDGE to the Leader of the House representing the Minister for Emergency Services:

I refer to the Department of Fire and Emergency Services operational circular 37/2021 issued in April this year regarding new procedures for opening a light tanker bonnet.

(1) How many people does DFES recommend are required to safely open the bonnet of a light tanker?

(2) What is the seating capacity of a light tanker?

(3) To enable DFES and bushfire volunteers who utilise light tankers to determine whether this procedure is appropriate for them, can the minister please detail the specific concerns raised about opening a light tanker bonnet with fewer than three people?

(4) Noting that DFES operational circular 01/2021 states that five improvement notices have been issued regarding light tankers, can the minister identify the other three issues of concern and why these issues have not been communicated to volunteers?

(5) Has the minister undertaken any correspondence with the Minister for Industrial Relations regarding the Worksafe findings and the precedent this may set for other automotive workers; and, if so, can the minister please table this correspondence?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

The Department of Fire and Emergency Services advises as follows.

(1) Up to three people, if a risk assessment conducted by a career fire and rescue station officer determines that there is the potential risk of injury to CFRS firefighters

(2) The seating capacity of a light tanker is two.

(3) A potential risk of musculoskeletal injury to individuals was identified when lifting and lowering a light tanker bonnet with fewer than three people. Subsequently, a risk assessment was undertaken by DFES, with a new procedure developed to assist with manual-handling tasks. The procedure is not mandatory; however, it should be applied when a potential risk of injury to any individual is identified.

(4) The three issues that were reported to DFES include thermal protection of light tanker critical components, presence of airbags in some light tankers, and the presence of the rear window in light tankers. These reported issues were not communicated to DFES staff and volunteers as the improvement notices were investigated and officially cancelled by the WorkSafe WA Commissioner in accordance with section 51 of the Occupational Safety and Health Act 1984.

(5) Not applicable.

WATER QUALITY — REMOTE ABORIGINAL COMMUNITIES

370. Hon JAMES HAYWARD to the minister representing the Minister for Water:

I refer to the recent Auditor General's report *Delivering essential services to remote Aboriginal communities—Follow-up*.

(1) Has the minister acted to improve water access and purity in the 38 communities mentioned in the report; and, if yes, can the minister please detail what action to date for each community?

(2) Will the minister commit to investigating alternative methods and new technologies for delivering safe drinking water to remote Aboriginal communities?

(3) How regularly are water tests undertaken at all regional and remote communities?

(4) Has the Water Corporation developed any plans for improving access to clean and pure water in remote communities?

(5) Has the Department of Water and Environmental Regulation developed any plans for improving access to clean and pure water in remote communities?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The following information has been provided by the Minister for Water.

(1) The water services to these communities are currently delivered by the Department of Communities. This question should be referred to the responsible minister.

(2) All drinking water supplied to communities by the Water Corporation meets the Australian Drinking Water Guidelines for adults and children over three months. The Water Corporation continuously investigates and evaluates new methods and technology to improve water supplies for all Western Australians, including remote Aboriginal communities.

(3) For regional and remote communities serviced by the Water Corporation, water sampling programs are established for localities with a standard drinking water service as per the Australian Drinking Water Guidelines and the Department of Health and the Water Corporation memorandum of understanding. Sampling program frequencies are developed based on the number of services and the water quality risk. Microbiological monitoring services occur on a weekly to monthly basis, depending on the number of services. Chemical sampling frequency ranges from monthly to five-yearly, radiological sampling occurs two to five-yearly and fluoride sampling occurs between weekly and six-monthly, all of which is dependent on whether the parameter is a key characteristic for the locality.

(4) Works are underway to normalise seven remote Aboriginal communities to improve water quality. The project is valued at $62.5 million and includes $38.9 million delivered through the McGowan government's $5.5 billion WA Recovery Plan. This funding is assisting to fast-track the McGowan government's commitment to provide remote Aboriginal communities with access to the same standard of essential services enjoyed by other Western Australians.

(5) In addition to the work being done by the Water Corporation as per the answer to (4), the McGowan government is currently participating in national discussions around a new Closing the Gap target to improve drinking water infrastructure in Aboriginal communities.

SOUTH FREMANTLE POWER STATION — EXPRESSIONS OF INTEREST

371. Hon NEIL THOMSON to the minister representing the Minister for Finance:

I refer to the recent publicity on the market-led proposal for the Graylands Hospital site and the announcement yesterday for an expression of interest for the Fremantle power station site.

(1) Who is the proponent that has already submitted an MLP for the Fremantle power station?

(2) On what dates was the MLP proposal received by the Department of Finance on the Graylands Hospital site and the Fremantle power station site?

(3) Has the minister received a recommendation from the Department of Finance on the MLP for the Fremantle power station?

(4) Was that recommendation to reject the MLP?

(5) If yes to (4), what criterion or criteria, as per section 1.2 of the *Market-led proposals policy* dated January 2020, did the proponent fail, requiring an expression of interest process as announced yesterday?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1) No proposal relating to South Fremantle power station has been submitted through the market-led proposal process.

Hon Neil Thomson: That's not what the minister said.

Hon STEPHEN DAWSON: The member asked the question; I am answering it on behalf of the minister, so please let me. The answer to (1) continues —

> The sale of the South Fremantle power station is being dealt with via an expression of interest process through Synergy; therefore, the honourable member needs to refer questions on the South Fremantle power station to the Minister for Energy.

(2) The MLP submission for the Graylands site was received on 7 July 2020, and stage 2 was disclosed on 8 April 2021, as per the MLP policy disclosure requirements.

(3)–(4) No.

(5) Not applicable.

PUBLIC SECTOR — WAGES

372. Hon Dr STEVE THOMAS to the Leader of the House representing the Minister for Public Sector Management:

(1) What has been the total Western Australian public sector wage bill, inclusive of part-time and full-time employees, for each of the financial years 2016–17, 2017–18, 2018–19, 2019–20, and 2020–21 to date?

(2) What has been the total cost of external consultants engaged by the McGowan government for the financial years 2017–18, 2018–19, 2019–20, and 2020–21 to date?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1) Public sector wages—salaries and superannuation—are tabled annually in the Legislative Council in the *Annual report on state finances* and budget paper No 3.

(2) This information is recorded and held by each agency and, as such, the question should be put on notice to the relevant ministers.

CORRUPTION AND CRIME COMMISSIONER — REAPPOINTMENT

373. Hon TJORN SIBMA to the parliamentary secretary representing the Attorney General:

I refer to the Attorney General's answer to my question of 22 June on the Corruption, Crime and Misconduct Amendment Bill 2021.

(1) Can the Attorney General please describe the manner by which a candidate for the role of Corruption and Crime Commissioner is "chosen" by the independent nominating committee chaired by the Chief Justice of Western Australia?

(2) In relation to the above, can the Attorney General clarify the procedure by which the independent nominating committee in this particular instance, and of its own volition, "chose" the Premier's preferred candidate, Mr McKechnie?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. I provide the following response on behalf of the Attorney General.

(1)–(2) Under section 9(3b) of the Corruption, Crime and Misconduct Act 2003, the nominating committee is required to advertise throughout Australia for expressions of interest. The nominating committee is defined

as a committee consisting of the Chief Justice, Chief Judge of the District Court and a person appointed by the Governor to represent the interests of the community. Under section 9(3a)(a), except in the case of the first appointment, the nominating committee submits to the Premier a list of three persons eligible for appointment as commissioner. Although not a requirement of the act, in submitting the list to the Premier, Hon Peter Quinlan, Senior Counsel, as chair of the nominating committee, described Mr McKechnie, QC, as the "outstanding nominee for the position" in the view of the nominating committee. Mr McKechnie, QC, was the only nominee chosen by the nominating committee to be described in this way. As to why the independent nominating committee chose to describe Mr McKechnie, QC, in this way, this can only be known by the independent nominating committee.

LAW REFORMS — DERIVATIVE ACTION

374. Hon NICK GOIRAN to the parliamentary secretary representing the Attorney General:

I refer to the Attorney General's answer on 2 June 2021 to my question without notice asked on that day, of which some notice was given on 24 May 2021.

(1) On what date did the Attorney General's office ask the Department of Justice to provide advice on the matters raised in the Supreme Court decision in the Shephard case of 2019?

(2) When is that advice scheduled to be provided?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. I provide the following answer on behalf of the Attorney General.

(1) On 31 March 2021.

(2) Due to the complexities of the issues raised, the Department of Justice notes that in preparing this advice it will need to, amongst other things, obtain legal advice, undertake significant legal research and undertake consultation with the heads of jurisdictions as well as others. The Department of Justice will provide this advice as soon as practicable and in accordance with the government's legislative priorities and reform agenda.

EDUCATION — REGIONAL LEARNING SPECIALISTS AND INDEPENDENT LEARNING COORDINATORS

375. Hon DONNA FARAGHER to the Minister for Education and Training:

I refer to regional learning specialists and independent learning coordinators.

(1) Can the minister advise whether funding for these positions is due to end on 30 June 2021; and, if not, how long are the positions funded for?

(2) If yes to (1), can the minister confirm whether funding will be provided for these positions beyond 30 June 2021?

(3) If no to (2), why not?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1) The ongoing funding for these initiatives is in the Department of Education's budget across its forward estimates.

(2)–(3) Not applicable.

EMERGENCY SERVICES — TRAFFIC MANAGEMENT

376. Hon WILSON TUCKER to the Leader of the House representing the Minister for Emergency Services:

I thank the minister for the answer to my question without notice 175, asked on 27 May 2021.

I refer the minister to a document titled *Ferguson report recommendation progress table*, dated 23 July 2019, published on the State Emergency Management Committee's website. This document lists recommendation 14 of the Ferguson report as completed, and states —

An independent review of the WA traffic management policy has been completed.

And —

The report of the independent reviewer is being considered by OEM.

(1) Who was the independent reviewer and when was the review completed?

(2) What is the status of the Office of Emergency Management's consideration of the report of the independent reviewer?

(3) Will the minister now table the report of the independent review?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question. The Department of Fire and Emergency Services advises the following.

(1) Mr Gary Morgan, AFSM, of the Bushfire and Natural Hazards Cooperative Research Centre, was engaged in 2017 to undertake an independent review of the WA traffic management policy, and his report was completed in November 2017.

(2) Mr Morgan's report found that Western Australia's arrangements met best practice. The State Emergency Management Committee subsequently noted the report and closed the Ferguson report's recommendation 14 in November 2017.

(3) I ask the honourable member to place this part of the question on notice.

VOLUNTARY ASSISTED DYING — PRACTITIONER TRAINING

377. Hon MARTIN ALDRIDGE to the minister representing the Minister for Health:

I refer to Legislative Council question without notice 270, which I asked on 15 June, regarding the voluntary assisted dying scheme, due to commence on 1 July this year.

(1) By region, how many medical practitioners have registered to participate in training to date?

(2) By region, how many medical practitioners have completed the mandatory training to date?

(3) Given the minister's response last week indicated that several regions had zero medical practitioners registered for training, will the state government develop a plan to encourage practitioner uptake in these regions to ensure reasonable access?

(4) Noting the government's commitment for practitioners to travel to patients where no practitioner is based locally through the regional access support scheme, where will these practitioners be sourced from and will the minister guarantee access occurs in a timely manner?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1) To date, the following number of medical practitioners have registered for access —

  (a) in the metropolitan area, 50;

  (b) in the Peel region, five;

  (c) in the great southern, 10;

  (d) in the midwest, one;

  (e) in the Pilbara, one;

  (f) in the south west, six;

  (g) in the wheatbelt, two;

  (h) the total number of medical practitioners who have registered is 75. I also note that three nurse practitioners have registered—two in the metro region and one in the midwest; and

  (j) the total number of practitioners is 78.

(2) The following number of medical practitioners have completed the mandatory training to date —

  (a) in the metro area, one;

  (b) the total number of medical practitioners is one.

(3) The Department of Health continues to closely monitor registrations for access to Western Australian voluntary assisted dying approved training. The number of practitioners who are registering to access the training continues to increase and the Department of Health has received 78 applications to date. The Department of Health is actioning plans to ensure that practitioners are aware of the commencement of the legislation and that they are able to register to complete the training. It is the decision of individual practitioners whether they choose to participate in voluntary assisted dying.

(4) The WA voluntary assisted dying statewide care navigator service will support linkage of patients to practitioners. Individual practitioners will decide whether they consent to make their details known to the SWCNS and, further to that, whether they will provide a service to an individual patient. The government is able to support access via the regional access support scheme. The regional access support scheme has been designed to address concerns regarding access in regional areas.

HOUSING — BUILDING APPROVALS

Question without Notice 252 — Answer Advice

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.02 pm]: I would like to provide an answer to Hon Colin de Grussa's question without notice 252, asked on 15 June, to me as the Leader of the House representing the Minister for Housing.

I seek leave to have the response incorporated into *Hansard*.

[Leave granted for the following material to be incorporated.]

(1)–(2) Updated building approval data is not collated by the Department of Communities, however, is publicly available via the Western Australian Treasury Corporation.

(3)–(4) The McGowan Government inherited an ageing public housing portfolio consisting of a significant number of dilapidated buildings which were unsafe, expensive to maintain, and not fit for purpose. Since September 2020, a total of 217 of these dwellings have been removed from the social housing stock.

The McGowan Government is investing heavily with nearly $1 billion in social housing programs and homeless support services including the Social Housing Economic Recovery Package (SHERP) and the Housing and Homelessness Investment Package. This investment includes the largest housing maintenance and refurbishment program in WA's history via the $319 million SHERP, due to refurbish 1,500 homes and complete maintenance for 3,800 regional homes.

Since September 2020, 78 dwellings have been added to the social housing stock and as at 31 March 2021 there were 235 social houses under construction, with a further 50 social houses under contract for construction, and several other developments in various stages of planning and design.

Yes, social housing includes both public housing and community housing. Below are tables providing a breakdown by region.

(a)

September 2020 – May 2021	**Social Housing**
East Metro	14
Goldfields	10
Midwest / Gascoyne	10
North Metro	8
Pilbara	1
South Metro	32
South West	1
Wheatbelt	2

(b)

September 2020 – May 2021	**Social Housing**
North Metro	36
South Metro	69
East Metro	33
Great Southern	2
Southwest	23
Goldfields	6
Midwest / Gascoyne	24
Pilbara	10
West Kimberley	4
Wheatbelt	8
East Kimberley	2

MINISTERIAL EXPERT COMMITTEE ON ELECTORAL REFORM

Question without Notice 338 — Supplementary Information

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [5.03 pm]: In reference to Hon Martin Aldridge's question without notice 338 asked on 22 June 2021 to me, the parliamentary secretary representing the Minister for Electoral Affairs, I table the list of public submissions that were received by the Ministerial Expert Committee on Electoral Reform prior to the deadline for submissions on Tuesday, 8 June 2021. Those who made submissions but have requested confidentiality have not been included in the tabled list of public submissions. Additionally, where it has been requested, the names of those who have made submissions have been redacted.

[See paper 350.]

CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

HON SOPHIA MOERMOND (South West) [5.03 pm]: I will not take much of the house's time this afternoon—because goldfish—but I want to echo something my colleague Hon Dr Brian Walker said before lunch, which was reiterated by Hon Tjorn Sibma just before our coffee break. What does the way that we are handling this bill say about the government's priorities? Why is this specific bill a priority bill? What does it communicate to vulnerable women across WA about how we rate their safety or health when important bills that support the safety of women are not prioritised? I, for one, would rather be standing here debating safe zones around abortion clinics, but that bill is languishing in the other place at present. Apparently, this is not a priority of the McGowan government, or at least it is not sufficiently a priority for it to have been debated and passed on to us in an accelerated time frame as this bill has been. I think that is a shameful and highly disappointing approach for the government to take and I ask members to reflect upon that. I suspect many other women will feel similarly disappointed in us when they realise what the government's self-confessed priorities are. We also have not one but two bills that deal with animal cruelty languishing in what Hon Dr Steve Thomas referred to as the unmentionable place. Those bills I think would find a far greater level of agreement in here and I hope they will pass swiftly on to the statute book. Knowing how this bill has been progressed through this Parliament, I am disappointed that the safety of women and specifically the safeguarding of vulnerable and very young women appear to not deserve the same courtesy and apparently neither do animals affected by cruelty. We need to do better and I hope that members opposite will take a strong message of disappointment back to the mothership.

HON JAMES HAYWARD (South West) [5.06 pm]: What is going on here today can be described only as an abhorrent abuse of process. The Corruption, Crime and Misconduct Amendment Bill 2021 is out to short-circuit the appropriate method for appointing the Corruption and Crime Commissioner. Many members who spoke before me very eloquently put to members a number of arguments around why bipartisan support is so important for this position. I looked around at other jurisdictions to see what they do in this space and I found a report from the Australia Institute, which I understand is made up largely of union and Labor Party supporters. Its briefing paper *Bipartisan appointment and oversight of integrity commissioners* was published in relation to the desire for a federal bipartisan integrity commission. Its summary states —

- Bipartisan appointment of commissioners to integrity institutions is critical to ensuring the institution can operate independent of political interference
- Bipartisan committees can nominate commissioners for appointment, and can also provide independent oversight of integrity institutions
- A National Integrity Commission must be established with an independent commissioner, nominated by bipartisan committee

This is not our people; this is what the Australia Institute says should happen. The paper goes on to refer to the appointment of a commissioner. It states —

> There are a range of mechanisms in place to appoint commissioners and chairpersons of Australian integrity institutions. Outlined below are mechanisms for appointing commissioners and chairpersons of the NSW Independent Commission Against Corruption, the Queensland Crime and Corruption Commission —

And others. It continues —

> Bipartisan support for the appointment is crucial to ensuring the independence of integrity institutions. This independence can be included in the legislation establishing a National Integrity Commission, by specifying that a Joint Committee be established with members from all parties represented in each house of parliament, and that this committee must give bipartisan support for nominations for commissioner before the commissioner can be appointed by the Attorney General or the Governor General.

New South Wales has the Committee on the Independent Commission Against Corruption. It comprises 11 members, with three chosen by the Legislative Council and eight chosen by the Legislative Assembly. The current committee has membership from four parties. It is required to get bipartisan support and a commissioner can be selected only with the committee's approval. Queensland has the Parliamentary Crime and Corruption Committee, which is a bipartisan committee. Obviously, the Queensland Parliament is unicameral so there is only one house. The committee comprises seven members, four of whom are appointed by the Leader of the House with the other three appointed by the Leader of the Opposition. The committee must have bipartisan support to appoint a commissioner. That is what New South Wales and Queensland do.

The New South Wales Independent Commission Against Corruption Act 1988 does not specify that the committee should be bipartisan, but it states that the appointment of members should be in accordance with the practice in Parliament with regard to joint committees. In practice, this has resulted in the current committee comprising four Labor members, three Liberal members, three National Party members and one Country Democratic Party member.

Hon Alannah MacTiernan: What state is that?

Hon JAMES HAYWARD: It is New South Wales.

Its role is to review ICAC and the ICAC inspector's performance, examine their annual reports and report to Parliament on matters relating to the commission's functions. That committee has the power to veto the commissioner.

In Queensland, the committee comprises seven members; four are nominated by the Leader of the House, three are nominated by the Leader of the Opposition and the chair of the parliamentary committee is nominated by the Leader of the House. Queensland's Crime and Corruption Act 2001 specifies that nominations for commissioner must be made with bipartisan support of the parliamentary committee. Its role is to monitor and review the CCC's performance, report to the Legislative Assembly regarding matters relevant to the CCC's findings and performance and examine the CCC's annual and other reports.

If we are talking about gold standards in integrity and we look around the country, nowhere do we find this going on. I do not know whether any members are sparkies or whether they have had much to do with electrical contracting. My brother is a sparkie. Back in the good old days, the fuses were not like what we have today, which automatically reset themselves. Today, if there is an earth leak, the fuse goes "bang", the power goes off and you walk out to the fuse box, flick the little switch or press the button and it re-engages the fuse. That is modern technology. These fantastic devices are saving lots of lives. In the old days, if there was a problem with an electrical fuse and it was not quite working, the solution was pretty simple; you got yourself a two-inch bolt or a nail and shoved it in the fuse box, which completely bypassed the failsafe of having a fuse, but it kept the power on. Of course, having a two-inch bolt or nail in the fuse box when a kid sticks his tongue in the toaster has diabolical and tragic results because that failsafe mechanism cannot work. It gets the power on and the job done. That is what the Corruption, Crime and Misconduct Amendment Bill 2021 is about. It is about shoving that two-inch bolt in the fuse box and saying, "We don't care what risks it brings to the state, what the dangers or potential problems are; we are getting the job done. This guy's good at fighting corruption in WA. We're putting the bolt in the fuse box and we are turning the power on." That is the McGowan government's theme.

Hon Darren West: Are you familiar with the circumstances in which Commissioner McKechnie was appointed in the first place?

Hon JAMES HAYWARD: I certainly am, but that is not a relevant issue, honourable member, because in that circumstance there was bipartisan support; there was no bolt going in the fuse box to turn the power on. That is what we are seeing here today. The precedent that is being set here is dangerous. It is not in the best interests of the state, it is not in the best interests of Parliament and it is not even in the best interests of the members sitting here. It is a dangerous precedent and it is a bizarre one. One of things we could look at further is to consider Mr McKechnie on a term-of-government contract. After all, he is quite clearly a political appointment.

It has already been said in the house today that we will inevitably sit a lot of hours today, and in the end, the consequence and the results are well known, but that does not mean that we will not stand here and voice our concerns. We will stand here and raise the concern and make it as clear as we can that this is not right. This is a real moment in time. Today will go down in history, no doubt, as being one of those critical times when the Parliament has made a decision. The decision that is being made is to put the two-inch bolt into the fuse box and ramp up the power—get the job done. It keeps the power on. We do not need any of this fancy stuff to keep us safe. We will just get the power on to get the job done until something goes wrong.

Why does every other jurisdiction in Australia—certainly the couple I pointed out, the bigger ones and WA—require this? Why it does the Australia Institute, which, as I said, is a left-leaning organisation, champion the need to have bipartisan support? Why do members opposite not see that having bipartisan support is a reasonable safety net for everybody involved? This has not happened before. Since the Corruption and Crime Commission's inception there has been bipartisan support for putting people into those roles, but today we are seeing the two-inch fuse going to the fuse box and the power turned on, because we are going to get the job done. We are not worried about safety. There is no doubt that here we are seeing a political appointment. The danger of a political appointment is that it is solely being made by the Premier and his supporting party. No other party in this house or the other house has voiced support for this bill. This is being forced through. I have heard analogies like "battering ram". That is exactly what is going on. This is being forced through, and the danger in having a political appointment is that it creates questions about the ability of that individual to work independently. I do not say that with any malice or disrespect to Mr McKechnie, but I make the point that he will know that he does not have bipartisan support. He will be working in Western Australia with the two-inch bolt in the fuse box keeping the power on, but he will know that he does not have the bipartisan support of the Parliament of Western Australia. He will know that he will probably be the only commissioner, I imagine, in this situation in the country. I am not sure what the arrangements are in the Northern Territory, but I suspect it has a commissioner with bipartisan support as well. He will be the only commissioner working in that situation where he does not have a safety switch—that RCD. The residual current device flicks off when danger approaches, when somebody's life is potentially on the line; that is what RCDs are in the fuse box for. He will not have that because he does not have bipartisan support. He will go into the job knowing that he does not have that. It is really not a great place for us to be. It is not a great place for the state, as I said. I think there should be concern on both sides of the chamber, not just on our side, around this appointment.

I want to also briefly touch on some of the reports. Hon Nick Goiran ran us through a time line of some of the issues that have been raised and no doubt some members heard about some of those things for the first time while others will know all about them. I think five different issues came up, which there were some parliamentary reports on. I am aware of some of them—certainly the one with Dr Cunningham and Ms Atoms that resulted in Ms Atoms being paid over $1 million in a settlement through the courts. Surely that must ring alarm bells. The Corruption and Crime Commission was repeatedly asked to look into that. It said, "Nothing to see here", and it ended up going to court. The court made a detrimental finding against those police officers and the state had to pay out over $1 million to Ms Atoms and I think $100 000-odd to Dr Cunningham.

Hon Alannah MacTiernan: Member, just very briefly, because I think this is an important point; this did not cause the award. The view of the commissioner was that it had already been dealt with by the court.

Hon JAMES HAYWARD: The point I am making, honourable member, is that the CCC was repeatedly asked to look into the matter and it said, "Nothing to see here." I agree. The incident happened. It is not the CCC's fault that it happened and, inevitably, a payout was required because of the circumstances.

Hon Alannah MacTiernan: I don't think he said, "Nothing to see here."

Hon JAMES HAYWARD: I am pretty certain that the CCC refused to look into the matter, despite repeated requests.

One of the most recent reports that was tabled here is an update on the Supreme Court proceedings from the Standing Committee on Procedure and Privileges. I am sure members are familiar with this report. I want to point out a couple of things. The third paragraph of the executive summary states —

> Over the past two years the plain facts in this matter have been obscured and misrepresented in the media, as well as in both the Legislative Council and the other place, and in various correspondence and reports emanating from the CCC.

Emanating from the CCC—that is quite an allegation. It is saying that the information—the plain facts—are being manipulated in the media, but by who? By the CCC. It goes on to say —

> Quite simply, it is the PPC's view that at the heart of this matter is an entirely inexplicable sudden cessation of good faith negotiations between the PPC and the Commissioner of the CCC. This coincided with the bald usurpation of the powers and privileges of the Legislative Council through the calculated intervention of the Attorney General and State Solicitor's Office (SSO), to the potentially unlawful benefit of the CCC.

They are powerful allegations. The CCC is a big dog and bites hard; it is supposed to. The thing is that that big dog is not supposed to have one handler; it is not supposed to be a political appointment. This person's role is supposed to be independent. Today we are seeing a state government force through a bill that literally seeks to short-circuit the proper process of appointing a commissioner. It is serious business. It is trying to short-circuit it by sticking in a two-inch globe and saying, "You beauty; the power's on; let's go." I believe history will show that that is a very poor decision and a poor outcome.

There are a lot of political appointments within government. People are employed because a member of Parliament seeks to employ a person or because a minister wants to have a certain person. Obviously, there is freedom within the parameters of government to be able to do those things. That is how it works. One of the key elements of those appointments is the term-of-government contracts. Whilst the appointee's minister is in the position, they have a job. Quite frankly, what is happening here today, by putting the two-inch globe in the fuse box and turning the power on to get the job done, is a political appointment. The political appointment is not going to serve us well.

One of the things I did as a journalist was cover the story of a young Indigenous girl who died in a Homeswest—Department of Housing—home after residual current devices were not installed. It was a terrible tragedy. That is one of the things that can happen when we take a short cut—when we forget about the safety measures and decide that they are not important. This legislation is before us because somebody did not get their own way. The Premier decided that he wanted this person but he did not have the authority to appoint that person. What is the solution? "Oh, well, we have two houses of Parliament now; we can just slam it through. We will rewrite the history, we will rewrite the bill and we will rewrite the rules to suit us." One of the problems we have with that approach is that in four years' time, eight years' time, 12 years' time or at some point in time, government members will be sitting on this side of the chamber and the same approach will be used with them. I think that will be a terrible outcome as well. I say to honourable members: really think about what you are doing here today, whether you want to be signing your name to this, whether you want to be putting your name against the fact that you have rewritten the rules so that you can get your own way, and ask yourself, "Is that really in the best interest of the state?"

HON DONNA FARAGHER (East Metropolitan) [5.28 pm]: I rise to make a few brief comments on the Corruption, Crime and Misconduct Amendment Bill 2021. My position on this bill is simple. It relates to proper process. I am going to confine my comments to that in this second reading debate today. I want to pose a couple of questions. First: does this bill seek to subvert a process put in place through legislation introduced by a former Labor government and a former Labor minister? Yes, it absolutely does. Does this bill seek to subvert a process that was recommended by a former Standing Committee on Legislation in its twenty-first report tabled in December 2003?

That committee was chaired by a former Labor member, Hon Jon Ford, and its members were Hon Peter Foss, Hon Giz Watson, Hon Derrick Tomlinson, former members of this place, and Hon Kate Doust, a current member of this house. That report was referred to by Hon Nick Goiran. Does it seek to subvert the process that was recommended in that report? Yes, it absolutely does. That 2003 committee report very clearly stated after long consideration that the appointment of the commissioner should be "apolitical and bipartisan". The act as it stands, and as it has stood since 2003, clearly states the process for the appointment that must be undertaken. Quite obviously the Premier and the Attorney General are not happy with the process that was put in place by a former Labor government. As others have said, the Premier and the Attorney General have consistently put forward the notion that the Liberal Party, of which I am a member, has blocked Mr McKechnie's reappointment. What the Premier and the Attorney General have failed to do, and one might say quite deliberately so, is to set out the true facts of the matter. It might be an inconvenient truth to the Premier, but section 9 of the act as it stands today stipulates that the Premier must provide the bipartisan Joint Standing Committee on the Corruption and Crime Commission with a recommendation from three nominees for appointment. The bipartisan committee then advises if the recommendation is supported on both a majority and a bipartisan basis. If it is not supported, the Premier's recommended nominee cannot ultimately be recommended to the Governor. Those are the facts of the matter.

In the previous Parliament, this bipartisan committee consisted of two Labor members from the Legislative Assembly, the member for Girrawheen, now Landsdale, who was the chair; the member for Kalamunda; one Greens (WA) member, Hon Alison Xamon, a now former member of this house; and Liberal member Hon Jim Chown, also now a former member of this house. That bipartisan committee did not recommend Mr McKechnie for reappointment on two occasions. With respect to the comments by the Premier and the Attorney General that somehow the Liberal Party has blocked this nomination, I want to state very clearly that I was not a member of the committee. I had no role in the appointment process. Not one of the Liberal members who sit in this place today were members of that committee. Not one of the Liberal members who sit in this place today had any role in the appointment process as it related to that former committee. Not one of the Liberal members who sit in this place today were privy to the reasons that Mr McKechnie was not recommended for reappointment in the previous Parliament. That is because, albeit the member for Kalamunda decided to shun the rules, consideration of this matter was undertaken quite appropriately in private and in confidence.

In mentioning the member for Kalamunda, I will just say this. This member was, I might say, the most elusive Labor member in the final week of the election campaign; we certainly could not find him anywhere in Kalamunda. Despite that, he has now been rewarded by the Premier at the expense of the Labor member for Girrawheen, now the member for Landsdale. He has been rewarded after breaking all the rules when it comes to committee deliberations and after his personal attacks against former members in this house. I cannot believe to this day that the member for Kalamunda referred, during debate in the other place on 14 May 2020, to Hon Alison Xamon as "the handmaiden to the executioner pulling the guillotine". When the member was picked up on that as being wholly inappropriate, did he withdraw it? No, he did not. The member for Kalamunda simply responded by saying —

> The member might say that this is not appropriate. I am allowed to say in this chamber what I wish to say.

Obviously, the Premier and the Labor Party think the various actions of the member for Kalamunda are okay. I find them appalling, but I digress.

As I said in the previous Parliament, neither bipartisan nor majority support was given by the committee. I will refer to a media statement. I would say that it is quite extraordinary for the Joint Standing Committee on the Corruption and Crime Commission to release such a statement. It was released on 23 April 2020 by the chair, Margaret Quirk, and it is titled "Reappointment of the Corruption and Crime Commissioner, John McKechnie QC". It states —

> The Committee met on 22 April 2020.
>
> It took into account the matters which were recently brought to the Committee's attention by the Premier.
>
> Again it was unable to reach either a bipartisan or a majority decision in support of the recommendation to reappoint the current incumbent.
>
> The Committee operates under Standing Order 270:
>
> > "*Committee deliberations will be conducted in closed session*."
>
> However, because of unfounded public speculation about the motives for the Committee's previous deliberations, it has resolved to unequivocally reject any suggestion that the motivation for any members not supporting the appointment recommendation was the Corruption and Crime Commission's focus on parliamentary electoral allowances.
>
> A range of reasons were canvassed at length. As has been the practice since the Committee's inception, all points of view by members were made in good faith and given respectful consideration.
>
> The nature of those discussions is not detailed because it includes information provided by third parties in confidence and matters which may impact on the operational performance of the Commission.

> As has been the previous practice, the Committee interviewed all persons on the list considered by the nominating committee. We note in the report of the nominating committee that, although the incumbent is described as outstanding, the observation is also made that "*each of the nominees is qualified for appointment to the position of Commissioner*."
>
> This Committee notes that a suggested 2016 amendment to the provisions of the *Corruption, Crime and Misconduct Act 2003* dealing with the appointment of both the Commissioner and Parliamentary Inspector has never been introduced.
>
> That recommendation occurred after a similar dilemma had arisen where the previous Joint Standing Committee "*recommended to the Premier that he appoint a person other than the proposed candidate due to a specific operational reason for the Commission*."

Reference is made to the thirty-first report of the Joint Standing Committee on the Corruption and Crime Commission tabled in November 2016. The statement continues —

> Given support for the incumbent by both the Opposition Leader and the Premier, discussion on what did, or did not, occur in the Committee, and imputing motives to individuals, does not progress a constructive way forward.

Therefore, the suggestion propagated by the Attorney General and the Premier last year that somehow the Liberal Party has sought to block the reappointment of Mr McKechnie is simply not true. Obviously, again, under the auspices of the forty-first Parliament, the matter has now been brought to the new committee. Again, the only member on this side of the house on this occasion who would appropriately be aware of the decision-making and deliberations concerning this matter would be Hon Dr Steve Thomas, the Leader of the Opposition, given he is a member of the committee. But other than Hon Dr Steve Thomas, much like last time, not one of the Liberal members sitting in this place today is a member of this committee. Not one of the Liberal members sitting in this place today, with the exception of Hon Dr Steve Thomas, has had any role—I repeat, any role—in the appointment process as it relates to this committee. What is true is the opposition's concern about the McGowan Labor government's subsequent decision to seek to change the law through this bill that is now before us to allow the Premier to make his own appointment of the Corruption and Crime Commissioner.

As has already been said today on numerous occasions and in previous debates in this place and outside of it, this bill names Mr McKechnie as an exception to the rules clearly set out under section 9 of the Corruption, Crime and Misconduct Act for the appointment of a commissioner—rules that have applied up until now and that we think will continue to apply to every other candidate in the future. The act was established to ensure that there would not be even the slightest suggestion of political interference in such an important appointment. This bill, however, seeks in an unprecedented way to bypass the proper process. That is what I said at the beginning of my contribution that I would focus on. My issue is with respect to the process, which was set out in law through the other place and through this place back in 2003. This bill seeks in an unprecedented way to bypass that proper process that is laid out very clearly in the act. It defies all convention. I think it was Hon Dr Brian Walker who said—we seem to have gone a long way since he last spoke—that it defies all the checks and balances that we would expect for such an important appointment. It sets a very, very dangerous precedent. Thank you.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [5.42 pm]: It is going to be somewhat difficult for me to make a significant contribution to the debate this evening, given my position on the current Joint Standing Committee on the Corruption and Crime Commission, so I do not intend to give a particularly long address. To be honest, I think this is the first time in the last few weeks that I have stood to give a contribution to a second reading debate and the clock has been on me, so it is a fairly momentous occasion in itself to be restricted to an hour. I can guarantee members that I will not be filling in that entire hour.

It is, as I say, a little problematic, because at the end of this process, this bill will pass, and John McKechnie will again be the CCC commissioner. I just place on the record that I think I have met him once, nodded and said, "Good evening", and I do not think we have had a conversation beyond that. As deputy chair of that committee, I have no comment to make about his capacities. When he is ultimately appointed, I will work with him and his team to the best of my ability to get the best outcomes for the people of Western Australia.

Much has been said about the history of the Joint Standing Committee on the Corruption and Crime Commission. I am not going to comment on the current committee or the previous committee beyond this single comment: to my knowledge, the existing Joint Standing Committee on the Corruption and Crime Commission and its members have made no public comment. I am unaware of any public comment by any members, and that stands the committee in good stead. I commend the committee members, particularly the new members who have joined that committee without much experience. Well done to them all.

We find ourselves in very unusual times. I must say, I was drawn to Hon Martin Aldridge's speech, as I quite frequently am. That is not to say that the contributions by other members were not excellent; they were. But Hon Martin Aldridge's focus on the process of appointment warrants some review. I think his suggestions are worthy and should be taken

on board. I note that it is a highly unusual step for anyone to be appointed by an act of Parliament. When the parliamentary secretary replies to the second reading debate, I will be interested to find out whether he knows of any precedents for that occurrence in this or any other jurisdiction. I would have thought it would be remarkably rare. I am not aware of any precedent. The parliamentary secretary can perhaps give us some examples of this having occurred before, or are we very much in uncharted waters?

Another question I have that the parliamentary secretary might consider in his reply is: if a commissioner can be appointed by an act of Parliament, could a commissioner also be removed by an act of Parliament? Are we setting a precedent of not only appointing a commissioner, but also opening up the possibility of the political removal of a commissioner or other public servant through an act of Parliament? These are the things I think we should consider deeply as we open up this can of worms.

The Premier highlighted his preferred candidate and was unable to proceed with it through the existing structures, without making any further comment on what those structures are. Would the same thing apply if, for example, the commissioner lost the Premier's confidence? What would happen if something from history re-emerged and confidence was lost in the commissioner? I am not suggesting that there is anything, and I am unaware of any such thing. I ask this question because I am a little concerned about the process upon which we are embarking. If we set the precedent of using an act of Parliament to appoint a person to this high office, are we also opening the door for their removal—perhaps by the present government, or perhaps by a future government? Will we then end up in some sort of interesting circle—a devolution to the bottom, if you will, in which the role suddenly becomes far more political than it was ever designed to be? That is a serious question for the parliamentary secretary. I have enormous respect for his position, and if he would take that question on board and respond, I would appreciate it. I think it is important to know the path we are going down. The other component that concerns me is that we are effectively an employment selection panel. As a house and as a Parliament, we have started to attribute jobs. I am of the view that the people of Western Australia give us our jobs. Our job as parliamentarians is not the employment of public servants; that is the role of executive government. I fully understand the issue of executive government having a preferred candidate, and that this process has been put in place because the legislation is not delivering that particular outcome. I do not come to this naively and thinking that this is flippant. We are effectively anointing ourselves as a selection panel. But we have only one candidate whom we can refer.

My understanding is that even the parliamentary secretary is not aware of the alternative candidates who were nominated. Again, I make no criticism of him whatsoever. I do not know whether anyone in government is aware of the alternative candidates. I do not know whether the Attorney General is aware. I know that the committee made a particular selection of three candidates. I do not know of any employment selection panel that is given a choice of one. If we were running a government and we were the Premier of the state looking for our next chief of staff, and we were offered a choice of one, I think we might have some question marks. It is highly unusual for a selection panel to be given a choice of one. I know that the one recommendation obviously goes to the committee, and perhaps that is an issue that might be looked upon in time. I did note the comments of other members, in particular the comments of Hon Martin Aldridge in relation to the now former commissioner's view of the process, and perhaps removing the panel entirely and having just the Joint Standing Committee on the Corruption and Crime Commission go through the process. That would allow the members of Parliament, as represented in those four people, to at least have a choice of three, potentially.

All these things should be looked at. I do not have the magic bullet for this. I do not profess to be the expert who can tell us that this is the ideal way to go forward. But it is difficult, in my view, for us to be the selection panel, with a choice of one. I can understand that the recommendation panel may well have confidence in the person whom they put forward as the best candidate. I understand that, and perhaps the recommendation panel should be considered one day, but, if that is the selection panel, that should be the selection panel. That was not the recommendation of the former commissioner, but at least that would make sense. The current system is designed to be—I almost said apolitical, but I do not think it is. I think it is meant to be as evenly political as it can be. We have obviously now shifted that to something far more political, and it is to the detriment of everybody when we do this.

How else could this be done? Obviously, we could have the recommendation panel as the selection panel. We could remove the recommendation panel and have Parliament do the exact same job. Remember that this is somebody who is watching the watchers. The Corruption and Crime Commission spends much of its time looking into the police, who are watching the community and protecting the community. This is in effect someone who is watching the watchers. Then, of course, there is the parliamentary inspector, so we have someone who watches the watchers who watch the watchers. At some point there has to be an end to that; we have to have some faith in the people we give the job to. We have those mechanisms in place.

Perhaps the recommendation panel or the Joint Standing Committee on the Corruption and Crime Commission should be empowered to do more. I would have concerns if it were purely the executive arm of government that were empowered to do the job. We have choices here, honourable members. We can empower the Parliament or we can empower the selection panel, but none of those is the path proposed by the government. The government is proposing to empower itself. If ever there was an issue of inappropriate oversight or use of power, I suggest that

it is in the executive appointing someone whose job it is to watch the executive for corruption. That is not to say that the person proposing this bill cannot do the job or that I have no faith in the person named in the bill. None of that is true. I will fulfil my obligations to the committee; I will certainly not be the person who makes any of that public. I have no doubt that Hon Klara Andric will feel exactly the same. It is a committee that can function. I think we have proved that, even though we have not been at it for very long.

However, there are other ways to do this and the way presented by the government is not the only way to do it; even to get the government's preferred candidate into that position, if that is the ultimate will of everybody. There are other ways to do this that do not simply involve the executive government ramming legislation through Parliament to express its executive will. This is not just my opinion; a far more experienced member in this area, I suspect, Hon Martin Aldridge, said very similar things during his address earlier today. There are alternative options to the bill before the house. I think we should explore those alternative options and I think the Parliament should explore those alternative options. If we simply go through the motions and empower the executive government to have its will unchecked, we will expose ourselves to exactly the sort of activity that we are trying to empower the commission to prevent.

I think there are some options here and one option raised by Hon Martin Aldridge was that we might ask a committee to review the selection process. I took on the option of a select committee looking at it, but I think that has the potential to be a very, I guess, longwinded process. Again, it frightens me that the Parliament itself is deciding who is the appropriate person to fill this role. I do not think we are qualified to make that decision in a debate in Parliament. I think it will belittle the position and belittle the Parliament and will be an embarrassment to us all. The other option, which is my preferred option, is that a standing committee of the Parliament look at this legislation to see whether it is appropriate, whether it will deliver the outcomes the government wants in the most appropriate manner and whether there might be a better way, even if it is the government getting its way—that there might be a more, let us say, honest and robust way for the government to potentially get the outcome it wants but without crashing the system of integrity that I think is so important to this chamber. It should be particularly important to the members within it. There are a few ways we could do this but my preferred option is for a committee to look at the best way forward because I do not think we have necessarily identified the best way forward.

Discharge of Order and Referral to Standing Committee on Legislation — Motion

HON DR STEVE THOMAS (South West — Leader of the Opposition) [5.59 pm] — without notice: I move —

(1) That the Corruption, Crime and Misconduct Amendment Bill 2021 be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 12 August 2021.

(2) The committee has the power to inquire into and report on the policy of the bill.

HON SUE ELLERY (South Metropolitan — Leader of the House) [6.00 pm]: I am conscious of the time and that the Deputy President might take another action in a moment or two, but I will just put the government's position on the record. We will not be supporting the referral of the bill to the Standing Committee on Legislation. This bill has certainly attracted some controversy in the debate, but it is actually not a complicated piece of legislation. The legislation committee normally considers complex pieces of legislation. The debate has been about, from what I have heard, the suitability of the candidate—or not, in members' opinions—and the conduct of various players in the application of the existing act, not the proposed bill. The committee is not going to resolve those matters for anyone. Opposition members have to make their own judgement about those matters, and I do not think the committee can assist them with that. The debate so far that I have listened to has been about whether the person proposed is suitable—the committee is not going to be able to resolve that for opposition members—and the application of the provisions of the existing act. That is not the role of the legislation committee; its role is to look at the proposals in the bill. The government will not be supporting the referral.

The DEPUTY PRESIDENT: Members, noting the time, I am going to leave the chair until the ringing of the bells.

Sitting suspended from 6.01 to 7.00 pm

The PRESIDENT: I have a brief statement regarding services available tonight. From 10.00 pm, Hansard reporters will no longer be in the chamber. Recording will continue until the house rises, with transcription starting on Friday. From midnight, the lounges will close and a coffee, tea and biscuit trolley will be placed in the Legislative Council members' lounge.

HON NICK GOIRAN (South Metropolitan) [7.02 pm]: I rise to support the motion moved by Hon Dr Steve Thomas earlier this evening that the Corruption, Crime and Misconduct Amendment Bill 2021 be discharged and referred to the Standing Committee on Legislation.

This motion moved by the Leader of the Opposition has some precedent. I draw to members' attention that in 2003, when the very legislation that we are currently looking to amend first made its passage through the Parliament via the Corruption and Crime Commission Bill 2003, it was, indeed, referred to the Standing Committee on Legislation. In 2003, Australian Labor Party members were in government in Western Australia and they saw fit to refer the bill to the Standing Committee on Legislation. That referral resulted in a report tabled in December of that year,

being the twenty-first report, *Report of the Standing Committee on Legislation in relation to the Corruption and Crime Commission Act 2003 and the Corruption and Commission Amendment Bill 2003*. At the start of that report the committee informed the house that on 26 June 2003, the Corruption and Crime Commission Bill 2003 and the Corruption and Crime Commission Amendment Bill 2003 were referred to the Standing Committee on Legislation. A reporting date was not set, and I will come back to that point a little later. The report continues —

> The Bills initially formed one bill known as the Corruption and Crime Commission Bill 2003 … The original Bill was split in the Legislative Council, in order to enable the provisions dealing with the establishment of the Corruption and Crime Commission … to be promptly enacted.
>
> The provisions relating to the establishment of the CCC formed the Corruption and Crime Commission Bill 2003 which was passed on June 26 2003 and received Royal Assent on July 3 2003. As the Corruption and Crime Commission Bill 2003 has been assented to, it is referred to in this Report as the *Corruption and Crime Commission Act 2003* … At the time of the presentation of this Report, the *CCC Act* has not yet come into operation.
>
> The remaining provisions of the original Bill became the Corruption and Crime Commission Amendment Bill 2003 …
>
> The terms of the referral has enabled the Committee to conduct its inquiry on both the *CCC Act* and the CCC Amendment Bill.
>
> Pursuant to an order from the Legislative Council, the Committee may consider the policy of the *CCC Act* and the CCC Amendment Bill.

That is the beginning of the introduction to the twenty-first report of the Standing Committee on Legislation. This report was tabled in the second session of the thirty-sixth Parliament and the members of that committee who considered that bill and the act were Hon Jon Ford, who was the chair; Hon Giz Watson, deputy chair; Hon Peter Foss, MLC; Hon Kate Doust, MLC; and Hon Derrick Tomlinson, MLC, who had substituted in for a member. That five-person committee of the Legislative Council considered the referral that had been made to it by the house. This report that was then produced is some 285 pages in length. It includes 68 recommendations.

I re-emphasise to members that a referral of this sort is not without precedent. I ask members to contemplate and perhaps respond during the course of the debate on this referral motion to answer the questions: Why was it okay to make the referral in 2003 to a standing committee chaired by Hon Jon Ford, but not okay to make a referral to a standing committee in 2021 chaired by Hon Dr Sally Talbot? What has changed in the 18 years that have transpired in the meantime that would make this chamber say no to a referral motion? Some members may rise and provide an explanation about what has indeed changed over that 18-year period, but it is not apparent to me why the referral would not be appropriate today as it was in 2003. If a member is inclined to articulate a reason, might they also consider the words of the Leader of the House as recently as 3 June 2021, some three weeks ago today. These comments from the Leader of the House three weeks ago, which I will read out in a moment, stand in some contrast to the contribution she made prior to the adjournment, when she indicated that the government would not be supporting the referral motion moved by the Leader of the Opposition. Her rationale for that was that the bill before us is not, in the view of the Leader of the House, complicated. I agree with the Leader of the House that the bill before us is not complicated. If the Leader of the House is referring to the manner and form, and the structure and content of the bill, it is not a complicated bill; it is a relatively simple four-clause bill. The purpose of the referral is not to have the Standing Committee on Legislation consider the technical drafting and formatting of the bill or matters of that sort. I agree with the Leader of the House that in that respect, the bill before us is not complicated. However, I ask members to consider the remarks made by the Leader of the House a mere three weeks ago when *Hansard* records the honourable member saying this —

> I think what this house does, and how this house creates better legislation, is done in one of two ways, or sometimes in both—a bill is referred to a committee, where expert advice is sought, submissions are called for and stakeholders are invited to express a point of view, and/or in the clause-by-clause examination, including extensive examination across the breadth of a bill, in the Committee of the Whole stage, when we literally examine the detail of the bill.

Those are the words of the Leader of the House, Hon Sue Ellery, a mere three weeks ago, saying that these types of referrals are, according to the honourable member, how this house creates better legislation. It is one of the things that the honourable member says this house does—apparently not on 24 June 2021. Something significant has changed—a seismic shift has occurred—that has resulted in the Leader of the House rapidly rising to her feet after hearing Hon Dr Steve Thomas, the Leader of the Opposition, move the referral motion and proceed to tell the house that the government will not be supporting it because, according to her, the bill is not complicated. In fact, according to my notes, the Leader of the House indicated that the committee cannot help the chamber because the question is whether or not the person is suitable. In my view, the committee could absolutely help the house to answer a number of very important questions about this very important and unprecedented piece of legislation. The first thing the committee would be able to do is to answer the eligibility question. Members may or may not be aware that there is

a serious question mark about the eligibility of John Roderick McKechnie to be appointed at this time. The reason these questions have emerged about the eligibility of the individual is that section 10 of the Corruption, Crime and Misconduct Act sets out the qualifications for the appointment of a person as a Corruption and Crime Commissioner. In subsection (1) it states —

> A person is qualified for appointment as the Commissioner if the person has served as, or is qualified for appointment as, a judge of the Supreme Court of Western Australia or another State or Territory, the High Court of Australia or the Federal Court of Australia.

Section 11 of the Corruption, Crime and Misconduct Act 2003 states —

> Schedule 2 has effect with respect to the tenure, remuneration and conditions of service of the Commissioner and the other matters provided for in that Schedule.

When members then turn to schedule 2 of the Corruption, Crime and Misconduct Act 2003, they will see that the legislation specifies —

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

If that was as far as the act took us, it would be clear on the face of it that the applicant, the preferred nominee, would be eligible. However, if members take the opportunity to refer to clause 4(1) of schedule 2, they will see that it specifies —

> If a person who, immediately before appointment to the office of Commissioner, was a judge of the Supreme Court, is appointed as Commissioner, that person is to be paid the same remuneration and have the same other rights or privileges as if the person had continued to be the holder of that judicial office.

Clauses 4(2) goes on to say —

> For the purposes of the *Judges' Salaries and Pensions Act 1950*, the service as Commissioner of a former judge is taken to be service as the holder of the same judicial office as the office that person held before appointment as Commissioner.

Clause 4(3) then says —

> The person's service as Commissioner is, for all purposes, taken to be service as the holder of that judicial office.

Why that is particularly relevant is because John Roderick McKechnie is a former judge of the Supreme Court of the state, and his service as Corruption and Crime Commissioner is, according to Western Australian law, to be treated as if he were still serving in the capacity as a judge of the Supreme Court. It might interest members to know that section 3 of the Judges' Retirement Act 1937, another law on our statute book, provides for the retirement of judges of the Supreme Court on the day on which they attain the age of 70 years. Legitimate questions arise when members consider, as I was told, that John Roderick McKechnie attained the age of 70 in November last year. That eligibility question could be tested by the Standing Committee on Legislation so that members can have confidence that there is genuine eligibility in these circumstances, notwithstanding the provisions that I have referred to.

The committee could also assist the chamber by considering the important misconduct questions that have emerged and that continue to surround the possible reappointment of Mr McKechnie. In particular, once again I draw to members' attention the staggering revelation made in the sixty-first report of the Standing Committee on Procedure and Privileges that was tabled a mere month ago. That report includes the content of an SMS prepared and sent by the applicant, Mr John McKechnie, QC, to Mr John Quigley on 22 July 2019. If members take the opportunity to read the content of that message, they will see that at least in the first instance, to my knowledge, a person performing the functions of the Corruption and Crime Commissioner colluded with the first law officer of Western Australia on whether evidence and material would be released to investigators in the Corruption and Crime Commission.

No-one in Western Australia has served on the Joint Standing Committee on the Corruption and Crime Commission for longer than I have. In that time, I am unaware of any circumstance in which a commissioner of the CCC colluded with the first law officer of Western Australia on whether material would be provided to investigators. I am unaware of that ever happening. If that form of action took place, setting a precedent, I call on the government of Western Australia and John Roderick McKechnie to inform us of that precedent. I am unaware of any such precedent. In addition, I call on the government and the would-be applicant to peruse and consider the entirety of the Corruption, Crime and Misconduct Act 2003 and demonstrate to us that it was lawful for that to occur. If it were lawful, it should be easy for one government member to provide that information. In fact, unless the Attorney General is away in Bali at the moment, it should be easy for him to send an SMS to his good friend John Roderick McKechnie and find out what provision of the Corruption, Crime and Misconduct Act made that particular action lawful. Can they do it? Will they do it? Will it happen today? Debate on this bill may not conclude until tomorrow, but at some point during the course of this debate, will anyone from the Australian Labor Party tell us why it was okay for the person who is supposed to be the independent Corruption and Crime Commissioner to collude with the first law officer of Western Australia? Will anyone be able to tell me what the section is? I am looking forward to the response.

Sadly, I have observed today that once again the members of the Australian Labor Party have been muzzled by their leader. They are clearly under a directive not to speak on this matter. I have said to them previously that I understand

the dilemma for those members. Should they ever show an ounce of courage with respect to the Leader of the House, they will be out on their ear. I understand their dilemma. In those circumstances, only one person can be held to account with regard to that matter—that is, the Leader of the House. If the Leader of the House is the only person who will be allowed to contribute to this matter, she needs to be in a position to tell us why it was lawful for that to occur.

This is exactly why the Standing Committee on Legislation should be able to consider these matters. It is all very good for the Leader of the House to say to us that the committee cannot help us. It can help us with this matter here; I suspect we are not going to hear from the government, so someone needs to get to the bottom of this matter. These are the types of misconduct matters that can be considered by the Standing Committee on Legislation. It can inquire into it and report to the house and we will be better informed. Although the Leader of the House will say that the format, content and structure of the bill are not complicated—a point that I agree with—the matters at stake here are very serious. If John Roderick McKechnie has acted unlawfully, if he has committed misconduct or if the Attorney General, the member for Butler, has committed misconduct, someone needs to get to the bottom of that. Maybe that should be the Standing Committee on Legislation. Certainly, it would be able to do that and the house would be better informed.

In addition, with all due respect to the Leader of the House, the Standing Committee on Legislation would be able to assist us in our deliberations on this bill because it would be able to do a number of things, which she conveniently referred to only three weeks ago, including, I note, seeking expert advice, calling for submissions and inviting stakeholders to express a point of view. Perhaps one thing that could be done by the Standing Committee on Legislation is actually to interview the applicant. At the moment, all we have is that the member for Rockingham, the Premier of Western Australia, has dictated to everybody, including the members opposite, that they will support this appointment, yet the question is: Which of the members opposite have interviewed the applicant? Why would they agree to the appointment of an individual if they have not interviewed them? Is that not something that the Standing Committee on Legislation could do and report back to the house?

The other thing that the Standing Committee on Legislation could do is hear from the Parliamentary Inspector of the Corruption and Crime Commission. The committee might even be inclined to call in as witnesses the past two chairs of the Joint Standing Committee on the Corruption and Crime Commission to ascertain their views on the performance of John Roderick McKechnie over the course of his five-year tenure as Corruption and Crime Commissioner. After all, the Parliament of Western Australia has set up a structure with the corruption watchdog in Western Australia whereby there are two guardians—the parliamentary inspector and the joint standing committee. Why would the committee take some evidence or information from those particular guardians? Indeed, it would be remiss of me not to also mention the possibility of taking evidence from the Acting Parliamentary Inspectors of the Corruption and Crime Commission. Members may not be aware that it is not uncommon in Western Australia to have not only a parliamentary inspector, but also even two acting parliamentary inspectors, the purpose of which is to ensure that if the parliamentary inspector is unavailable or has a conflict of interest, there is another senior legal practitioner available who can fulfil those functions. These individuals would be in a good place to provide evidence to the Standing Committee on Legislation so that its members might be able to properly assess the performance of an individual who has been in that role for five years and whom the member for Rockingham, the Premier of Western Australia, insists be reappointed for another five years.

Some members may be concerned that any referral to the Standing Committee on Legislation might result in delaying the passage of the bill. Again, I would ask those members to stand and explain to the house what would be lost if that were the case. The Corruption and Crime Commission has had the opportunity, over the more than 12 months since the term of Mr McKechnie concluded, to continue its work. Any delay along the lines of what has been proposed here by the Leader of the Opposition until August would have no material impact on the operations of the Corruption and Crime Commission. It seems to me that would also be an opportunity for the Standing Committee on Legislation to make a recommendation to the house. When the Leader of the House said that the Standing Committee on Legislation cannot help the chamber and that the matter is not complicated, I suggest to members that that view is misconceived.

There is a further matter that I wish to draw to members' attention that could be considered by the Standing Committee on Legislation. The committee could consider each of the reports that were prepared by the Parliamentary Inspector of the Corruption and Crime Commission during the tenure of Mr McKechnie. I draw to members' attention a letter that was prepared, and at least signed, by John McKechnie, QC, at the time that he was the commissioner. The date of the letter is 20 April 2017. He wrote this letter to the then Parliamentary Inspector of the Corruption and Crime Commission, the late Hon Michael Murray, AM, QC. The purpose of this letter was to deal with the high-profile, highly controversial set of circumstances involving Dr Robert Cunningham and Ms Catherine Atoms. During my contribution to the second reading debate, I have already touched on some of the circumstances surrounding the Cunningham and Atoms matter; I do not propose to retrace those things at this time. But before members cast their votes on this matter, it is important to have an appreciation and understanding of whether the applicant actually has real respect for the oversight regime in which he is expected to operate. It strikes me that this letter demonstrates that the applicant on this occasion—I think that the record reflects multiple other occasions—did not have respect for the oversight process.

Mr McKechnie concluded his letter to the then parliamentary inspector on 20 April 2017 —

> I always treat your recommendations with the seriousness they deserve.

I pause there to note that if that were where the letter ended, it might have been on a good note. He went on to say —

> They are another source of valuable information to guide me in making or reviewing a decision which Parliament has entrusted to me alone. I do not intend to alter my decision.

There is arrogance dripping from that final paragraph from Mr McKechnie to somebody whom he should have seen as his superior, the parliamentary inspector, after repeated requests, in this high-profile case that has cost taxpayers literally more than $1 million, and in circumstances in which the repeated requests were endorsed by the Joint Standing Committee on the Corruption and Crime Commission, including in the most recent Parliament, the fortieth Parliament. Here we have an individual who, on the face of it, in his conduct over the five-year period, demonstrates that he has no interest in being guided by this so-called valuable information that is provided to him by sources such as the parliamentary inspector or the joint standing committee. Why is that? It is because, in his own words, he says that Parliament has entrusted him alone.

If that is the extent to which the power has gone to an individual's head when he is supposed to be the independent corruption watchdog, who has no regard for the guidance that is being provided by the Parliamentary Inspector of the Corruption and Crime Commission, members ought to be very concerned. These are the types of matters that the Standing Committee on Legislation could properly consider if this matter were referred to it.

I turn to the time frame that has been proposed by Hon Dr Steve Thomas, the Leader of the Opposition. He has sought our support for a motion to refer this bill to the Standing Committee on Legislation, and for the committee to consider and report by no later than 12 August 2021. I indicate that I will be supporting the motion moved by the Leader of the Opposition. However, I will say that I think the Leader of the Opposition has been very generous in these circumstances in providing a reporting date of 12 August 2021, particularly when I look at the precedent that was set in 2003 when the Standing Committee on Legislation received a referral with no reporting date. That said, I support the Leader of the Opposition in placing some time frame on this because history has told us, with respect to this matter, whether it be this bill or this issue in general, that the McGowan government will stop at nothing to politicise this process. Members need only familiarise themselves with the unedifying remarks made by the Attorney General in the other place on this matter, and the baseless allegations that have been made against certain former members of this place. It disturbs me no end that the Attorney General would stoop to besmirching the reputation of Hon Simon O'Brien, a former Deputy President of this place, a person whom I have had the opportunity to serve with in Parliament for 12 years and whom, on my observation, has only ever demonstrated integrity. To try to besmirch the reputation of that honourable man simply because he showed some concern for the mental health and welfare of a former colleague is disgusting, at the very least.

Nevertheless, the government has chosen to politicise this process to the maximum possible extent, and in order to try to depoliticise that process, it is my view that a referral to the Standing Committee on Legislation would be of immense benefit. What is it that members opposite and the government are so concerned about that might be revealed in an inquiry undertaken by the Standing Committee on Legislation? Hon Dr Sally Talbot is chair of the committee and she will do her job. I can attest to that, having previously served on that committee with the honourable member. As I said in a recent debate, there have been many occasions on which we may not have seen eye to eye on a particular issue, but I know the honourable member will do the job entrusted to her if she is given the opportunity. Why was that opportunity afforded to Hon Jon Ford in 2003 but is not going to be afforded to Hon Dr Sally Talbot in 2021? The process we are embarking on will be the worse for it because, as Hon Sue Ellery mentioned only three weeks ago, this is what this house does. This is how this house makes legislation better; at least, that was her view three weeks ago.

I ask members to give serious consideration to supporting the motion that has been moved by Hon Dr Steve Thomas, the Leader of the Opposition. The worst thing that can happen for the government is that some of the concerns that have been raised by every single political party in the fortieth Parliament and in the forty-first Parliament—every single party other than the Labor Party—might be found to be correct. The government now has an opportunity to remedy the situation, just as happened in 2003 when the Standing Committee on Legislation chaired by Hon Jon Ford identified a weakness, and the government of the day—also a government consisting of the Australian Labor Party—agreed and was persuaded to change and revert to the process, which has been tried and tested and proved, to ensure that the appointments are apolitical. That is the worst thing that could happen for the government. That could be done in less than two months. What could possibly be wrong with that? Would that not be in the best interests of Western Australia? Would that not be in the best interests of the Corruption and Crime Commission?

If this process were embarked upon and the legislation committee did its work and found that the concerns that have been raised are unfounded, all members of this chamber would be able to have confidence in supporting the government, because the committee would have been able to interrogate all those issues. We would then find that for the next five years, when Mr McKechnie is holding that position, the work that is done by the Corruption and Crime Commission will not then be tainted by this political appointment process. Members of this place and the

other place, and the people of Western Australia, will then be able to have confidence in the work that is being done by the Corruption and Crime Commission. As things stand at the moment, we have a government that is being dictated to by the member for Rockingham, who is saying that this is the way it is going to be. The Parliament is now being told to also fall into line. No scrutiny has been allowed. There has been no opportunity to interview the applicant and assess him on his performance and to test the veracity of the concerns that have been raised by members and by the Standing Committee on Procedure and Privileges. The government is saying that under no circumstances can that happen. That will result in a situation in which each and every one of the reports that is tabled by the Corruption and Crime Commission over the next five years, under the stewardship of Mr McKechnie, will stand for nothing. What kind of weight will we be able to give those reports? I have got a rubbish bin here, and that is probably the place where those reports will go, because the process will have been so politicised, at the insistence of the Labor government.

There is an opportunity right now to fix that and to dispel those concerns. All it requires is for members to cast their vote in support of the motion moved by the Leader of the Opposition for a simple referral of this bill to the Standing Committee on Legislation so that that particular committee, which is paid for by the taxpayers of Western Australia, can do its job.

Division

Question put and a division taken, the Acting President (Hon James Hayward) casting his vote with the ayes, with the following result —

Ayes (11)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon Peter Collier	Hon James Hayward	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*
Hon Donna Faragher	Hon Sophia Moermond	Hon Wilson Tucker	

Noes (17)

Hon Klara Andric	Hon Peter Foster	Hon Shelley Payne	Hon Darren West
Hon Dan Caddy	Hon Lorna Harper	Hon Stephen Pratt	Hon Pierre Yang *(Teller)*
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Matthew Swinbourn	
Hon Sue Ellery	Hon Kyle McGinn	Hon Dr Sally Talbot	

Pairs

Hon Dr Steve Thomas	Hon Kate Doust
Hon Dr Brad Pettitt	Hon Rosie Sahanna
Hon Steve Martin	Hon Ayor Makur Chuot

Question thus negatived.

Second Reading Resumed

HON COLIN de GRUSSA (Agricultural — Deputy Leader of the Opposition) [7.52 pm]: I rushed back to ensure that I did not miss the opportunity to make a brief contribution to the second reading debate. I am sure members are eagerly awaiting. I do not intend to use the full time available to me because obviously we are way past our bedtime for a Thursday night! I want to make a couple of key points —

An opposition member interjected.

Hon COLIN de GRUSSA: Some of us might like to stay up a bit later.

I want to make a couple of key points on this debate about the Corruption, Crime and Misconduct Amendment Bill 2021. It is not about personality—I do not know John McKechnie; I have never met the man and I do not intend to make any comment about him on a personal level. For me, this is about process. It is about a process for appointing our state's most powerful corruption fighter. It is a process that must be beyond reproach—a process that, until now, has required an apolitical approach that should transcend politics and absolutely be of the highest integrity. That is exactly what we are doing. We are appointing the most powerful corruption fighter in our state and that is a process that is certainly beyond politics. The bill before us actually obliterates that process and turns it into a simple captain's pick. Wanting a particular person because it suits a particular agenda is not something that we should do or support in this place. I thank members on this side of the chamber who have at least had the courage to stand and make a point about their view on this bill.

Earlier today, while I was away on urgent parliamentary business, members from the Liberal Party, the Nationals WA, the Legalise Cannabis WA Party, the Daylight Saving Party and the Greens all stood in this place and made the point that they do not support this bill. The reason that they do not support this bill is that it usurps the process that has been established over many years to provide integrity to our Corruption and Crime Commissioner.

I will talk briefly about some of the history of the CCC. My colleague Hon Nick Goiran referred to the twenty-first report of the Standing Committee on Legislation of December 2003 titled *Report of the Standing Committee on Legislation in relation to the Corruption and Crime Commission Act 2003 and the Corruption and Crime Commission Amendment Bill 2003*, presented by Hon Jon Ford, MLC. There are some very pertinent points in that report that are important to have on the record to ensure that we understand exactly what we would be usurping should we allow the passage of this bill. In the executive summary of that report, the committee refers to the referral process. At paragraph 5, the committee says —

> The *CCC Act* and the CCC Amendment Bill replace the Anti-Corruption Commission with a new agency, the CCC. The CCC is to have the following functions:
>
> - a **misconduct function** which involves investigation and action against police and general public sector misconduct;
> - a function called an **organised crime function** which despite its name actually leaves this function to the police and assigns to the CCC the exercize of powers previously to be exercized by a special commissioner under the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*;
> - a **prevention and education function**; and
> - a **function of completing Police Royal Commission matters**.

Those were the functions of those pieces of legislation. At paragraph 6 of the executive summary, the committee went on to say —

> This Report is wide ranging, however the Committee's main concern has been the proper balance between power and accountability. This has led the Committee to look at such matters as the structure, composition and model of the CCC, and its functions and powers. Given the breadth of this Report, the Committee highlights the following amendments which it considers will be fundamental to ensuring the success of the new agency:
>
> - The amendments in relation to the misconduct function which are intended to enable the CCC to direct its resources to allegations of serious misconduct rather than less serious allegations thereby enabling the agency to properly perform its functions.
> - The amendments to involve the parliamentary committee with oversight of the new agency in the appointment process for the Commissioner of the CCC and the Parliamentary Inspector. These amendments make both these roles accountable to the Parliament and the people of Western Australia through a parliamentary joint committee.
> - The amendments directed to creating the office of the Parliamentary Inspector as an agent of the parliamentary committee with oversight of the CCC. The Committee considers that this is the most comprehensive and effective model of accountability.
> - Given the CCC's extensive coercive powers, the Committee recommends an amendment which provides that the Parliamentary Inspector is to have the ability to directly audit any operation carried out pursuant to the powers conferred or made available by the *CCC Act*. This will include operations conducted by the Police Service using exceptional powers granted by the CCC pursuant to the organised crime function.
> - The amendments in relation to the prevention and education function of the CCC which are directed to creating a clear link between the intelligence gathering role of the agency and its prevention and education function.

In their contributions earlier today, members referred to the Parliamentary Inspector of the Corruption and Crime Commission and some of the parliamentary inspector's reports regarding a couple of incidents, namely the incident with Dr Cunningham and Ms Atom as well as the incidents detailed in the twelfth report of the Joint Standing Committee on the Corruption and Crime Commission titled *An unreasonable suspicion—Parliamentary Inspector's report*. I do not intend to go into those incidents in detail, but I will examine a couple of specific things contained in the *Report of the Standing Committee on Legislation in relation to the Corruption and Crime Commission Act and the Corruption and Crime Commission Amendment Bill 2003*. The report refers specifically to the appointment process of a CCC commissioner and the Standing Committee on Legislation's inquiry into that process and the processes used in other states. On page 98 of the report, paragraph 6.74 states —

> … sections 7(3) and 7(4) of the *CCC Act* provide that the Commissioner is to be appointed by the Governor after the Premier has consulted with the parliamentary leader of each party in Parliament.

That is how the legislation worked at the time. The report went on to talk about issues arising out of that appointment. At paragraph 6.76, the observation was made that —

> The Crown Solicitor's Office advised the Committee that the requirement for consultation was included on specific instructions from the Attorney General and mirrors a provision in the *Electoral Act 1907*.

Paragraph 6.77 states —

> The Crown Solicitor's Office indicated that as the term is not defined in the *CCC Act* and the CCC Amendment Bill it would take its ordinary and natural meaning and it would be *"left to the Premier to determine what that was at the time of consultation."*

Paragraph 6.78 states —

> The Anti-Corruption Commission submitted —

That is, to the Standing Committee on Legislation at the time —

> that the proposed appointment process for the Commissioner creates a political appointment, which it does not support. The Anti-Corruption Commission further submitted that the current process under the *Anti-Corruption Commission Act 1988* is an appropriate procedure and was recommended by the WA Inc Royal Commission.

It was saying that the procedure in the act, as it existed at the time, that required the Premier to consult with the parliamentary leader of each party presented a number of issues, and essentially meant that the Premier of the day would have the discretion to determine exactly what consultation meant and that that was acceptable in the appointment of such an important person as the Corruption and Crime Commissioner.

The report then talks about appointment processes in other states, in particular New South Wales and Queensland. At paragraph 6.80, the committee commented —

> With the exception of the New South Wales Crime Commission, the appointment processes in New South Wales and Queensland involve the relevant parliamentary oversight committees.

Paragraph 6.81 states —

> In New South Wales, the Commissioners of the Police Integrity Commission and the Independent Commission Against Corruption of New South Wales are appointed by the Governor. However the relevant parliamentary oversight committees for these agencies are granted a power to veto the appointment.

Then paragraph 6.82 states —

> In Queensland in relation to the appointment of all commissioners including the Chairperson, the Minister is required to consult with the parliamentary committee about the proposed appointment. The Minister may only nominate a person as commissioner if the nomination is made with the bipartisan support of the parliamentary committee.

That is in Queensland. The committee's observations on this aspect of its inquiry continue in paragraph 6.83, where it states —

> The Committee considers that the appointment of the Commissioner should be apolitical and bipartisan and therefore does not endorse the appointment process contained in sections 7(3) and 7(4) of the *CCC Act*.

It did not agree with the process that existed in the act at that time—that is, the simple process that required the Premier to consult with party leaders. Paragraph 6.84 states —

> The Committee recommends that the *CCC Act* be amended to incorporate the appointment process in Recommendation 25.

I will come to that in a minute. It continues —

> This Recommendation adopts the appointment process contained in section 5 of the *Anti-Corruption Commission Act 1988* in order to compile a short list of nominations. Those nominations will be forwarded to the Premier who will then select a Commissioner. The Premier must have the bipartisan support of the parliamentary committee before the Commissioner is appointed.

Paragraph 6.85 states —

> The Committee considers that the term "bipartisan support" should be defined to mean supported by a majority consisting of Members of both the party that forms the Government and of the party that provides the Leader of the Opposition.

Paragraph 6.86 states —

> The Committee considers that the process contained in Recommendation 25 ensures that the appointment is apolitical and bipartisan.

That is absolutely key in the appointment of a Corruption and Crime Commissioner. Under a Labor government in 2003 and chaired by Hon Jon Ford the committee recommended —

> … that the process contained in Recommendation 25 ensures that the appointment is apolitical and bipartisan.

Recommendation 25 was —

> … **that the appointment process for the Commissioner be amended as proposed in Appendix 8.**

Those are the statutory recommendations; I am not going to read those. The point is that the Standing Committee on Legislation in its inquiry—not time limited and given the opportunity to properly scrutinise the legislation as it was at that point—after considering the mechanisms used in other jurisdictions and the submission of various interested parties, including the Crown Solicitor's Office and the Anti-Corruption Commission at the time, came back in its comprehensive report of some 280-odd pages with a recommendation that considered that the process must be both apolitical and bipartisan. That is the process we had up to this point—apolitical and bipartisan. That is the most critical point that we must understand in this debate on this bill. Should it pass Parliament, it will change that process fundamentally to bypass what has been a key plank of the appointment of the Corruption and Crime Commissioner from 2003 when the committee made a recommendation and the legislation was amended. This bill attempts to amend that to a point whereby it becomes a captain's pick and the government is moving the goalposts, changing the appointment to suit its own end.

This is the appointment of the Corruption and Crime Commissioner for the state of Western Australia, one of the most important appointments that can be made in this state. It should be above politics, it should not be corruptible and this legislation effectively corrupts the appointment of the anti-corruption commissioner. It should not be accepted by Parliament. Members on the government benches cannot speak on this bill. They cannot stand up and express their views about why they should support this bill. They cannot speak, they are not allowed to speak and they are not allowed to have an opinion. They have to sit quietly on the bench and do as they are told, like lemmings walking off a cliff. They simply have to agree with whatever they are told to do, without contemplating the consequences of the decision that could be made today if this bill is supported, which is to fundamentally break a decades old process that seeks to make the appointment of this person bipartisan and apolitical. But no, that does not suit the government's agenda so it has to change the rules. If this precedence is set, what other rules will we see change? Hon Dr Steve Thomas, the Leader of the Opposition, said earlier that maybe we will reach the point when there is legislation to dismiss a commissioner if they are not doing the job or they are investigating someone on the other side, perhaps. This is the risk we take with legislation that sets a dangerous precedent. We should not support it. We have plenty of time left; we can sit as long as we want. I would encourage members on the other side of the chamber to stand up and have a say. If they truly believe in this legislation and they truly support it, tell us why, because for the life of me and my colleagues on this side and on the crossbench, none of us can understand why members would usurp this process to make it a political appointment that loses that independence and immediately taints that person, regardless of the person involved, as being a political puppet. That is absolutely unacceptable for the office of the Corruption and Crime Commissioner.

I will leave my contribution there, members. I am eagerly awaiting contributions from members on the government benches, and I am sure they will spring to their feet once I resume mine.

The PRESIDENT: The question is that the bill be read a second time. All those of that opinion say aye —

Hon Matthew Swinbourn interjected.

The PRESIDENT: Excuse me, parliamentary secretary to the Attorney General. I knew that the member was likely to seek the call; you were just a little tardy!

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [8.10 pm] — in reply: I am seeking the call. Thank you, President, for allowing me to speak in reply on this important bill. I acknowledge the contributions made by members of the house. I note that members opposite do not support the Corruption, Crime and Misconduct Amendment Bill 2021; they could not have made that any clearer if they had tried. That is unfortunate, but not unpredictable. I will try to follow the advice given by Hon Tjorn Sibma, which was to play the ball, not the man, and deal with as many of the matters that have been raised as I can.

We started the day some time ago now with Hon Nick Goiran giving his second reading contribution. Hon Nick Goiran, as he is wont to do, raised a number of issues that I will do my best to address, the first of which related to the Kennedy Royal Commission into Whether There Has Been Corrupt or Criminal Conduct by any Western Australian Police Officer and the recommendation that corruption bodies be headed by a commissioner who is not a political appointee. The point I make is that the person who we are putting forward is not a political appointee. The nominating committee identified that person as the most outstanding candidate of all the candidates who were put forward. The suggestion that the nominating committee and its processes could in any way be political—I am not saying that Hon Nick Goiran suggested that the nominating committee is political—is completely unsustainable. The nominating committee comprises the Chief Justice of the Supreme Court, the Chief Judge of the District Court and a community nominee who is chosen by the Governor. I do not think that anybody would suggest that they are political nominees or political people, although having said that, I understand that Chief Justices are appointed by the Attorney General of the day, without reference to input from the opposition, but, generally speaking, nobody seems to go around saying that that is a political appointment.

Hon Nick Goiran listed various reports from the Joint Standing Committee on the Corruption and Crime Commission that pointed out that the parliamentary inspector took a different view from Mr McKechnie on a range of issues, including the Cunningham and Atoms matter and the CCC intelligence unit. I do not think there is any controversy that they took different views. The joint standing committee and the parliamentary inspector are charged by statute

to oversee the CCC. To expect the joint standing committee and the parliamentary inspector to agree with the CCC on all issues in all circumstances is fanciful. Competitive tension between those bodies is built into the Corruption, Crime and Misconduct Act 2003.

In relation to the Cunningham and Atoms matter, Mr McKechnie decided that the CCC would not pursue the matter further. It was dealt with exhaustively in a full trial in the District Court and all the evidence was obtained. Judgement was made by the District Court judge in favour of Dr Cunningham and Ms Atoms. The issues about the police's behaviour were well ventilated and, as identified by other contributors to this debate, compensation of a significant order was awarded in that matter. The question is: what further action could the CCC have taken in those circumstances? The conduct of the police was already in the public realm. Obviously, all government resources are finite and in that particular matter, I do not think there should have been any great controversy that the Corruption and Crime Commissioner said, "A court has looked at this matter and we can move on and focus on other things."

The intelligence unit of the CCC was also raised by Hon Nick Goiran. The misdeeds of this unit predated Mr McKechnie's time at the CCC; they were historical by the time he took office in April 2015. The parliamentary inspector at the time, Hon Michael Murray, first informed the Joint Standing Committee on the Corruption and Crime Commission of these allegations in 2013. If members were labouring under any view that those issues with the intelligence unit arose at the time that Mr McKechnie was head of the CCC, they would be mistaken. They did not. He came into the organisation following those events. Hon Nick Goiran also raised differences of opinion between Mr McKechnie and Hon Michael Murray, the late parliamentary inspector. When it was asserted that Mr McKechnie may have been blocked by the joint standing committee last year because of material given to the committee by third parties, including Mr Murray, Mr Murray went to the trouble of correcting the record. These comments have been tabled in the other place, and emails from Mr Murray show that he in fact told the joint standing committee —

> … I have always received appropriate consideration from the Hon McKechnie …

I am reliably informed that that is an old-fashioned way of Mr Murray expressing that everything he had raised with Mr McKechnie had been treated respectfully, and I do not think he would have gone out of his way to make such a statement if he did not truly believe it. Further, I can advise the house that Mr Murray also wrote to the Attorney General on 12 February 2020 advising that he had to stand down due to ill health. Unfortunately, Mr Murray later passed away. Mr Murray praised Mr McKechnie in a letter that he wrote to the Attorney General. He said —

> At least I may say that I leave a system of my oversight of the Commission which generally functions well. Much has been done to rescue it from the parlous state in which I originally found it, particularly since the Hon John McKechnie QC was appointed as Commissioner.

These are hardly the words of someone who thinks Mr McKechnie did a bad job as commissioner.

Much has been made of the text message that is referred to in the sixty-first report of the Standing Committee on Procedure and Privileges, which reads —

> 'The DPC has delivered a USB in accordance with the requirements under the CCM Act. Any privileged material was identified and removed prior to deliver. I have ordered that the USB remain in the secure exhibit room. In the absence of any indication to the contrary I will release it to the investigators later this week. Enjoy your … night in Bali'.

Hon Nick Goiran has asserted that the text message showed that the Corruption and Crime Commissioner was taking instructions from the first law officer, the Attorney General, and has suggested that it was improper. He has also suggested that there should be further investigation of it. I do not think there is a reasonable basis for these assertions. It cannot be known what "any indication of the contrary" referred to. It might have been the commissioner referring to instructions he might get from his legal team about whether to release the USB drive to the CCC investigators. The point I am making is that we do not know. But we do know that the Standing Committee on Procedure and Privileges' own lawyer, Pat Cahill, SC, described this text message in open court as uncontroversial on 23 May 2021. Given it was said in open court and Paul Murray reported on it extensively on 1 May 2021 in an article titled "A text of wills in MP fight", it was a matter of public record, and it can be reasonably assumed that the nominating committee would have known about it before it then described Mr McKechnie in its correspondence to the Premier of 7 May as "the outstanding nominee". It is not open to suggest that the committee would not have been aware of it, and if it had been aware of it, it cannot be sustained that it would have adversely affected the suitability of Mr McKechnie.

I now move to the contribution of Hon Wilson Tucker, who is out on urgent parliamentary business. I think he would suggest that his contribution could be summarised as saying that it should be about the process and not the person. We say that the process is deadlocked—not broken, deadlocked. The joint standing committee is the child of the Parliament. It has shown three times that it is unable to resolve the question being put to it, and in that case it is entirely appropriate for the question to come back to Parliament as a whole to consider and vote on, and that is what is happening today. Hon Wilson Tucker also said that Mr McKechnie was not the only suitably qualified person

identified. Our response is that under section 9 of the CCM act, the nominating committee must submit three names to the Premier. Under section 10, only people who are suitably qualified can be put forward; that is, they must have been or are eligible to be a judge of the Supreme Court of Western Australia or another state or territory, the High Court of Australia or the Federal Court of Australia. Only one person was described as the outstanding nominee for the position. The nominating committee did not need to do that as it is not a requirement of the act, but it chose to identify Mr McKechnie as the outstanding nominee for the position. That is the assessment of the nominating committee. Let us remember who makes up the nominating committee: it is not a politician, the Premier or the Leader of the Opposition; it is the Chief Justice of the Supreme Court and the Chief Judge of the District Court. They make up the nominating committee, plus a community member. They described Mr McKechnie as the outstanding nominee for the position. A number of members opposite have thrown comments at us, asking on what basis members on our side could possibly draw the conclusion that he is the suitable person. I will tell members why we drew that conclusion. The nominating committee described Mr McKechnie as the outstanding nominee. I will be more than happy to take the words of Hon Peter Quinlan, SC, and Hon Judge Wager over any other politician in this building or elsewhere. I think we are safe to do that.

Hon Brian Walker described the action as not being proportional to the issue and that plenty of other issues face Parliament. That is true; plenty of other issues always face Parliament. However, the government sees this legislation as very important. It is important that the state's premier integrity agency has a substantive head and that we make a decision so we have that head in place. The CCC has not had a head since Mr McKechnie left his position in April last year. It is important that we get that done. There is always a subjective question about what is important or urgent in this house. Members always say that we should not be dealing with certain bills, saying that they are not important, questioning why they are in this place on particular days and saying that we should be dealing with another bill. It is always the case that members will draw their own conclusions about what is important and what is urgent. In this instance, the government gets to decide what is important and urgent, and this is the matter that we want to deal with today. With all due respect, this is the most urgent matter that we wish to deal with today. Many other important and urgent issues will come to this place that we will get to deal with together.

Hon Dr Brad Pettitt gave a very short contribution. He is out of the chamber on urgent parliamentary business. I probably appreciated his contribution the most for its brevity. I appreciate the point that he made when he acknowledged the credentials of Mr McKechnie. He indicated that he would not support the bill, but he did not seek to impugn the character or suitability of Mr McKechnie in any way, and I appreciate that.

During his contribution, Hon Peter Collier made a number of accusations against the government, calling people names a number of times. I suppose the less said about that the better. He accused the government of trying to engage in a sweetheart deal by proposing an amendment to the 2020 CCM amendment bill, to the effect that Mr McKechnie would be appointed on agreement between the Leader of the Opposition and the Premier. This amendment was offered after Mrs Harvey, a former Leader of the Opposition, spoke in the Legislative Assembly and on Gareth Parker's program on 6PR on 15 April 2020 in favour of the original McGinty model of the appointment occurring after consultation between the Premier and the Leader of the Opposition. This model was suggested by the then Leader of the Opposition, Colin Barnett. There was no sweetheart deal. The Premier was trying to resolve the matter in cooperation with the Leader of the Liberal Party at that time. I wonder what happened to Hon Liza Harvey later that year. I am not sure what happened. Perhaps she did not meet the satisfaction of some members in this place and a suitable replacement was found.

Hon Peter Collier also raised the legal opinion of Grant Donaldson, Senior Counsel, on the Corruption, Crime and Misconduct Amendment Bill 2020. It is worth noting that Mr Donaldson's opinion concluded that the bill was valid. He said, according to my notes —

> There is no reason to doubt the validity of the Corruption, Crime and Misconduct Amendment Bill.

That was the ultimate conclusion of Mr Grant Donaldson, SC, who was commissioned by the Liberal Party to run a ruler over the validity of the legislation. I think it is important to keep in mind that the legal advice sought by the Liberal Party concluded that the bill in the form it was presented in 2020, which is substantially identical to what we have today, would be valid, in his view.

Hon Peter Collier also indicated that there was something untoward with the Attorney General getting a list of the ongoing and emerging operational activities of the Corruption and Crime Commission prior to the expiry of Mr McKechnie's term. Our response to that is as conveyed to the Legislative Council in the answer to question without notice 699 in the previous Parliament, which advised —

> The document was relevant to the reappointment of the commissioner because, as pointed out by the Chief Justice in his nominating committee letter to the Premier, the reappointment of Mr John McKechnie, QC, would provide continuity in the role. On that basis, any responsible government would wish to be apprised of what a break in continuity would mean for the operations of the Corruption and Crime Commission.

It was also pointed out in the transcript that Mr Collier read out—Hon Peter Collier. Members will notice my notes state "Mr Collier" all the way through, so I have to keep correcting myself, so I apologise if I miss that. Hon Peter Collier

read out the CCC transcript of chief executive Ray Warnes. When he was asked about the list by the Joint Standing Committee on the Corruption and Crime Commission during the last parliamentary term, Mr Warnes said that it was so the AG could understand administratively the impact of what a break in continuity of commissioners would mean for the commission. I do not think there is anything unusual about that in those circumstances.

Hon Peter Collier, as did a number of other members, also raised the speech that was given by McKechnie as a private citizen at St Georges Cathedral on 25 November 2020. Members have asserted that it shows McKechnie had a political bias. If members read the speech in full, they will realise that McKechnie also said —

> … a personal note. I do not take the rejection as a personal affront. There is nothing which would cause my disqualification.

He continued —

> … I view the decision not as a personal attack …

Mr McKechnie is not taking the issue personally even if members in here are. It is not fair to suggest that he has a political bias. Mr McKechnie was appointed to positions by the members on the other side here, the Liberal Party, at different times. I believe Mr McKechnie was appointed a Supreme Court judge—am I correct?—by the Liberal–National government. The idea that him having been appointed by the Liberal–National government as a Supreme Court judge would make him politically biased is as absurd as the idea that he is now politically biased. Mr McKechnie has 45 years of experience as a public servant in this state. Obviously, in the roles he has taken on, as the Director of Public Prosecutions, a justice of the Supreme Court and as the Corruption and Crime Commissioner, he has made some enemies along the way because he has had to sentence people and put them in jail and obviously he has made findings that have upset people. He was not very good at his job if he did not achieve that in doing those sorts of roles. I do not think anyone could possibly suggest that in those 45 years he has shown any ounce of political bias, hence on other occasions the Liberal–National government was prepared to appoint him to very senior and important roles.

Hon Peter Collier also accused the government of being "atomic" in its language. My response is that in the same speech, Hon Peter Collier accused McKechnie as being "drawn into the evil web of the Premier and the Attorney General". The hyperbole has been thrown thick and fast across the chamber today. If we wanted to get back to the first person who started that, it would probably not be tonight; we would be here for years and years to see who was the first person to cast the stone of "atomic" words as Hon Peter Collier described them. Perhaps it is best we leave them to one side.

Hon Martin Aldridge also made a contribution to the debate and asked whether the government would permit or move a motion for Mr McKechnie to come before the Bar of the house. My response to that is that that will not be happening. We are not a selection committee. That selection committee was the nominating committee that had those esteemed people, so that will be the case. Mr McKechnie is not, as a private citizen, coming to the Bar of this house.

Hon Martin Aldridge also implied that it was an indictment on the Corruption and Crime Commission under Mr McKechnie's watch that allegations from the public went from 12 per cent to 45 per cent. Our response to that is that the figure comes from the CCC annual reports and is a proportion of overall allegations referred to the CCC. The member said that that demonstrated that corruption was out of control under Mr McKechnie's watch, but the overall referral figures do not bear that out. For clarity, in 2013–14, the last full financial year before Mr McKechnie took office, the number of reports of public sector misconduct from the public was 851 from a total of 7 260 allegations received. That is 11.7 per cent from the public. In 2019–20, the figure was 45 per cent referred from the public out of a total number of 5 743 allegations. The overall number of allegations went down during that period, albeit the CCC ceded minor-level misconduct to the Public Sector Commission in December 2014.

Hon Martin Aldridge also asserted that the uncovering of the Paul Whyte theft of more than $22 million from the Department of Communities was evidence the CCC was allowing corruption to flourish. He also asked how Mr McKechnie had saved taxpayers' money. This highly sophisticated fraud had been going on undetected for 11 years.

Hon Tjorn Sibma: It was not sophisticated.

Hon MATTHEW SWINBOURN: It was sophisticated enough not to be detected for 11 years.

This was a long-running investigation initiated by Mr McKechnie in mid-2009. If it had continued, logically $2 million more each year would have continued to have been siphoned by Mr Whyte. It is a bizarre argument from Hon Martin Aldridge. Every time WA police make a significant seizure of meth, I do not hear any criticism of Commissioner of Police Dawson that he is somehow responsible for drugs flourishing. He gets applauded, as he rightfully should.

Hon Martin Aldridge asked: whose advice was it to recommence the section 9 process after the election? I can advise that that was the Solicitor-General's advice. He also raised the statement of the member for Girrawheen, now the member for Landsdale, in the other place. The member for Girrawheen's statement, as she was then, emphasised it was a deadlocked vote at the committee. As she pointed out, there is no capacity in the act to break a deadlock. That is why we are bringing this matter back before the Parliament.

Hon Martin Aldridge also raised the fact that previously the Joint Standing Committee on the Corruption and Crime Commission had not reached bipartisan majority support on a recommendation by the Premier and that Mr McKechnie once advocated for the nominating committee to be removed. Our response is that that is true; so did Hon Nick Goiran when he was the chair of the joint standing committee. He recommended this in multiple reports that he tabled.

Hon Tjorn Sibma quibbled with the second reading speech, where it stated —

> It is … wrong for the tenure of Western Australia's most respected and decorated corruption fighter to be prematurely ended by opposition MPs at a time when the CCC is investigating opposition parliamentarians over the misuse of entitlements.

Our response to that is that yes, the initial term of Mr McKechnie expired on 28 April 2020, but opposition MPs withholding bipartisan support were responsible for Mr McKechnie not being reappointed. That was the point being made.

Hon Tjorn Sibma also said that no Premier should be advocating a single appointment to any agency. He said that he would not have given such advice to the Premier 10 years ago. It is noted that Mr Sibma worked for Hon Colin Barnett and that he would not have needed to advise Mr Barnett on this matter because Mr Barnett had firm views. Mr Barnett told *The West Australian* on 25 April 2020 —

> "John McKechnie is an outstanding person and I'm absolutely of the view he should be reappointed," …
>
> "McGowan could, for example, move a motion of both Houses of Parliament calling for the reappointment of McKechnie," … "That would allow members of Parliament to indicate confidence in McKechnie and you would get, I think, probably close to unanimous support in both Houses.

Hon Neil Thomson: Not now.

Hon MATTHEW SWINBOURN: Not now; the member is right.

The article continues —

> That probably means the members of that committee would step down, new members would be appointed and McKechnie would get reappointed. If I was in McGowan's position, that's what I would do."

Mr Barnett would have moved a motion in both houses calling for the reappointment of Mr McKechnie, and we are bringing in legislation effectively to that effect—not such a different approach from that of the Liberal Party's former leader.

Hon Tjorn Sibma also said that he was not necessarily convinced that members of the public voted with the election commitment about Mr McKechnie in mind. I have several letters to the editor that I might read out, because I think the member referred to media reports as well. I will read out a small sample of what I have here. I will start with this letter, which I think is an important letter. It is from 28 April last year. The title of this letter to the editor of *The West Australian* is "Big shoes to fill". The letter reads —

> Yesterday marked the last official day of John McKechnie's term as the first and only Corruption and Crime Commission commissioner to serve out a full term. There is a reason why nobody else has lasted the full five years; it is an incredibly demanding role. Very few can do it and far fewer can do it well.
>
> I am a former commission officer who wishes to pay tribute to Mr McKechnie because of the impact he has had on my life and the WA community. Having worked with 11 (substantive and acting) commissioners, I can easily say that Mr McKechnie was the best. His tremendous record in public service speaks for itself. I will always be grateful to him for his wise counsel and continuous encouragement. He is genuinely the diamond standard in integrity.
>
> Whoever replaces Mr McKechnie has huge shoes to fill but they will be inheriting the best and most capable team.

The author of this was Tracey Chung, and she was writing from Victoria. I think that is a pretty good basis on which to have confidence that we are making the right decision here.

There were a number of other letters to the editor on this; some of them are not very complimentary to members opposite, so it might be best to avoid them, but I will read this one from 29 March 2021. It reads —

> Right man for the job
>
> I was very pleased to see that John McKechnie is to apply for his old job as Corruption and Crime Commissioner (*Sunday Times*, 28/3).
>
> I hope that this time around whoever had the power to prevent his reappointment a year or so ago has no influence in this process.
>
> That was one of the silliest bureaucratic processes known, and kept a very able man away from protecting this State, especially as there was so much secrecy as to why the appointment was blocked.
>
> Without, of course, knowing who else may apply or what their character and/or skills are, I have to say that they would need to be very, very special indeed to be preferred to Mr McKechnie.

I have a number of other letters, but I will not bore members of the house with them, because I think the point has been made.

Hon Tjorn Sibma also said something like this should never have been an election commitment. I cannot agree with him being so dismissive of the public to say that it has no stake in this. How derisive to the public to say that it should not be expressing a view on this. What could be more democratic than taking something to an election? This morning, I was part of a debate in which we were accused of not taking something to an election. It was stated that it was important that we did that to legitimately get people's vote on it, and that if we had said what we were going to do post-election, it would have affected votes. However, in this particular case, it is said that nobody had it in their minds and it was not important to electors.

We also had a contribution from Hon Donna Faragher.

Hon Tjorn Sibma: You've given up on me so easily? Enough said!

Hon MATTHEW SWINBOURN: I gave up on you a long time ago, buddy! I take that back; that is not true. We all need the honourable member here. He is a gem to this house, particularly when he says nice things about me.

Hon Donna Faragher asked: does this bill seek to subvert a process put in place by a former Labor government, and does it subvert the 2003 report by the Standing Committee on Legislation? Our response to that is simply no. The former Labor government did not agree with the joint standing committee process. Hon Jim McGinty and Hon Colin Barnett were in favour of a consultation model between the major parties, and when the legislation returned to the Legislative Assembly from the Legislative Council, Hon Jim McGinty said that the new appointments process and the new role of the joint standing committee —

> … although not necessarily supported, were not opposed by the Government, in an attempt to facilitate the timely passage of the Bill through the upper House.

In that regard, I do not think that what we are doing here is subverting the process that was put in place in 2003, because that process was a compromise, as is often the case with bills in this place.

I am going to start concluding my remarks. Sorry, I think I have jumped ahead on my notes here. I will not conclude my remarks just yet.

Hon Dr Steve Thomas raised a couple of issues that I would like to address. One of those was whether there was any precedent of naming people in legislation. The answer to that is yes; it is acknowledged that it is unusual, but it is not inappropriate to name people specifically in legislation. An early example of this Parliament naming people in legislation is an incorporation for the purposes of the Perth diocese trustees—specifically, the Anglican Church of Australia (Diocesan Trustees) Act 1888. Section 2, "New trustees incorporated", names, in part —

Several members interjected.

Hon MATTHEW SWINBOURN: Yes, 1888. Members opposite have talked about the traditions of Parliament and they are saying to me that what happened in 1888 is not relevant to how the Parliament proceeds? It was in 1888. The incorporated names include —

> THE Right Reverend Father in God Henry Hutton Parry, Doctor of Divinity, Lord Bishop of Perth; the Very Reverend Frederick Goldsmith, Dean of Perth; the Venerable James Brown, Archdeacon of Perth; Mr. Justice Edward Albert Stone; the Honourable Anthony O'Grady Lefroy, Esquire; and William Thorley Loton, Esquire, and their successors as appointed by Statute of the Synod, or to be appointed in accordance with the provisions of any Statute of Synod to be made and enacted hereafter, shall be and are hereby constituted a Corporation, by the name and style of "The Perth Diocesan Trustees"…

That is a very early example of individuals being named in a particular act.

Several members interjected.

Hon MATTHEW SWINBOURN: Can I finish? Am I allowed to finish?

More recent examples have occurred in serious criminal matters in which ad hominem legislation has been passed to adjust the parole periods of particularly serious offenders. A good example is to be found in a piece of Victorian legislation, the Corrections Act 1986. Section 74AB deals with an individual named Craig Minogue, otherwise known as the Russell Street bomber. That section specifically mentions him and sets out the conditions for making a parole order in relation to him. That matter was taken to the High Court, which held that the provisions relating specifically to him and the naming of him were, in fact, valid. I can give the citation for that case: Minogue v Victoria [2019] HCA 31.

So there are examples of this happening. It is conceded that it is unusual, but it has happened.

Hon Dr Steve Thomas interjected.

Hon MATTHEW SWINBOURN: You asked, member, and we answered.

Several members interjected.

The PRESIDENT: Order! I think your interjections have been made, honourable members. The parliamentary secretary has the call.

Hon MATTHEW SWINBOURN: Thank you, President.

Members asserted that the process has been politicised. Nothing could be less political than the independent nominating committee that I have already referred to. Mr McKechnie is the outstanding nominee that we are appointing, not someone plucked by the executive. On the other hand, the joint standing committee process is political; it is made up of politicians with party affiliations, unsurprisingly, and they have been specifically included in the act, so there is reference to the party political affiliations of the members of the joint standing committee. For example, there is reference to members of the Premier's party and members of the Leader of the Opposition's party. The Joint Standing Committee on the Corruption and Crime Commission is a party political process. The nominating committee that put Mr McKechnie's name forward is not political.

Look back through history and what was intended by Parliament; it was never the intention of Parliament for one member of the joint standing committee to hold up appointments. During the debate back on 11 December 2003, former Attorney General Peter Foss, although he would not have been Attorney General at that time, said, in relation to bipartisanship —

> The ideal situation is that everybody on each side should agree, but I do not want one person to have the power to say that he or she disagrees and muck everything up …

So how can this be a captain's pick, as members opposite have accused us of, if the outstanding nominee of the nominating committee, which is responsible for overseeing the recruitment process, is the person who has been put forward in this bill?

On that basis, I will conclude my comments.

Hon Dr Steve Thomas: I did ask a second serious question, which was: if you can install a commissioner by legislation, can you remove a commissioner by legislation? I am wondering whether you might have an answer to that.

Hon MATTHEW SWINBOURN: The answer to that, member, is that is already possible. I am reliably informed that section 12 of the current act allows Parliament to remove a Corruption and Crime Commissioner. I know the member did raise that, and I have a note of that somewhere, but I have a lot of paper on my desk and it is a bit all over the place. The answer is that under the current act, Parliament has the power to remove a commissioner.

Those are my concluding remarks, and I commend the bill to the house.

Division

Question put and division taken with the following result —

Ayes (17)

Hon Klara Andric	Hon Peter Foster	Hon Shelley Payne	Hon Darren West
Hon Dan Caddy	Hon Lorna Harper	Hon Stephen Pratt	Hon Pierre Yang *(Teller)*
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Matthew Swinbourn	
Hon Sue Ellery	Hon Kyle McGinn	Hon Dr Sally Talbot	

Noes (11)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon Peter Collier	Hon James Hayward	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*
Hon Donna Faragher	Hon Sophia Moermond	Hon Wilson Tucker	

Pairs

Hon Kate Doust	Hon Dr Steve Thomas
Hon Rosie Sahanna	Hon Dr Brad Pettitt
Hon Ayor Makur Chuot	Hon Steve Martin

Question thus passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Peter Foster) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

The DEPUTY CHAIR: Members, we are dealing with the bill. Before we do so, I draw members' attention to supplementary notice paper 30, issue 2.

Hon NICK GOIRAN: As we get started, in the parliamentary secretary's reply to the second reading debate, he indicated in response to Hon Martin Aldridge's requests that Mr McKechnie will not be available. Does that mean he will be unable to provide the parliamentary secretary with any advice during our consideration of this bill this evening?

Hon MATTHEW SWINBOURN: Yes, member; Mr McKechnie is a private citizen. If the member's question is whether Mr McKechnie will be providing me with advice at the table, the answer is no; he will not be providing me with advice.

Hon NICK GOIRAN: Will either the parliamentary secretary or any of his advisers be able to obtain information from the applicant?

Hon MATTHEW SWINBOURN: I am sorry, I do not quite understand what the member is getting at here. What does he mean "provide advice from him"?

Hon NICK GOIRAN: The question is whether the parliamentary secretary or one of the advisers will be able to communicate with Mr McKechnie to provide information to the chamber.

Hon MATTHEW SWINBOURN: No, member.

Hon NICK GOIRAN: The parliamentary secretary indicated in his response in reply that that will not happen. In accordance with my notes, his justification was because we are not a selection committee, and, if I understand him correctly, it is because he said that that process has already been done by the nominating committee. Is that right?

Hon MATTHEW SWINBOURN: Yes, the nominating committee puts out advertisements for people who are interested. They then obviously go through whatever process the nominating committee follows and makes suggestions to the Premier.

Hon NICK GOIRAN: Consequently, the view of the government is that the chamber, the Legislative Council and the Parliament of Western Australia are not a selection committee, according to his words in his reply, because that process has been undertaken by the nominating committee. Parliament has a different role to play and the role we are playing is not of a selection committee, is that right?

Hon MATTHEW SWINBOURN: Our role here is to deal with the bill before us and to pass that bill or not pass that bill. That is our role.

Hon NICK GOIRAN: The member was asked by Hon Martin Aldridge whether the government would provide Mr McKechnie to the chamber, and he indicated that that will not happen. In his second reading reply, and I do not have the *Hansard* but I have my handwritten notes, he said that the reason for that is because we—I take it when he referred to "we", he was talking about the chamber, being the Legislative Council, not the government of Western Australia—are not a selection committee. The "we" would be this chamber?

Hon MATTHEW SWINBOURN: I do not have my *Hansard* before me, but we, the chamber, are not a selection committee in the selection process as we would ordinarily understand it.

Hon NICK GOIRAN: That is because, according to my notes—perhaps the parliamentary secretary still has his notes on the response he gave to Hon Martin Aldridge handy—the parliamentary secretary indicated that the role of the selection committee had already been undertaken by the nominating committee. I am happy for the parliamentary secretary to refer back to his notes and correct the record if I have misquoted him in any way with respect to his reply.

I do not want to dispute with the parliamentary secretary whether the Parliament and this chamber are a selection committee. I also do not want to dispute with the parliamentary secretary whether it is the case that the nominating committee has already performed that role. For the purposes of making progress, let us just say that that is correct—the Legislative Council at this time is not a selection committee and that is because the role has already been undertaken by the nominating committee. How will the role receive bipartisan support at this time?

Hon MATTHEW SWINBOURN: Whether it receives bipartisan support is entirely up to the Liberal Party and the Nationals WA, if the member wants to put it in those terms. The bill before the house is open for members to vote to support. The member already voted against it at the second reading stage and we divided on it. The member has indicated that he does not support it. Patently, the bill will not receive bipartisan support on that basis.

Hon NICK GOIRAN: In the parliamentary secretary's reply, he indicated that this process was not subverting the process and was not political—he emphasised that on a couple of occasions—because the government will rely on the nominating committee. According to the parliamentary secretary in his reply, the existence and composition of the nominating committee and its recommendation to government makes this process not political. My question to the parliamentary secretary is simply: if that is correct—as I say, I do not want to dispute that point because the government has a very strong view on that—where does the bipartisan requirement come in?

The parliamentary secretary indicated in his response to my question moments ago that that is a matter for the Liberal Party. With respect, I do not know whether that is correct. I think the parliamentary secretary will find that a different process is set out in the act. But, again, rather than disputing with the parliamentary secretary about that, the government knows, at this time, that not only does the Liberal Party and National Party not support the appointment; but there is no party in the Parliament that will provide support other than the Labor Party. So if the

parliamentary secretary's contention is that we do not need to worry about anything here because the nominating committee is already taking care of the selection process, would the parliamentary secretary agree that at the moment the process outlined in the act that we are about to amend has two stages? The first stage is the nominating committee stage. The second stage brings in bipartisan majority support. Does the government agree that there is currently a two-stage process?

Hon MATTHEW SWINBOURN: I think there are a couple more than two stages. I think the stages are the nominating committee, then the transmitting of that view to the Premier, the Premier then putting forward a candidate and that going to the joint standing committee, and then that coming back in that regard. That is the process.

Hon NICK GOIRAN: Does the final part of the process require bipartisan support?

Hon MATTHEW SWINBOURN: In terms of what the joint standing committee is required to do, the requirement is for both majority and bipartisan support at the joint standing committee stage.

Hon NICK GOIRAN: What is the process if there is no joint standing committee?

Hon MATTHEW SWINBOURN: Section 9(4) of the Corruption, Crime and Misconduct Act 2003 specifically states —

> Except in the case of the first appointment, before an appointment is made under subsection (3), the Premier must consult with —
>
> (a) the Standing Committee; or

This goes to the member's question —

> (b) if there is no Standing Committee, the Leader of the Opposition, and the leader of any other political party with at least 5 members in either House.

Hon NICK GOIRAN: Does John Roderick McKechnie currently enjoy the support of any of those individuals?

Hon MATTHEW SWINBOURN: The candidate has not been submitted to any such process so I cannot answer that.

Hon Nick Goiran: Sorry, has not?

Hon MATTHEW SWINBOURN: He has not been submitted to any such process that I have just described under section 9(4)(b), so it would be speculation.

Hon NICK GOIRAN: Is the parliamentary secretary saying to the chamber that the Premier has not exercised the option available to him under section 9(4)(b)?

Hon MATTHEW SWINBOURN: That is correct; he has not. The thing is that section 9(4)(b) says "if there is no Standing Committee". There is a standing committee so that would not be available to the Premier in the current circumstances.

Hon NICK GOIRAN: When did the standing committee first come into existence?

Hon Matthew Swinbourn: Do you mean like when it first came in 2000 and whenever?

Hon NICK GOIRAN: There is only one joint standing committee at the moment and it started on a particular date.

Hon MATTHEW SWINBOURN: My understanding is that the current committee was formed on 26 May 2021. As to when it was originally formed, I cannot answer that.

Hon NICK GOIRAN: It was 26 May, so prior to 26 May 2021 there was no standing committee. I assume that we are of one mind in that regard. I ask the parliamentary secretary to take as much advice and as much time as he needs about this. Is the parliamentary secretary informing the chamber now that the Premier of Western Australia—there is only one, the member for Rockingham—at no time since the state election in March until 26 May when the standing committee was formed, embarked upon the process set out in section 9 (4)(b) of the act?

Hon MATTHEW SWINBOURN: The advisers with me are from the Attorney General's office. The advice that I can give is based only on the advice available to me right now. As far as we know, the Premier did not follow that process in potentially filling the position of commissioner of the CCC.

Hon NICK GOIRAN: What process do we need to implement now so that the parliamentary secretary is able to get the advice that we need?

Hon MATTHEW SWINBOURN: I think I have been quite generous to date on this particular point. The bill has four clauses. The member is proposing a process that is not the subject of this particular bill. I am happy to answer the questions that I can, but I will not delay the progress of this bill by seeking alternative advice. I will, though, make a further note about what the member is saying about the formation of the committee. The process would have still required the nominating committee to forward to the Premier the names of the particular people for him to put before that group. That did not happen until 7 May, which was after this. He did not have the names before him. The process was started again, as the member was aware. The positions were advertised and the nominating committee wrote to the Premier, describing him in early May as the outstanding nominee, after the committee had formed.

Hon NICK GOIRAN: The parliamentary secretary just said to us that the committee was formed on 26 May, now he is talking about a date prior.

Hon MATTHEW SWINBOURN: Sorry, I take the member's point. He raised a good point; I was incorrect. I am getting my Marches and Mays mixed up. There was a lot going on at that particular time all around the place. I understand that on 7 May the nominating committee described to the Premier in its letter the outstanding nominee, and the member is correct that on 26 May 2021, the Joint Standing Committee on the CCC was formed in the current Parliament.

Hon NICK GOIRAN: There is a time between 9 May and 26 May 2021 when the Premier may have embarked upon the process set out in section 9(4)(b) and that is the question that I am asking. What do we need to do for the parliamentary secretary to get accurate advice about whether that process was embarked upon during that time?

Hon MATTHEW SWINBOURN: I cannot give the member anything more definite than what I previously gave him. I can seek at a later time to confirm that with him, but as I already indicated, I do not think it will have any bearing on whether or not the member supports the bill, because he has already indicated that he does not support it.

Hon NICK GOIRAN: That is the point, parliamentary secretary; the government is subverting the current process. In the parliamentary secretary's reply to the valid concerns raised by several members, he repeatedly dismissed the concerns of my colleagues by saying that the government is not subverting the process. The justification that the parliamentary secretary provided is that the nominating committee had performed a role. He said that the nominating committee is not political. I agree; as I said, I will not dispute that, but there are multiple parts to the process.

When my colleagues say to the parliamentary secretary and the government that they are subverting the process, they are talking about not only the nominating committee process, but also the entire process. Most importantly, that process includes, at the end, a requirement that there be bipartisan support. I have asked the parliamentary secretary to indicate which party, other than the Labor Party, agrees with the appointment. He has been unable to name a party, either in the fortieth Parliament or the forty-first Parliament. That is called subverting the process. The Premier of Western Australia cannot get his way, so he is subverting the process and avoiding bipartisan support. The parliamentary secretary says it is up to the Liberal Party to provide that support. That is contrary to the act. In any event, the parliamentary secretary took me to section 9(4)(b) and the process that occurs if there is no standing committee.

We will be here for a while, so I hope that somebody in government is talking to someone in the Premier's office right now to find out whether he embarked on that process. It is not difficult. According to my notes—I am happy for the parliamentary secretary to correct me if I recorded this incorrectly—the Premier received the three names from the nominating committee on 7 May 2021. It may be useful for the parliamentary secretary to table the document that provides that information if he can.

Hon MATTHEW SWINBOURN: I am not able to table that document.

Hon NICK GOIRAN: Why is that, parliamentary secretary?

Hon MATTHEW SWINBOURN: The document is confidential between the Chief Justice and the Premier.

Hon NICK GOIRAN: Let us get this right. The parliamentary secretary should remember that he is on the record as saying that the process has not been subverted. I take it that the government realises that that process involves the letter that he referred to being provided to the Joint Standing Committee on the Corruption and Crime Commission for its consideration. The government decided that it is not happy with that process, so it introduced this bill. As part of this alternative process, the parliamentary secretary will not provide us with the same information that would be provided to the Joint Standing Committee on the Corruption and Crime Commission. That is called subverting the process. He can dress it up any way he wants but let us remember that is the same government that promised gold-standard transparency.

We have a situation in which the government is hiding documents from the Parliament yet again, as if it learnt nothing in the fortieth Parliament. First, it hides documents from the Parliament when we are making this important decision. Second, the parliamentary secretary tells us that Mr McKechnie is playing hide and seek; he is nowhere to be seen, and he will not be available to us. We suggested to the Leader of the Opposition that this matter be referred to the Standing Committee on Legislation. The parliamentary secretary said no. Well, he did not, but the Leader of the House did. She made sure that no-one else spoke on it. This is the gold-standard transparency of the McGowan government. The government is asking us to agree to the appointment of Mr McKechnie. It says it is up to the Liberal Party to provide bipartisan support. It should give us the documents. In his reply, the parliamentary secretary made a big deal about the fact that the process is not political because the nominating committee consists of these eminent individuals. I agree with him. I said that I agree. Those particular individuals who are on the nominating committee have my deepest respect. They have provided a letter as part of this process that the government is placing great weight on. I am asking the parliamentary secretary to release the document. Why would he hide it? Apparently, it is a secret document between the Chief Justice and the Premier. In fairness, the parliamentary secretary did not say "secret". That is me paraphrasing him; he said it was confidential. A confidential document between the Chief Justice of Western Australia and the Premier includes the chief point raised by the McGowan government about why the appointment needs to go ahead. That particular committee said so in the

letter but we cannot see the letter. Yet the government expects us to provide bipartisan support. What garbage this is! Then McGowan government members and ministers told us that they are not subverting the process. Parliamentary secretary, who are the current members of this nominating committee who provided the letter to the Premier on 7 May?

Hon MATTHEW SWINBOURN: Who the members are is not a mystery; I just had to make sure that I had the names right. The members of the nominating committee are the Chief Justice of Western Australia, Hon Peter Quinlan, SC; the Chief Judge of the District Court, Hon Julie Wager; and the community representative is Ms Audrey Jackson, who is a former senior bureaucrat from the Department of Education. Member, just to clarify —

Hon Peter Collier: She was from AISWA, not the education department.

Hon MATTHEW SWINBOURN: If the member knows better than me, he knows better than me.

In relation to the correspondence I referred to that Hon Nick Goiran made a point about, that correspondence was not transmitted to the Joint Standing Committee on the Corruption and Crime Commission either.

Hon NICK GOIRAN: Has that information ever been provided by the Premier to the joint standing committee? Let us be very clear what we are saying here, because I am probably going to have a short fuse with this matter if we are not provided with accurate information during the course of this deliberation. That is not a criticism of the parliamentary secretary because, as per usual, he is doing his best with the advice he has been given. But I want to make sure that the advice is considered and accurate. If people are not sure, they should say that they are not sure and they should check. Do not expect the Parliament of Western Australia to tolerate half-baked information. To the best of my understanding, on three occasions the current Premier of Western Australia transmitted to the Joint Standing Committee on the Corruption and Crime Commission the name of his preferred applicant, preferred nominee, preferred recommendation for the appointment of commissioner to the Corruption and Crime Commission. It is a matter of public record that the name that the Premier put forward on each occasion was Mr McKechnie. My question to the parliamentary secretary is: on any of those three occasions did the Premier provide to the Joint Standing Committee on the Corruption and Crime Commission a copy of the letter that he received from Chief Justice Quinlan? I again ask the parliamentary secretary to take as much advice and time as is necessary.

Hon MATTHEW SWINBOURN: The member referred to three occasions. On the first occasion, the Premier just passed the correspondence containing the three names on to the committee. On the second occasion, he did not because those names had already been passed on the first time. On the third occasion, he did not either.

Hon NICK GOIRAN: Can the parliamentary secretary provide us with the dates of those three occasions—that is, the three dates that the Premier transmitted a request or a letter to the Joint Standing Committee on the Corruption and Crime Commission providing his recommendation in seeking that committee's bipartisan and majority support? What were the three dates?

Hon MATTHEW SWINBOURN: The first date was 5 March 2020, the second one was 16 April 2020 and the third one was 26 May 2021.

Hon NICK GOIRAN: With regard to the letter that was sent by the Premier on 5 March 2020, is the parliamentary secretary in a position to table that letter?

Hon MATTHEW SWINBOURN: I am not in a position to table that, member.

Hon NICK GOIRAN: Am I to assume, for the same reason that the parliamentary secretary indicated earlier, that it is a confidential document?

Hon MATTHEW SWINBOURN: I think the issue we have with the particular correspondence is that there is a note, as the member may be familiar with, that is presented on correspondence with the joint standing committee about there being confidentiality relating to correspondence to and from the committee. That is the position we are in in relation to that correspondence.

Hon NICK GOIRAN: I have some sympathy for that position. The position that the parliamentary secretary has just described, and which I share with the parliamentary secretary, is clearly not shared by the member for Kalamunda; nevertheless, I understand the problem that the parliamentary secretary has. I think it is very interesting that the government is utilising parliamentary privilege as a reason not to provide information to the Parliament of Western Australia. Nevertheless, I think it is ironic that the person at the centre of the bill here, Mr McKechnie, has already been reprimanded once by the Parliament on matters of parliamentary privilege and his actions are currently at the centre of a very expensive court case in Western Australia also pertaining to parliamentary privilege, yet his appointment this evening is being clouded by a defence of parliamentary privilege. Nevertheless, that is what the record is. Whether I agree with it or not, I will say that it is certainly a higher standard than was demonstrated by the current Chair of the Joint Standing Committee on the Corruption and Crime Commission in his behaviour in the last Parliament.

That said, the parliamentary secretary indicated earlier that there are three members of the nominating committee: Chief Justice Quinlan, Chief Judge Wager and Audrey Jackson. How long have those individuals been members of the committee? What I particularly want to know is whether all three of those individuals were involved in the process on both occasions. As I understand it, they were involved on two occasions, albeit that the Premier was involved with the joint standing committee on three occasions.

Hon MATTHEW SWINBOURN: In the first events last year, the Chief Judge of the District Court was Kevin Sleight, and that has since changed to Julie Wager. That is the only change between now and then. I cannot give the member the dates of their terms on the nominating committee. It obviously coincides with when the committee needs to perform its functions.

Hon NICK GOIRAN: The parliamentary secretary has kindly provided to us the dates of the correspondence from the Premier to the joint standing committee. They are 5 March 2020, 16 April 2020 and 26 May 2021. As I understand it, the parliamentary secretary is not in a position to provide us with copies of any of that correspondence tonight.

Hon Matthew Swinbourn: By way of interjection, no.

Hon NICK GOIRAN: On what dates did the nominating committee transmit the three names to the Premier on the two occasions?

Hon MATTHEW SWINBOURN: The advice is that the first one was 23 February 2020 and the most recent one was 4 May 2021.

Hon NICK GOIRAN: For the record, parliamentary secretary, the government has asked us to consider providing support for the appointment of Mr McKechnie, but it will not this evening provide him to the chamber to provide any answers to questions that members might have as to his suitability or otherwise. I note in passing that earlier—the parliamentary secretary may have been away on urgent parliamentary business—one of the reasons the Leader of the House gave for why the matter should not be sent to the Standing Committee on Legislation was that, as far as she was concerned, the question was whether the person is suitable. The parliamentary secretary is indicating to the house that the government will not provide Mr McKechnie so that we can ask him questions as to his suitability. He is also indicating to the chamber that the government will not provide to the Parliament the letter from the nominating committee that the government places great weight on, and the government will not provide a copy of the letters that the Premier has sent to the Joint Standing Committee on the Corruption and Crime Commission. On what dates did the Premier receive information that the Joint Standing Committee on the Corruption and Crime Commission was not able to provide majority and bipartisan support on those three occasions?

Hon MATTHEW SWINBOURN: The date of the correspondence was 2 June 2021. I presume that the Premier received it immediately following that.

Hon NICK GOIRAN: That is with regard to the last occasion; I am keen to know the dates for all three occasions.

Hon MATTHEW SWINBOURN: The first one was on 25 March 2020, and after it had been resubmitted, it was 23 April 2020.

Hon NICK GOIRAN: The three members of the nominating committee at the moment have the surnames Quinlan, Wager and Jackson, and the parliamentary secretary has indicated that obviously there was a change in the Chief Judge between the first-round process and the second-round process. Is the nominating committee aided in any way by a secretariat or other public office that is involved in that process?

Hon MATTHEW SWINBOURN: We do not know what the secretariat arrangements are for the nominating committee. It is apart from, and independent of, government.

Hon Nick Goiran: Sorry?

Hon MATTHEW SWINBOURN: The processes of the nominating committee are not managed by government in that regard. It is apart from government. It is not a part of government, so we do not know what support it gets.

Hon NICK GOIRAN: That makes sense. I think what the parliamentary secretary is saying to us is that it is a quite separate, independent process, presumably run under the auspices of the Chief Justice, and if it has any secretarial support, it is really a matter for those three individuals. Is it the case that no-one in government was involved in the nominating committee process?

Hon MATTHEW SWINBOURN: That is my advice, yes.

Hon NICK GOIRAN: Parliamentary secretary, to be clear, would that include the Solicitor-General?

Hon MATTHEW SWINBOURN: My advice is that, to be frank, we do not know in this particular instance whether the Solicitor-General has done that. As the member knows, the Solicitor-General is an independent statutory office, so whether he may or may not have done that is not something that we would be aware of, and we are not able to confirm that with him. We do understand that in the past, Colin Barnett has referred to the Solicitor-General having provided informal assistance to previous nominating committees. It is conceivable that it may have happened, but we have no knowledge of it if it has happened, because, again, it would have happened independently of government.

Hon NICK GOIRAN: The parliamentary secretary is in a position at least to confirm to the chamber that members of government were not involved in the nominating committee process. I respect what the parliamentary secretary had to say with regard to the Solicitor-General, and obviously he is not available at this time to confirm that or otherwise, but in terms of the people the parliamentary secretary can confirm, he can confirm that other members of government were not involved in that independent process.

Hon MATTHEW SWINBOURN: My advice is that they were not involved in the process.

Hon NICK GOIRAN: Did the Premier discuss the matter with any member of the nominating committee before he received the most recent letter from it on 4 May 2021?

Hon MATTHEW SWINBOURN: To be frank, member, outside of the correspondence, we do not know whether the Premier has had contact with the members of the nominating committee. As the member can imagine, given the offices that they hold, and the office of Premier, it would not be out of the realms of possibility that they have come across each other in certain ways, but, to be perfectly frank, we do not know whether that has happened or not happened. As I say, we are aware of the correspondence between them, but that is the extent of it.

Hon NICK GOIRAN: A moment ago, I asked the parliamentary secretary whether anyone in government had been involved in this process, and the parliamentary secretary said no. I asked the parliamentary secretary about the Solicitor-General, and he indicated that is an independent statutory office and he is not able to confirm that; and, in any event, that is independent of government. I asked the parliamentary secretary again whether any members of the government had been involved in the process, and he indicated no. I have now asked the parliamentary secretary whether the Premier has had any discussions with any member of the nominating committee with respect to this matter, and now we are told that he does not know. It makes it very, very difficult if we are not getting straight answers on this matter. I want to be very clear whether anyone in government, particularly the Premier and the Attorney General, have had any conversations with members of the nominating committee.

The parliamentary secretary has indicated to us that the current members of the nominating committee are Chief Justice Quinlan, Chief Judge Wager and Audrey Jackson; they are the three people on that committee. We need to know whether the Premier and the Attorney General have interfered with that process. Have they colluded with any of those people? The Premier should be able to tell us, the Legislative Council, whether or not this has happened. The Attorney General should be able to do that as well. Remember, in one of the parliamentary secretary's rebuttals to the honourable member who asked about the priorities of this matter and was expressing concern that this was the top priority of the government, the Attorney General said, "Yes, this is the top priority of the McGowan government." If it is the top priority, the chiefs, including the Premier and the chief law officer, need to be held to account. Were they involved in this process or was it authentically independent? Did the Premier have a chat to the Chief Justice and say, "I want McKechnie to be included"? Did the Attorney General do it? This is no trivial matter, parliamentary secretary, because as we know, if I park the Premier to one side for a moment, the Attorney General is quite happy to intervene in processes that are otherwise considered to be independent.

I draw to the parliamentary secretary's attention the tabling statement made by the previous President of the Legislative Council, which indicated that facts had come to light that certain things have been the result of the direct intervention of the Attorney General in the CCC's investigation. There is form regarding certainly the Attorney General intervening in processes that are otherwise ordinarily independent. I want to get confirmation and clarification about whether the Premier or the Attorney General ever had a conversation with Chief Justice Quinlan, Chief Judge Wager or Audrey Jackson on this issue prior to them providing their information on 4 May this year.

Hon MATTHEW SWINBOURN: The member asked me, to begin with, whether any member of the government was involved in the process and I said no. And that is correct. He then asked me about discussions, which is a different thing from involvement. I put to the member what I thought was a reasonable point that within the realms of possibility, it is possible that the Premier may have had a discussion on any matter—not this matter—with the Chief Justice or the Chief Judge through the course of his work. I was not suggesting that he had actually had a discussion with them about this particular matter. The Premier was not involved in the nominating process. The member suggested, for example, that there was some sort of interference or collusion. Any such suggestion would suggest that both the Chief Judge of the District Court and the Chief Justice of the Supreme Court were involved in colluding for an outcome. I think such a suggestion would be outrageous and I am sure the member is not suggesting either the Chief Judge or the Chief Justice were involved in collusion with the government over the nominating process. I am absolutely certain that is not what he is suggesting.

Hon NICK GOIRAN: To be clear, it is the government and the parliamentary secretary who are indicating that this process needs to be independent. I have never said that there is something wrong with the Solicitor-General, the Premier or the Attorney General having discussions with the nominating committee. That is not the position I have put; that is the position the McGowan government has put. It is trying to dress up this process and place all the weight on the independence of the nominating committee. That is the government's position. I am just testing the veracity of that. If so much weight is to be given to this recommendation from the nominating committee, there should be no problem whatsoever confirming that it is authentically independent and that the Attorney General has not decided to intervene in that process, as is his want from time to time. That is what I am trying to test. I would not necessarily have said that there was anything wrong if the parliamentary secretary had come in here and said, "It's actually part of the normal process. The Solicitor-General and the Attorney General have a bit of a discussion with the Chief Justice from time to time. They throw around a few names and say, "We need to get this process moving for the Premier, have you got any idea of people's suitability and so forth?" I am not necessarily saying that there is anything wrong with that. My position regarding this is not relevant; it is the position of the McGowan government

that is relevant. It is dressing up this process as authentically independent, so let us test how authentically independent it is. The problem is that, once again—this is becoming a pattern in this forty-first Parliament—the McGowan government is unable or unwilling to provide information to the chamber. If I have said it once, I have said it a thousand times. I am not too sure when government members and ministers think that the information can be provided, because now is the time to provide it. The government wants our support with regard to this information, but it wants us to do it without being able to ask any questions of Mr McKechnie and without having any information provided to us, including the letter from the nominating committee, which is now being dressed up as confidential.

Regarding the letter from the Premier to the Joint Standing Committee on the Corruption and Crime Commission, I can concede that there is an issue there that needs to be tested with regard to parliamentary privilege. But the letter from the Chief Justice to the Premier—we know that there are two such letters, one on 23 February 2020 and the other one on 4 May 2021—is now being dressed up as confidential. On what basis, parliamentary secretary, is that information not provided to the Parliament? I suspect that the Auditor General might have a view on this matter. The parliamentary secretary is not saying that the letter is cabinet-in-confidence and he is not saying that it is commercial-in-confidence, which is an issue that the Auditor General has, from time to time, said gets used far too often. The parliamentary secretary is not saying that it is covered by parliamentary privilege; he is just saying that it is confidential. Yet it is the key evidence, the key exhibit and the key piece of information that the McGowan government expects us to rely upon.

The parliamentary secretary will recall that during the course of the debate, he mentioned that the appointment of Mr McKechnie was recommended by that committee, and he indicated, I think, that it included words to the effect of "the person was outstanding" and "the outstanding candidate", but we do not get to see that. That recommendation is being kept behind lock and key under the guise of confidentiality, yet we are still expected to make a decision on these matters.

Earlier I asked the parliamentary secretary whether the Premier had invoked the process set out in section 9(4)(b). The parliamentary secretary has helpfully provided us dates for, as far as I can see, all the rest of the process that is set out in section 9, which will be amended by virtue of this bill. The parliamentary secretary indicated earlier that he is not able to provide us with any further information—or he was not at the time—on whether the Premier had invoked section 9(4)(b). I wonder whether any further information has become available to the parliamentary secretary, because in the time since I asked the question, I have had information provided to me and I think that the record needs to be corrected.

Hon MATTHEW SWINBOURN: I am advised that the Premier did not invoke that process.

Hon TJORN SIBMA: On a similar thread, albeit maybe slightly differently, the focus has been on the actions or potential interactions of the nominating committee with the government, but I am more interested of the actions of the nominating committee itself. I make brief reference to a question without notice that I asked today to which the parliamentary secretary provided an answer from the Attorney General. To encapsulate the question, it was seeking an explanation of the process that the independent nominating committee chaired by the Chief Justice undertakes. I will read in part of the answer that I received, which is pertinent to this. It states —

> Under section 9(3b) of the Corruption, Crime and Misconduct Act 2003, the nominating committee is required to advertise throughout Australia for expressions of interest.

Regarding the actions that occurred in 2021, when did the nominating committee advertise for the position throughout Australia?

Hon MATTHEW SWINBOURN: I am advised that an ad was placed in *The West Australian* on 27 March 2021 and in *The Weekend Australian* also on 27 March 2021. The closing date for applications was 23 April 2021.

Hon TJORN SIBMA: Were advertisements promulgated through other means, through online search agencies or the like, or was advertising constrained to, or through, those two papers in that one instance?

Hon MATTHEW SWINBOURN: The member will note that advertising is a matter for the nominating committee; that is something that it takes on. The only advice we have is in relation to the one ad in *The West Australian* and the one ad in *The Weekend Australian*.

Hon TJORN SIBMA: Can I ask whether that was effectively the same process that the nominating committee undertook in 2020?

Hon MATTHEW SWINBOURN: We do not know. That would be something we would have to seek advice from the Chief Justice on.

Hon TJORN SIBMA: Nevertheless, the answer provided today is that the nominating committee is obliged to do that apparently under section 9(3)(b). Applying a principle of charity and appreciating the eminence of the three people involved, I make the assumption that indeed they did. That is going to be my operating assumption. Can I ascertain with regard to the advertisements in *The West Australian* of 27 March and *The Weekend Australian* of the same date, with the closing date of 23 April, which I believe the parliamentary secretary mentioned, how many expressions or applications were received as a consequence?

Hon MATTHEW SWINBOURN: The member may know this already, but during the briefings that were undertaken for opposition members earlier this month, a request was made by the advisers to the Chief Justice about how many applicants there were for the position. I can advise that the Chief Justice's response to that request was that it would not be appropriate for the nominating committee to otherwise report or disclose any further information regarding its functions under the act, which are confidential. That was the response we got from the nominating committee in furtherance of the request that came out of the briefing provided to the Liberal Party.

Hon TJORN SIBMA: That is not helpful. I make no reflection on the parliamentary secretary, but I think that is wholly unhelpful to this process, and, frankly, it is not particularly helpful to the nominating committee. I will make a point; it need not be laboured. I think a consistent point has been made by the government prior to this bill being debated today, but also absolutely throughout the course of the debate on this bill today and, indeed, quite clearly stated in an answer that the Attorney General provided me via the parliamentary secretary, that Mr McKechnie, QC, is the outstanding nominee for the position. That, of course, is a relative value judgement. I am not saying that that is inappropriate to make because, of course, we make them all the time. I cannot satisfy myself that he was the outstanding nominee for the position. That could be the case if he was the only nominee, because if he was not the outstanding nominee something would be quite catastrophically wrong with that nomination. If there were two applications, one from him and one from some other eminent person, that would still be a very big stretch because I would hate to see the quality of the application. This is fundamentally problematic. It is a simple question. I am not seeking the details of the individuals, I am not seeking their qualifications, names or employment histories, but the parliamentary secretary is compelled, obliged again, unfortunately, to defend the indefensible and say that he cannot provide even the barest details concerning the number of applications received as a consequence of advertising that expression of interest. Is there no other way, perhaps relying on somebody else's good offices, to seek at least a partial answer, just a number, in the course of this evening's consideration?

Hon MATTHEW SWINBOURN: The request was put directly to the Chief Justice. He holds that information. We do not hold that information, a government officer does not hold that information, a judicial officer holds that information. He said that in his view it is inappropriate to release it. I am not going to argue with the Chief Justice of the Supreme Court. The member has made his points about that. We do know that there were at least three applications, because three names were transmitted.

Hon Nick Goiran: How do we know that?

Hon MATTHEW SWINBOURN: That is the practice that is contained in the act.

Hon Nick Goiran: It doesn't mean it was done though.

Hon MATTHEW SWINBOURN: My advice is that three names were transmitted. All three were eligible and John McKechnie was identified as the outstanding nominee amongst those.

Hon TJORN SIBMA: Thank you, parliamentary secretary. Not to be unnecessarily obtuse at this hour, but effectively, the chamber's understanding is that on the previous occasion, presumably, the nominating committee complied to follow the act and advertise. At least three names were proffered. It is partially useful as a guide, but on this occasion we have absolutely no way of ascertaining whether that process of advertising elicited any interest. I suppose it would be a fool's errand to inquire whether the previous two nominees sought to reapply for this position. I am sure that I will get absolutely no satisfaction. The parliamentary secretary mentioned a keyword, which I think has not been used that frequently in the course of today, and that is the eligibility of the person nominated not only by way of a nominating committee, but by the Premier and named in this act. In what way is Mr McKechnie eligible for appointment to this position, and, as a counterpoint to that, in what ways might he be construed as being ineligible for appointment?

Hon MATTHEW SWINBOURN: Section 10 of the act deals with the qualifications for appointment as commissioner and outlines who is and who is not eligible. It states —

> (1) A person is qualified for appointment as the Commissioner if the person has served as, or is qualified for appointment as, a judge of the Supreme Court of Western Australia or another State or Territory, the High Court of Australia or the Federal Court of Australia.
>
> …
>
> (3) A person who is or has been a police officer is not eligible to be appointed as Commissioner.
>
> (4) A person holding a judicial office shall retire upon appointment as Commissioner.

Somebody who does not retire, would not be eligible. I mentioned in my second reading speech about eligibility and indicated that an opinion has been obtained from the Western Australia Solicitor-General, Joshua Thomson, on the eligibility of Mr McKechnie, QC. The Solicitor-General advised that Mr McKechnie is eligible to be appointed for a full five-year term under the act. In addition, under section 9(3a), the nominated committee can only submit candidates to the Premier who are eligible for appointment. Ergo, Mr McKechnie is eligible because the nominating committee formed the opinion that he was eligible. Mr McKechnie was then submitted to the Premier by the nominating committee. I will not repeat that process but that is the thing.

I think it is a reasonable conclusion to draw that when people make their application or nominate for the position to the nominating committee, that they would have to satisfy the eligibility requirements that we have just mentioned under section 10 of the act, and that the Chief Justice, the Chief Judge and the community member would then make that assessment on the information available to them.

Hon TJORN SIBMA: I will just go back briefly to the advertisement from 27 March that we were talking about earlier on. Did that expression of interest in any way encapsulate the eligibility criteria that someone should fulfil, to basically save everybody's time; and, if so, could the minister table a copy of that advertisement? That would be particularly helpful.

Hon MATTHEW SWINBOURN: That is something that I can table. It is a public document and it contains the details, but before I table it, I shall go through it. It states —

> CALL FOR EXPRESSIONS OF INTEREST IN APPOINTMENT
>
> Pursuant to section 9 of the Corruption, Crime and Misconduct Act 2003 … a nominating committee comprising … has been requested to submit to the Premier a list of 3 persons eligible for appointment as the Commissioner of the Corruption and Crime Commission.
>
> The nominating committee is advertising throughout Australia for expressions of interest …
>
> To be qualified for this appointment a person must have served as, or be qualified for appointment as a judge of the Supreme Court …

It then lists the other courts. It continues —

> … a police officer is not eligible for appointment. A person holding judicial office must retire …
>
> The Commissioner is to be appointed on a full-time basis …
>
> The nominating committee may nominate a person for this appointment who has not lodged an expression of interest.
>
> Expressions of interest should be addressed in writing …
>
> …
>
> Expressions of interest should set out the applicant's personal particulars, qualifications and relevant experience and nominate at least 2 referees.

The date on this advertisement is 31 March, but I think that this is a copy of an online version of the ad. It is possible that the position was advertised more than once.

Hon Tjorn Sibma: Previously.

Hon MATTHEW SWINBOURN: Yes. I think the answer I gave before was about the first time it was advertised on 27 March. As is often the case with online publications, they may be repeatedly advertised. I seek to table that document.

[See paper 351.]

Hon TJORN SIBMA: I will focus a little bit more on the substance of the recommendation, particularly the nominating committee's view that Justice McKechnie is, I suppose, eligible. I want to clarify one point. Presently, is Mr McKechnie qualified for appointment as a judge of the Supreme Court of Western Australia; and, if not, why not?

Hon MATTHEW SWINBOURN: The answer to that is no, because he has attained the age of 70, which disqualifies him from being a judge in the Western Australian Supreme Court.

Hon TJORN SIBMA: Frankly, that is an ageist vestige that should probably be dispensed with, but, nevertheless, that is how I read the black letter law. That disqualification notwithstanding, I am interested to know as much as the parliamentary secretary can divulge—I do not think that is unproblematic as far as the black letter law. On what argument does the nominating committee rely on to satisfy itself that not only is Justice McKechnie eligible when that would appear on a layperson's reading to potentially knock him out, but not only that, it puts him in the position of being the outstanding nominee for the position?

Hon MATTHEW SWINBOURN: I cannot speak on what the nominating committee did because we are not privy to what happens within its four walls. But what we can do is look to the act and to the understanding of the act. Section 10(1) states —

> A person is qualified for appointment as the Commissioner if the person has served as, or is qualified for appointment as, a judge of the Supreme Court of Western Australia —

We accept that he is not eligible to be that anymore. It then states —

> or another State or Territory, the High Court of Australia or the Federal Court of Australia.

It is my understanding that in New South Wales, people can be judges up to the age of 75 years. An applicant who comes from New South Wales or somewhere else would be qualified to be appointed on the basis that they have not yet attained the age of 75, and that would apply to all applicants. He is eligible to be a Supreme Court judge in New South Wales. That is the answer to that part of the question.

Hon TJORN SIBMA: I will not quibble with the parliamentary secretary. I think that is probably a fair supposition considering the circumstances; nevertheless, presumably the government has relied upon legal advice to that effect. The parliamentary secretary is appropriate, trained and educated well enough not to divulge documents that arise from legal professional privilege, but, nevertheless, it is pretty clear that the government at some stage has relied upon legal advice of some form that attests to Mr McKechnie's bona fides as an appointee or prospective appointee to this position. If so, when was it made, by whom, and can the parliamentary secretary table it?

Hon MATTHEW SWINBOURN: I cannot and will not table it, but I can say that the advice was given—I think this is already a matter on the public record because I just mentioned it again in terms of the Solicitor-General, Joshua Thomson—on 6 May 2021. I clarify the point that he is also qualified because if we look at section 10(1), it states that a person is qualified for appointment as the commissioner if the person has served as a Supreme Court judge, which he has done. Separately, he is qualified for appointment as a judge of the Supreme Court of Western Australia. He is qualified on that first limb and he is also qualified on the third limb, which is that he is eligible to be a Supreme Court judge in New South Wales.

Hon TJORN SIBMA: Just to clarify the advice from Joshua Thomson, was that on 6 May 2021 or 6 May 2020?

Hon MATTHEW SWINBOURN: It was in 2021.

Hon TJORN SIBMA: In these unusual circumstances I would argue for the need for a committee, so composed—potentially just a select committee or a broader committee of this chamber—to effectively interrogate this issue or at least the fundamentals at issue here, which are Mr McKechnie's eligibility for this position. I will not quote extensively from this transcript, but I note that on 3 June, the Leader of the House talked about the operation of the chamber. This is not a cheap shot at all, but I think it highlights a fundamental principle of how this chamber operates. The Leader of the House said —

> I think what this house does, and how this house creates better legislation, is done in one of two ways, or sometimes in both—a bill is referred to a committee, where expert advice is sought, submissions are called for and stakeholders are invited to express a point of view, and/or in the clause-by-clause examination, including extensive examination across the breadth of a bill, in the Committee of the Whole stage, when we literally examine the detail of the bill.

We have four clauses here and the interrogation is not going to be that extensive, but the issue is that there are some fundamental problems, which we would ask about, of how many nominations the government received. The answer is, "I cannot tell you that." I find that wholly unsatisfactory. I will leave that where it is for now, and I might go to another process.

I want to confirm that Mr McKechnie put in an application as a consequence of the advertisement made on 27 March. Is that a fair assumption?

Hon MATTHEW SWINBOURN: My advice is that he did apply for the position. I think there might be some information about that on the public record as well.

Hon Nick Goiran: But how do we know that? We were just told that the nominating committee process was confidential and we cannot find out that information. How come the Chief Justice has now just opened the vault?

Hon TJORN SIBMA: I think that was done as a helpful interjection; it certainly was not unruly. That is a fair point, is it not, parliamentary secretary? On the one hand, the parliamentary secretary can confirm that this individual applied for this position, but he cannot say—he is effectively forbidden and thwarted from telling us—how many other applicants applied. I suppose the question I have is: how is that inconsistency reconciled?

Hon MATTHEW SWINBOURN: Member, the best we can do at the moment is make reference to an article on 27 March by Peter Law in which he confirmed that John McKechnie would reapply for his position. It states —

> John McKechnie is set to reapply for his old job as the Corruption and Crime Commission boss, one year after his reappointment was blocked.
>
> …
>
> Mr McKechnie said he remained keen to continue his work as CCC commissioner and would submit an application for consideration in due course …

By inference, he put in an application, but I do not have a document that says he absolutely did put in an application. He clearly indicated on 27 March that he would be doing so.

Hon TJORN SIBMA: Parliamentary secretary—I mean, really! I am not using this occasion to make a speech, but I have asked a question of the parliamentary secretary as the Attorney's representative at that table. It is a pretty basic question about how he could reconcile the cone of silence around the number of applications for this position, which was a consequence of the advertisement placed in two broadsheets on 27 March, and the parliamentary secretary's concession previously that Mr McKechnie did apply. I have been referred to Peter Law from *The West Australian. I* have a bit of respect for Peter Law. I do not always agree with what he writes; Peter knows that. But,

frankly, should I put a call through to Peter Law now—DM him on Twitter and say, "Mate, get to the chamber now because I've got a question to ask the government. The parliamentary secretary cannot provide an answer from the government; instead he has referred me to you." This has been a long day and the parliamentary secretary has been put under duress, and he is here to defend the indefensible, but that is the very, very worst response I have ever heard.

Hon Matthew Swinbourn interjected.

Hon TJORN SIBMA: No, I ask again—this is a serious matter. Is it not possible to provide this chamber with an indication of how many people applied for this as a consequence—it is not even as a consequence—after 27 March, with their details redacted? From whom would the parliamentary secretary seek that advice?

Hon MATTHEW SWINBOURN: I cannot take the member any further than what I said earlier. The Chief Justice holds that information. We have asked the Chief Justice to give us that information and the Chief Justice has said that he will not be providing it. I cannot be any clearer than that. We cannot compel the Chief Justice to provide the information to us.

Hon TJORN SIBMA: Does the parliamentary secretary or either of his advisers at the table have the number of the Chief Justice?

Hon Sue Ellery: Are you serious?

Hon TJORN SIBMA: Yes, I am serious.

Several members interjected.

Hon TJORN SIBMA: Frankly, this is an outrage. This is why this side of the chamber has condemned the government all day long.

The DEPUTY CHAIR (Hon Jackie Jarvis): Member!

Hon STEPHEN DAWSON: With the greatest respect, if the member wants to speak, he should seek the call. He did not have the call. The rules are the rules, mate.

Hon TJORN SIBMA: That is perhaps not the best argument for the minister's side to make today.

Hon Stephen Dawson: Respect the chair!

Hon TJORN SIBMA: I do respect the chair, and I only wish the government would respect the process of this chamber. I would ask the parliamentary secretary —

The DEPUTY CHAIR: Members! Direct your comments through the chair, please.

Hon TJORN SIBMA: Absolutely.

Hon Nick Goiran: Let us remember that the member voted against the respect and the adherence of the standing orders yesterday. His name is permanently on the record.

The DEPUTY CHAIR: Members, who is seeking the call?

Hon TJORN SIBMA: Thank you very much. I was not intending to go down this route, but I think I just need to establish the lines of communication upon which the parliamentary secretary is relying this evening. This is not a cheap point because it actually gets to his capacity to furnish this chamber with information that is being sought. One of the reasons I am seeking this kind of clarification is that he was put in an invidious position last week: he was forced to misrepresent the availability of police officers to answer questions about the bill concerning the security data leak, which came by way of utilisation of the SafeWA app. Can I confirm please from which agencies the parliamentary secretary's advisers at the table are drawn?

Hon MATTHEW SWINBOURN: I am not sure how it is relevant to the bill, but they are from the Attorney General's office. They are ministerial officers.

Hon TJORN SIBMA: Thank you very much. That is important. They are not departmental officials. That is what I wanted to clarify. Neither are they public servants in the employ of the CCC.

Hon Matthew Swinbourn: That is correct.

Hon TJORN SIBMA: Are they directly or indirectly, via the parliamentary secretary, in communication with the Attorney General this evening?

Hon MATTHEW SWINBOURN: Yes, I think the answer would be that we do have contact with the Attorney General this evening.

Hon TJORN SIBMA: No doubt he is apprised of the importance of this bill. Is he likely to be awake for the entirety of this evening's proceedings? That is not a cheap shot.

Several members interjected.

Hon TJORN SIBMA: No, it is not. Members do not need to interject.

The DEPUTY CHAIR: Members, I remind everyone that we do not have Hansard. They will be relying on a recording and it would be nice if they could hear what is being said.

Hon COLIN de GRUSSA: On a point of order: first, it is very difficult to hear what is going on; and, second, if the member was allowed to conclude his remarks, we might hear that he has a very genuine and sensible question. Before everyone gets a little bit upset and tired, we should give him the courtesy of allowing him to finish his question.

The DEPUTY CHAIR: Hon Tjorn Sibma, if you could get to the question.

Hon TJORN SIBMA: Thank you very much, chair. My point was to establish whether the Attorney General is in direct communication with the parliamentary secretary or the advisers at the table for the duration of this bill. I ask that question because we are at a late hour. I just want to know to what degree are answers provided by the parliamentary secretary subject to some form of intermediation. What level of trust and reliability can I ascribe to the answers that he is providing this evening?

Point of Order

Hon SUE ELLERY: The honourable member can see with his own eyes how the parliamentary secretary is answering the questions. He can see him speaking to the two people who are sitting at the table with him. He can see that they are not texting madly every time they provide an answer to the question. We will be here as long as we need to be here, but it belittles the honourable member, who is one of the smartest people on the other side, when he does not ask serious questions.

Hon TJORN SIBMA: Thank you, chair.

The CHAIR: Hon Tjorn Sibma, do you want to be heard on the point of order?

Hon TJORN SIBMA: I do have a serious point.

The CHAIR: Hon Tjorn Sibma, there is a point of order I need to rule on first. I think the Leader of the House has made a point. I have just taken the chair. I will closely observe the clause 1 debate, but there is no point of order.

Committee Resumed

Hon TJORN SIBMA: Thank you, chair. There is a serious point. It is not a flippant or trivial one, nor is it a cheap shot. The reason I ask it is that, indeed, it is quite to the contrary. The Leader of the House would not be able to ascertain this from the position in which she sits, but I have indeed observed during the course of this debate the contrary of the point the member asserted; there is mad texting going on. I am attempting to establish with whom the advisers at the table are corresponding. I can only guess that it is the Attorney General, and I have sought to establish whether that is the case. That is all I have attempted to do, because I have another series of questions that relate to the Attorney General's interaction with the proposed appointee that I would like to get to, but I will not do so if I am not satisfied that the Attorney General is in a position to provide his answers via the parliamentary secretary this evening.

Point of Order

Hon ALANNAH MacTIERNAN: I am sorry, but we have a system here of people who represent ministers in another place. The member opposite has absolutely no right to demand that the minister in the other place be available to take his questions by text. That is the role of the parliamentary secretary here, who is representing the Attorney General in this place. The member cannot seek to engage in a direct dialogue. If that is what he wants to do, he should go and stand for the lower house and get into the lower house!

Several members interjected.

The CHAIR: Order!

Hon Peter Collier: That's not a point of order.

Hon ALANNAH MacTIERNAN: It is a point. He is the representative —

Hon Nick Goiran: Why don't we refer it to a committee and then we might actually make some progress?

Hon ALANNAH MacTIERNAN: You have no right to demand that the Attorney be online for you.

The CHAIR: Minister, resume your seat.

Several members interjected.

The CHAIR: Order, members! Nobody has the call. I am not quite sure what the point of order is, but I agree with the sentiment expressed by the Minister for Regional Development that the parliamentary secretary at the table is representing the Attorney General. Whether the parliamentary secretary is seeking advice from others is a matter for the parliamentary secretary and the advisers whom he has at the table. I ask members to focus their questions on clause 1 of the bill.

Committee Resumed

Hon TJORN SIBMA: In the parliamentary secretary's second reading reply, and I think subsequently, he referred on a number of occasions to Mr John McKechnie being a private citizen. There is no disputation that that is the case. Could the parliamentary secretary clarify at what point, please, he became a private citizen in the way that I think the parliamentary secretary is attempting to convey to the rest of the chamber?

Hon MATTHEW SWINBOURN: It was in reference to Hon John McKechnie ending his tenure as the Corruption and Crime Commissioner at midnight, 27 April 2020, and from that point on, as far as I am aware, was no longer holding a public office.

Hon TJORN SIBMA: Am I right in construing the proposition I am about to give to the parliamentary secretary this way: that in the five years leading up to 27 April 2020 when Justice McKechnie was the Corruption and Crime Commissioner, in the conduct of his public office he was immune from freedom of information requests? Am I construing things correctly?

Hon MATTHEW SWINBOURN: I am struggling to understand how it has anything to do with this particular legislation before us, but we are seeking an answer because people have to check to see whether it is an exempt agency—it is. The answer is that it is an exempt agency.

Hon TJORN SIBMA: I thought that was the case; I just wanted to clarify that indeed my understanding was correct. It is not the place for hypotheticals, but I will chance my arm: hypothetically, prior to 27 April 2020, if I wanted to submit a freedom of information request that, for example, captured communications between the Corruption and Crime Commissioner and a minister, I would effectively be thwarted from doing that because the agency is exempt; would that be a fair categorisation?

Hon MATTHEW SWINBOURN: As the member said, it is a hypothetical. My advisers and I are not prepared to speculate on what might or might not be in a hypothetical sense. It is difficult to do that because it is very broad.

Hon TJORN SIBMA: Upon the passage of this bill and royal assent, what approximate date would Mr McKechnie cease being a private citizen and again become a public office holder?

Hon MATTHEW SWINBOURN: It will be the day after royal assent is given, which I think is in clause 2, that he will become the Corruption and Crime Commissioner.

Hon TJORN SIBMA: I presume either potentially tomorrow, or Monday or Tuesday, there is normally an Exco meeting; I think that is the way these things are managed. This is not a cheap shot in any way; I actually have a bit of respect for the Attorney General, I find him a compelling character in many respects. The reason I asked about his availability is that I want to ascertain whether there has been any communication between the Attorney General and Mr McKechnie as a private citizen in the 15 or 16 months that he has been a private citizen. I am particularly interested in whether Mr McKechnie has in any way been encouraged to reapply for his old position. Would the parliamentary secretary be in a position to clarify whether there has been any communication, either through text, phone call, chance meeting in the street or encrypted app on the phone? I think that would be particularly useful.

Hon MATTHEW SWINBOURN: I have here *Hansard* from 28 May 2020, in which Hon John Quigley states —

> I want to disclose to the Parliament that I recently contacted Mr McKechnie on official business. I rang him and said, "Mr McKechnie, it is my intention to inform the Parliament that we will not be backing away from your nomination, and if you are not reappointed before the election in 40 weeks' time, it will be our policy we are taking to the people that you will be reappointed in the next Parliament."

There are some interjections, and then Mr Quigley says —

> Mr McKechnie indicated to me —

Some more interjections —

> — that he would stand by for 40 weeks. He would not walk away and he would await the judgement of the people of Western Australia on whether they want him back as the head of the CCC …

I will leave it at that because the rest of it is commentary. The answer to the member's question is yes, there has been contact between them, and that is the example of the contact.

Hon Dr BRIAN WALKER: Just for the record and for my certain knowledge, can the parliamentary secretary confirm that the procedure for appointing a commissioner has not been followed, in that section 9(4)(a) has been rejected three times and section 9(4)(b) has not been availed of?

Hon MATTHEW SWINBOURN: I would not agree with the member that the procedure has not been followed. The procedure has been followed, and then, at the end of that procedure, the Joint Standing Committee on the Corruption and Crime Commission has not accepted the nominee that was put forward by the Premier. The member may have been out on urgent parliamentary business, but we have already explored whether section 9(4)(b) had been followed by the Premier, and I can confirm that the Premier did not follow that process in the short period he may have been able to.

Hon Dr BRIAN WALKER: The point I am also making about section 9(4) is that this had been put before the committee three times and it could not come to a decision three times, and the candidate was therefore rejected. It is my understanding that there are a number of options for managing this. One, of course, is to choose another candidate to put before the committee; another option would be to have another search altogether. But the choice that has been made here is that the Premier has rejected that opinion and is apparently quite comfortable in saying to the committee, "I know more than you; I have more information than you; your decision is not appropriate; I find myself in a position to overrule your considered decision", bearing in mind we have four honourable members on that committee. The split decision has been seen by the Premier to mean that he must stand in and take the decision as someone who has more power, more knowledge and is in charge. Is that correct?

Hon MATTHEW SWINBOURN: The member put a couple of things in there, but he suggested that the process could be started again and a new person put forward. What I will say is that if such a process were started again, it is not certain that the nominating committee would not put forward the name of John McKechnie again. They put him forward as the nominee the first and second time. The parliamentary committee has been deadlocked three times, and it is true to say that the Premier, as the Leader of the Labor Party, has put forward the proposal that we are dealing with in this bill as a resolution of that deadlock. It is clear that that is not acceptable to members on that side of the chamber, but that is the position that the government is putting forward.

Hon Dr BRIAN WALKER: It is my understanding that it is the Premier who decides which of the three candidates should be put forward to the committee—is that correct?

Hon MATTHEW SWINBOURN: That is correct, but in the past the Premier has forwarded the letter—I think that was established in an earlier part of the debate—with all three names on it. In the current situation, the Premier transmitted only the name of Mr McKechnie to the committee.

Hon Dr BRIAN WALKER: We are establishing that the Premier has made the decision that his opinion is that this is the best candidate, come hell or high water, and that the committee has to take it or leave it. I could accept that, but sections 9(4)(a) and 9(4)(b) have been neither availed of nor abided by. The intent, I think, is to present the most suitable candidate. What we now have is an amendment being introduced because the Premier fails to feel that the Joint Standing Committee on the Corruption and Crime Commission has performed as required. This amendment, in that case, as I understand it, must be a temporary one. We have an amendment to an act that will have to be amended later—am I correct in that?

Hon MATTHEW SWINBOURN: I think the amendment to the act that is currently before us will go into the act and become part of the act until the act is either amended or repealed, but it will take effect for only the five years that Mr McKechnie is the commissioner. In fact, the effective part of it will be the day that he is appointed for a five-year term, and then that will carry on. All the other provisions of the act will continue to apply to Mr McKechnie; it is not that he is put in for five years, and then nothing further happens. He will be the candidate for a five-year term, subject to all the rights, responsibilities and privileges that the act bestows on the commissioner.

Hon Dr BRIAN WALKER: I believe this actually sets a precedent, does it not, in that the Premier has decided that the act is unfit for purpose and a temporary amendment is being introduced to make it suit his needs. As a precedent, it can be repeated, and that therefore means—according to my understanding, and bearing in mind that I am a beginner here—that the door has been opened to drive a horse and carriage through any act of Parliament at any time, should the Premier choose. That would be the logical conclusion. Am I incorrect in that?

Hon MATTHEW SWINBOURN: It is up to Parliament to decide what it wishes to do, every time the Parliament has a matter before it. The outcome of tonight will be the will of Parliament. There will be members who do not support it and members who do support it, but that is the case for any ordinary bill that comes before this Parliament. In fact, all acts of Parliament are products of this Parliament, and this Parliament reserves the privilege and the right to change those acts at a later date. We are not locked in to them. There are some acts, such as the Constitution Act, which require special majorities to make changes, and in some parts of that act we even need to seek a referendum of the people. For example, if we were to reduce the size of the Legislative Council, we would need to go to a referendum before that could happen. But in all instances, Parliament is sovereign—I am sure I am going to get told off for that somewhere along the line by some members—and it has the right to amend, repeal or make new enactments. That is what future Parliaments will do, it is what past Parliaments have done, and it is what we are doing today.

Hon NICK GOIRAN: I think the explanation provided by the parliamentary secretary was spot on. It was a correct summation of the situation. To be clear, we do not dispute that the Parliament has the power to change the law. The problem here is that the executive—that is, the McGowan government—is using Parliament to subvert the existing process. Multiple members have raised that in their contribution, and the government's response, through the parliamentary secretary representing the Attorney General, has been to rebuff that and say, "No, no; we are not subverting the process." Clearly, that is exactly what has been happening because, as has been identified by Hon Dr Brian Walker, this particular process that is set out in section 9 has been followed. It does not suit the current Premier, so now he is utilising the Parliament to change the law. Can the Parliament do that? Yes, that is right; it can do that. But is it because the executive is subverting the existing process? Absolutely.

Earlier, in response to Hon Tjorn Sibma, the parliamentary secretary indicated that the Solicitor-General, Josh Thomson, provided advice. The date of that advice was, very interestingly, 6 May 2021. I say "very interestingly" because in earlier advice to the chamber, the parliamentary secretary indicated that the Premier received three names from the nominating committee the following day, 7 May. The parliamentary secretary has indicated that he is not in a position to table either of those documents—that is, the advice from the Solicitor-General, Josh Thomson, dated 6 May 2021, or the letter from the nominating committee to the Premier dated 7 May. With respect to the second document, the parliamentary secretary is claiming that it is confidential, so he cannot provide that. I suspect that it triggers obligations under the Financial Management Act and that the Auditor General is going to have to investigate that. That is a matter for the parliamentary secretary and the Attorney General to work through after today. My question, parliamentary secretary, is: why will the government not provide the advice of Josh Thomson dated 6 May 2021? The explanation that it is subject to legal professional privilege is not a sufficient explanation in and of itself, unless it is the case that the government is concerned that this issue of eligibility might be litigated. I cannot imagine that. In any event, the government is asking us as a chamber to agree with its position, including on eligibility. I think that this chamber is entitled to that information. My question is: has anyone asked the Attorney General whether he will agree to waive privilege in this instance, given that it is hardly a matter that is going to be litigated; and will the information then be made available to the chamber in those circumstances?

Hon MATTHEW SWINBOURN: Hello! How are you, chair? It is nice to meet you.

Several members interjected.

Hon MATTHEW SWINBOURN: Where did that come from! I want to see Hansard sort that one out! Chair, I seek the call, thank you.

Member, we will not be waiving our entitlement to privilege over that document.

Hon NICK GOIRAN: Part of my question, parliamentary secretary, was: has anyone asked the Attorney General whether he will agree to that? There is a context in this, because privilege has been waived in the past, including by this particular Attorney General. Certainly, my recollection of circumstances where that has been done is where advice has been provided to the government that is not on a litigious matter. If I were to ask the parliamentary secretary to table any advice that the government has received in its dispute with the Legislative Council, clearly, the government would not provide that advice. As a legal practitioner, I think that is absolutely the right course of action for the government, whatever I might think about the course of action that it is taking now. But this particular instance is entirely different. We first have to start with actually asking the Attorney General whether he would agree in this instance to provide the information to the chamber. Why do we want this information? It is so that this chamber can have confidence that the Solicitor-General of Western Australia—who, as the parliamentary secretary has pointed out, is an independent statutory officer—has provided independent advice to the government of Western Australia saying that Mr McKechnie is eligible. It would be beneficial to the 36 members of this chamber to receive that. I am not sure what is so sensitive about the Solicitor-General of Western Australia saying that this man is eligible that would require the government not to provide that information. I simply ask: will we be in a position to request from the Attorney General the provision of this information?

Hon MATTHEW SWINBOURN: My instructions, if we are talking about that, are that we will not waive privilege. They were the instructions we were given earlier in the day. What I will undertake, member, and outside of this, is to approach the Attorney General and ask him to communicate to the member whether he will do that, at a time when it is a little bit more amenable to ask him those sorts of questions. I give the member that undertaking.

Hon NICK GOIRAN: Parliamentary secretary, thank you for that courtesy. The parliamentary secretary indicated that the government had received advice from the Solicitor-General dated 6 May 2021. Did the government obtain any other advice with regard to the eligibility of Mr McKechnie either before or after that day? To be clear about the time frame we are talking about, it is intended to cover the, shall I call it, triple application process in the sense that on three occasions, the Premier provided a recommendation to the joint standing committee. At any time during the course of that triple application process, did the government obtain any legal advice other than from Solicitor-General Josh Thomson, dated 6 May 2021, with regard to the eligibility of Mr McKechnie?

Hon MATTHEW SWINBOURN: As certain as we can be, member, at this time—the chief of staff, who is following the debate, is also in the building—we are saying that we are not aware of any specific advice given in relation to Mr McKechnie's eligibility, which is the question the member asked. Other legal advice may have been given, but we do not want to lead the member into a position to ask, "Well, can you get that for me today?", because the advisers here are doing their best to rack their memories for over the last 15 months about whether that had happened. But we are only specifically and definitely aware of the advice that we have already referred the member to.

Hon NICK GOIRAN: That is fair enough and it helps to know that the chief of staff is on hand. I have found the chief of staff to be utterly professional in the undertaking of her duties with respect to the Attorney General, so to know that that information and her reliability is at hand this evening is helpful to the chamber. Can I ask, parliamentary secretary, who requested this advice provided by the Solicitor-General on 6 May 2021?

Hon MATTHEW SWINBOURN: The Attorney General requested it.

Hon NICK GOIRAN: Was the Premier involved in any way with the decision to request advice on the eligibility of Mr McKechnie?

Hon MATTHEW SWINBOURN: We do not know, member, and we are being as frank as we can. We could speculate on the circumstances in which he might be involved, but we could not disclose that to the member anyway—for example, if it were cabinet-in-confidence or something of that kind. So to be frank, we do not know whether the Premier was involved.

Hon JAMES HAYWARD: I have a couple of questions. Earlier the parliamentary secretary said that it was not broken, but it was either a stalemate or a deadlock, and it had gone to the committee three times. Is the committee free to refuse a nomination?

Hon MATTHEW SWINBOURN: Yes. I do not think that we are suggesting that in refusing, it was an illegitimate thing outside of its powers. It was within its powers to refuse one and that is what it has done.

Hon JAMES HAYWARD: The original legislation and other legislation around the country state that bipartisan support is important. I am wondering whether the parliamentary secretary has a view about why it is important.

Hon MATTHEW SWINBOURN: I cannot speculate about why it is important in other jurisdictions—that is a matter for them. I can speak in only the most general terms about why it is generally accepted that bipartisanship is important in matters like this. Obviously, those matters have been referred to in the speeches of other members in this chamber in terms of the process and that the Corruption and Crime Commissioner is a powerful position. The second reading speech that was given for the original bill will probably detail that point in particular. But, generally speaking, something that people think is desirable is to offer legitimacy to the position. To suggest otherwise would be silly.

Hon JAMES HAYWARD: Thank you very much, parliamentary secretary. I think that is an excellent answer in terms of how the parliamentary secretary responded in talking about legitimacy to the position. Given the passage of this legislation, why is that now not important?

Hon MATTHEW SWINBOURN: It is not that it is not important anymore, member. It is that we have reached an impasse in the progress of this matter. It is worth noting that up until last year, there was bipartisan support on this between the Premier and the then Leader of the Opposition, Liza Harvey. Therefore, it is not the case that we have been apart from each other on this issue forever. We are apart on this issue now; there is no question about that. As I say, bipartisanship is still important, but in this instance the consideration that the government is making for the appointment of the CCC commissioner means that we are following this particular process.

Hon JAMES HAYWARD: Does the parliamentary secretary see it as an impediment for the incoming commissioner that he does not have bipartisan support?

Hon MATTHEW SWINBOURN: No, member, because John McKechnie has been a public servant for 45 years. I think I mentioned in my reply to the second reading debate that he has previously been appointed by Liberal–National governments and Labor governments to these positions. Mr McKechnie will remain an excellent appointee to this position. Other people do not agree with that for different reasons, and I am not going to get into that, but I think once he gets back to work, he will continue to do the work that he has mostly done. Most of his work is not related to political parties—it obviously has been recently—it mostly relates to the public sector, organised crime and other aspects of misconduct. I do not think it is an issue in that regard. I will go through his history. He was appointed as the state's first Director of Public Prosecutions by a Labor government, he was reappointed as DPP by a Liberal government, he was appointed as a Supreme Court judge by a Liberal government, he was appointed Corruption and Crime Commissioner by a Liberal government and, until recently, had bipartisan support and has carried on.

Hon NICK GOIRAN: The parliamentary secretary indicates that John McKechnie, if appointed pursuant to this bill, will get on with the work that he is required to do. The parliamentary secretary indicates that that does not just relate to misconduct by members of Parliament or perhaps even former MPs. The parliamentary secretary would be aware that under part 4 of the Corruption, Crime and Misconduct Act 2003, the CCC has very important organised crime–fighting powers. The parliamentary secretary is aware that Mr McKechnie was commissioner for five years. During that five-year period, did he ever exercise the powers of examination found under part 4, for organised crime? Did he ever conduct an examination in his five years?

Hon MATTHEW SWINBOURN: We do not know at the table. That question would have to go to the CCC agency to ask whether in that time he exercised those powers.

Hon NICK GOIRAN: To be clear, the McGowan government wants us to agree to Mr McKechnie being put back into a role for five years, and tonight it cannot tell us whether he ever, even once, conducted an examination under the organised crime provisions in part 4 of the act. It cannot tell us. The parliamentary secretary referred to Mr McKechnie in glowing terms in his second reading speech. According to my notes, the parliamentary secretary said that he was the best corruption fighter Western Australia has ever had—the best. But the McGowan government cannot tell the Legislative Council of Western Australia whether this person, who has been branded as the best, has

ever examined anyone under the part 4 organised crime provisions. This is an extraordinary power that is provided to the Corruption and Crime Commission. No-one else in Western Australia has the capacity, on application from the police, to summons a witness and compel them to provide evidence.

Deputy chair, this is a significant matter. Members may not be aware that in the history of the Corruption and Crime Commission, those part 4 powers have been used by previous commissioners, but not Mr McKechnie. That included a set of circumstances in which two outlaw motorbike gangs were brought in. One obviously had received more strategic legal advice on how to handle those hearings; the others maybe received no advice whatsoever and proceeded to refuse to answer questions asked by the commissioner and swore at the commissioner. It ended up resulting in individuals being found in contempt of the Supreme Court, and, as memory serves me, it was the then Chief Justice Martin who sent some of those outlaw motorcycle gang individuals to jail for two years, and my recollection is that the one who swore at the commissioner got an extra three months for his trouble. That was for the unsophisticated individuals. The ones who had received some more sophisticated advice responded to the answers that had been provided, but they responded in such a way that they ultimately did not find themselves in contempt. The point is that the powers under part 4 are very powerful and can see individuals, as identified in that example, jailed for up to two years.

That was under a previous commissioner, but the McGowan government cannot advise us whether this commissioner actually did his job. It wants us to agree to this bill on an urgent basis, as it is the top priority of the McGowan government and it wants him to get back to work because he is the best corruption fighter, but it cannot tell us whether he has actually ever done his job. We do not know whether he has examined anyone before the commission. How is that possible? If this matter were before the Standing Committee on Legislation, it would be able to get to the bottom of this information, but we cannot get to the bottom of this information because, once again, the government cannot provide us with any information. Is the parliamentary secretary going to be in a position this evening to provide us with any data or information on the performance of Mr McKechnie during his five-year tenure? Is he going to be able to advise us whether any of the powers for entry, search and related matters, assumed identities or controlled operations were used? Is that data going to be available to us so that we can consider whether Mr McKechnie actually does his job and whether he in fact did it during the five-year period that the government is relying on?

Hon MATTHEW SWINBOURN: No, member, I am not going to be able to provide that level of detail. I do note that the media release that was released by the Corruption and Crime Commission on the ending of the commissioner's term states —

> Commissioner McKechnie has been instrumental in highlighting publicly or directly to public sector authorities, particular corruption risks in the WA public sector concerning: procurement and financial management; the misuse of data and information; the inappropriate use of force; people at risk; policy, regulation and licensing; and the WA Police Force.

I mentioned in my second reading speech that the Commissioner of Police, Chris Dawson, APM, has praised the crime-fighting credentials of Mr McKechnie, QC, and endorsed him as a person of unquestioned integrity, tenacity and strength to perform the role in leading the CCC. The Law Society of Western Australia, in referring to the end of his term, also said that it was difficult to imagine a candidate more qualified than Mr McKechnie for this important role. I cannot go into the specifics of the agency, but I can bring those matters to the member's attention.

Hon NICK GOIRAN: Those matters that the parliamentary secretary is referring to are the functions and powers found in part 6 of the Corruption, Crime and Misconduct Act. I am not disputing the fact that those particular things have been done, but a major part of the role of the CCC is the fight against organised crime with exceptional powers and the powers to remove fortifications. An entire part of the legislation is devoted to it. I draw to the attention of members and the parliamentary secretary that the Corruption, Crime and Misconduct Act 2003 is an act to provide for "the establishment and operation of a Corruption and Crime Commission with functions with respect to serious misconduct by public officers". I pause there to note that that is effectively what the parliamentary secretary was referring to, yet in the long title it says "and organised crime". So serious is this matter that it has its own entry in the long title, but the McGowan government cannot tell us whether Mr McKechnie has done anything in the fight against organised crime. We know that previous commissioners have; I can attest to that. The public record reflects that, but we do not know whether the so-called best corruption fighter has actually done any of the work that is set out in the act. We will add that to the list. That is precisely why I said earlier that I would like to see Mr McKechnie available to at least provide advice to the hardworking parliamentary secretary. If Mr McKechnie were here providing advice, we would be able to make some progress. The defence put up is that he is a private citizen and will not be available. I seem to recall another eminent legal individual who was a private citizen at the time and who was quite happy to sit here at the table on another contentious debate in the last Parliament. It does not suit the McGowan government at the moment for this individual to make himself available because being cross-examined about his underperformance over the past five years would be the absolute worst nightmare for him. It suits him to hide, but that does not help the Legislative Council come to a decision here this evening.

Is the parliamentary secretary able to advise the house what the remuneration and conditions of service are for the Corruption and Crime Commissioner?

Hon MATTHEW SWINBOURN: The commissioner's entitlements are dealt with in clause 3(1) of schedule 2 of the Corruption, Crime and Misconduct Act, which states —

> The Commissioner is entitled to be paid remuneration and to receive allowances or reimbursements at the same rate as a puisne judge of the Supreme Court.

We have pulled from the Salaries and Allowances Tribunal website the salary for that, which is $441 057. Obviously, there is a travel entitlement and accommodation allowance. I hope the member does not ask me to go through all those. Also, part 3 of the determination deals with motor vehicles that the person is entitled to.

Deputy chair, can I ask that you leave the chair until the ringing of the bells?

The DEPUTY CHAIR (Hon Dr Sally Talbot): For the purposes of the comfort of all members, I will vacate the chair until the ringing of the bells, which will be in about 15 minutes.

Sitting suspended from 11.15 to 11.31 pm

Hon NICK GOIRAN: Just prior to the interval, the parliamentary secretary indicated that the remuneration and conditions of service of the commissioner included $441 057 by way of base remuneration. The parliamentary secretary referred to travel, accommodation and motor vehicle expenses. Is there also a superannuation component that is applicable?

Hon MATTHEW SWINBOURN: On the question of superannuation, I do not think so, but it is worth noting that the provisions of the Judges' Salaries and Pensions Act 1950 apply to the commissioners, and that is detailed in clause 3(3) of schedule 2 of the CCC act.

Hon NICK GOIRAN: Would that mean that a person who is not a Supreme Court judge would then qualify for the judicial pension that the parliamentary secretary is referring to?

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: The parliamentary secretary should apply for the job. I take it then that the remuneration and conditions of service of the commissioner are identical no matter who is in the position—whether or not that person was previously a Supreme Court judge. At the end of the day, the cost to the taxpayer of Western Australia is identical.

Hon MATTHEW SWINBOURN: Generically, yes, the cost is the same for everyone. Mr McKechnie has other entitlements that are attached to his time as a Supreme Court judge.

Hon NICK GOIRAN: The parliamentary secretary indicated in a response to Hon Tjorn Sibma earlier that his expectation, as I understood it, is that should this bill pass—presumably not today, but let us say tomorrow—Mr McKechnie would be in the role as commissioner the day after assent, and that would presumably take place sometime in the next few days. In any event, it appears reasonable to assume that he would commence his appointment on or before 1 July, given that at the moment we are just shy of 25 June. What will be the total amount appropriated for the coming financial year to cover all payments and benefits to Mr McKechnie if this bill passes?

Hon MATTHEW SWINBOURN: We do not know at the table, but I will give the member an undertaking to establish that information and provide it to him at a later date.

Hon NICK GOIRAN: With regard to the appointment process, the parliamentary secretary indicated earlier that the Premier wrote to the Joint Standing Committee on the Corruption and Crime Commission on the first two occasions on 5 March 2020 and 16 April 2020. He received responses to those two communiqués on 25 March and 23 April respectively. Did those responses that the Premier received from the joint standing committee indicate whether the committee was able to provide majority support? I am asking specifically about majority support. I am not asking about bipartisan support and I am not asking about majority and bipartisan support. I am simply asking whether it indicated majority support.

Hon MATTHEW SWINBOURN: Member, I will answer it in this way: in relation to 25 March, the committee said that it was unable to achieve bipartisan and majority support; and in relation to 23 April, it said that it was unable to reach either a bipartisan or a majority decision in support of the recommendation.

Hon NICK GOIRAN: I take the parliamentary secretary to the second of those two responses. Does that mean that more than one member of the Joint Standing Committee on the Corruption and Crime Commission must have opposed the appointment?

Hon MATTHEW SWINBOURN: Hon Nick Goiran has in front of him the same words that I have. The issue here is whether or not the member said—I do not quite remember the member's words—that it is possible that a member could abstain and that would deny majority support. There is a range of possibilities in relation to that particular thing but, as I have said, I have read to the member the words that are in front of me, so the member has as much understanding of it as I do.

Hon NICK GOIRAN: If a person abstained, that means that they did not support the nomination. The point is—this is an important point for the integrity of the previous process and the members involved—that repeated assertions

have been thrown at the Liberal member who was on the committee on the basis that that member could be blamed for the fact that the process was so-called blocked. If the parliamentary secretary is saying to Parliament that on 23 April, the committee wrote to the Premier and said that it was unable to provide either majority or bipartisan support, it follows, does it not, that more than one member on the committee was unable or unwilling to provide support for the Premier's recommendation?

Hon MATTHEW SWINBOURN: I think the member is entitled to make that conclusion.

Hon NICK GOIRAN: For all the times that the Liberal member was criticised repeatedly by individuals, such as the Premier of Western Australia and the Attorney General of Western Australia, the Legislative Council now knows that in actual fact more than one member of the joint standing committee was unable or unwilling to provide support for the Premier's recommendation. That is not necessarily a startling revelation because that revelation has previously been published and publicised in some publications of integrity. But it puts paid to the continuing wrongful assertions that have been put forward by the Premier and the Attorney General of Western Australia. It is indeed consistent with the experience I have had in the fortieth and forty-first Parliaments, in which the only members seeming to support this recommendation are members of the Labor Party. That said, the parliamentary secretary has kindly provided us with some of the dates involved with regard to that process and, in particular, the dates of the response from the Joint Standing Committee on the Corruption and Crime Commission to the Premier, the two critical dates being 25 March 2020, when the first response was provided, and 23 April 2020, when the second response was provided. During that time, which is just two days short of a month, did the Premier ever discuss this matter with any member of the joint standing committee?

Hon MATTHEW SWINBOURN: We do not know.

Hon NICK GOIRAN: The McGowan government does not know whether the Premier of Western Australia communicated with members of the Joint Standing Committee on the Corruption and Crime Commission in the period between the first rejection and the second rejection. The McGowan government does not know or, in particular, those assisting the chamber with the passage of the bill tonight do not know. Clearly, the Premier of Western Australia must know, but I can only conclude that this matter is not of sufficient importance to the Premier of Western Australia for him to provide that information to us. The parliamentary secretary is representing the Attorney General. He has kindly indicated to us that there are some communications taking place with the Attorney General. Did the Attorney General discuss this matter, being the two rejections by the joint standing committee, with any member of the joint standing committee in the period between 25 March and 23 April 2020?

Hon MATTHEW SWINBOURN: At this juncture, we do not know what the answer to that is. The member's point was about contact. I think he probably meant contact in relation to the issue of appointment, just to be clear.

Hon Nick Goiran: I did say in relation to this issue, yes.

Hon MATTHEW SWINBOURN: If we get an answer, we will pass it on, because we may still get one, but at this point, to help with progress, could we perhaps move on to the next point. If we can get that answer to the member, we will. Those at the table and those watching in the chamber do not know the answer to that at this stage.

Hon NICK GOIRAN: I take it that somebody is going to wake the Attorney General and ask him the question! In all seriousness, I thank the parliamentary secretary for taking that matter on. We will find out whether the Attorney General has been speaking to members of the joint standing committee—whether that is the member for Kalamunda or any other member—about this issue in between the period of the two rejections. I assume that if I were to ask the parliamentary secretary for contact by the Premier and/or the Attorney General on this issue with members of the joint standing committee in the current Parliament, the same response would be provided: with regard to the Premier, we simply do not know and with regard to the Attorney General, we will endeavour to find out if we can at some point.

Hon Matthew Swinbourn: By way of interjection, member, yes.

Hon NICK GOIRAN: Can the parliamentary secretary advise when the Premier first learnt of the sixty-first report of the Standing Committee on Procedure and Privileges titled *Progress report: Supreme Court proceedings and matters of privilege arising in the 40th Parliament*? It was tabled in May 2021. I do not readily have to hand the date it was tabled. Nevertheless, my question is: when did the Premier first become aware of this report?

Hon MATTHEW SWINBOURN: This is what we know. We know that a question was asked in the other place on the day the report was tabled here and that the Premier would have, in all likelihood, been present during the time that that question was asked in the other place.

Hon NICK GOIRAN: What was that date?

Hon MATTHEW SWINBOURN: I believe the member has the report in his hand. I do believe it was 13 May, if I recall correctly—that is going on my own memory—because that was the last sitting day. If I am relying on my memory correctly, that was the day, 13 May, that the report was tabled. That is relying on my memory and I am fairly certain that was the day. These advisers were not here then, but we all were.

Hon NICK GOIRAN: By way of explanation, I do have a copy of this massive report, but it does not actually have a date on it, other than to say May 2021. I think the date the parliamentary secretary mentioned, 13 May 2021, is mostly likely to be correct. The relevance is that the Premier sent a letter to the Joint Standing Committee on the Corruption and Crime Commission on 26 May, but by that date he had already received a list of names from the nominating committee. The parliamentary secretary has indicated that that happened on 4 May 2021. Has the Premier communicated with the nominating committee about its list of names since this report came to light?

Hon MATTHEW SWINBOURN: Again, I cannot be precise, but not to our knowledge—we do not have any documentation to suggest that there was contact between the Premier and the nominating committee.

Hon NICK GOIRAN: Herein lies the problem. The parliamentary secretary has explained to us that the nominating committee includes very eminent individuals who have said that Mr McKechnie was the outstanding candidate, despite the fact that the government will not provide us with a copy of that letter. We now know that the committee made that recommendation before such time as the startling revelations in the sixty-first report. It appears that nobody in government has gone back to the nominating committee and said, "Do you still find him to be the most outstanding candidate given that in the Supreme Court trial, the revelation came out that Mr McKechnie was sending text messages to the Attorney General in Bali, effectively seeking direction from him on operational matters?"

The parliamentary secretary should understand how difficult it is for members of this place to provide any level of support for what the government is doing in circumstances in which the government will not allow Mr McKechnie to provide any information to the chamber, it will not provide a copy of the letter from the nominating committee because it says that it is confidential, it will not provide a copy of the letter from the Premier to the joint standing committee because it says that it is covered by parliamentary privilege, and it will not provide us with a copy of the advice from the Solicitor-General saying that the individual was eligible. It is unable to provide us with any data whatsoever on the performance of the individual with regard to the organised crime functions under the act. It cannot tell us whether the Premier discussed this matter with members of the joint standing committee during the period in which the committee had rejected the application, and the same applies with the Attorney General.

To round it all out, it appears that no-one in government thought to raise this with the nominating committee to say that it looks like Commissioner McKechnie and the Attorney General are in hot water. No-one thought to do that. In a sense, I am not surprised because, according to the government, at least in the response that the parliamentary secretary provided earlier with regard to this SMS, his response, according to my notes, was, "Well, we don't know what the SMS meant."

Hon Matthew Swinbourn: I think I referred to some other phrase that was used in the SMS, rather than the broader SMS.

Hon NICK GOIRAN: That is true, and I think that is a helpful clarification.

The parliamentary secretary then went on to refer to the Senior Counsel who was conducting the matter in the Supreme Court. I think the phrase that he used was that she referred to the matter as uncontroversial. If the parliamentary secretary looks at the transcript in context, the Senior Counsel was saying to the court that the existence of the SMS was uncontroversial; in other words, it is not controversial whether the SMS exists. If we look at the transcript of the dialogue with the judicial officer, we see that the reason the Senior Counsel took a moment to take instructions and to pause and reflect on the matter was that it was not immediately apparent to the Senior Counsel whether it was permissible to disclose the information. That is what is referred to as uncontroversial.

Let us not pretend for a moment that the Senior Counsel who was assisting the Legislative Council was somehow saying that the information contained in paragraph 5.49 of the standing committee's report was uncontroversial. It is extremely controversial. There is a prima facie case of misconduct by Mr McKechnie. In fairness to the Attorney General, as I have previously said, he cannot stop somebody sending him a message while he is in Bali, but the pattern of behaviour of these two individuals remains to be investigated. Nevertheless, we can see that nobody in government thought to bring this to the attention of the nominating committee.

What we have learnt in the clause 1 debate is that despite the weight that the government gives to the nominating committee's recommendation, we cannot see it because the government is hiding it from us and we know that the nominating committee was not availed of this new information.

Is the sole purpose of the Corruption, Crime and Misconduct Amendment Bill before the chamber the reappointment of John Roderick McKechnie?

Hon MATTHEW SWINBOURN: Yes; I believe that is the sole purpose of the bill.

Hon NICK GOIRAN: I indicate to the parliamentary secretary that there is an amendment standing in my name on the supplementary notice paper at 1/1 that confirms that. Is the government going to therefore support that amendment?

Hon MATTHEW SWINBOURN: We will not support the amendment. We do not think it adds anything to the bill, so no.

Hon NICK GOIRAN: Is the parliamentary secretary aware that it is the frequent custom and practice with amendment bills that a description of the primary purpose of the amendment is contained in the title of the amendment bill? Is the parliamentary secretary aware that that is a common practice and that the amendment that has been foreshadowed at clause 1 would be consistent with that customary practice?

Hon MATTHEW SWINBOURN: I think the honourable member's question was directly aimed at me and my awareness. No, I am not aware of that practice.

Hon NICK GOIRAN: I confess that that was not the response that I expected from the parliamentary secretary. I encourage the honourable member to take advice on that matter for future debates, because it is certainly my experience that when an amendment bill is before the chamber, and the general theme of the amendment can be captured in a few words, it is customary for that to be included in the title of the bill. Of course, it is not difficult to understand why that is the case. It helps to differentiate between bills when multiple amendment bills are put forward to amend a particular act. Parliamentary secretary, is it the government's intention to remove the provisions for bipartisan and majority support by the joint standing committee for the nomination moving forward?

Hon MATTHEW SWINBOURN: The answer is no; that is currently under review and a range of recommendations may arise out of that, but we do not want to pre-empt it at this time.

Hon NICK GOIRAN: Who is conducting that review, when did it start, and when does the parliamentary secretary expect it to be completed?

Hon MATTHEW SWINBOURN: In terms of who is conducting the review, it is the Department of Justice, but I do not have the information here about when it started and I also do not have the information here about when it will finish. I undertake to seek that information and provide it to the member later, but I can confirm that it has commenced.

Hon NICK GOIRAN: I hope that the Leader of the House is paying close attention to this because, three weeks ago, the leader indicated that she thinks that this chamber helps to create better legislation. But not if the information is not available! I am on the record, repeatedly, indicating that when there are referrals to parliamentary committees—I share the view of the Leader of the House on this—that does result in better legislation. But this type of process in which we are being expected to scrutinise important legislation, literally in the early hours of the morning, when information is unable to be provided to the chamber, is wholly unsatisfactory. We are being expected to do our job half-baked. The police commissioner does not expect to be able to do his job half-baked, but the McGowan government expects the Legislative Council of Western Australia to do its job half-baked because it repeatedly is not in a position to provide information to the chamber.

I move —

Page 2, line 2 — To insert after "*Amendment*" —

(Reappointment of John Roderick McKechnie)

Amendment put and negatived.

Hon NICK GOIRAN: Parliamentary inspector—I mean parliamentary secretary; you would make a very good parliamentary inspector, incidentally. I draw to the parliamentary secretary's attention that in his reply to the second reading debate, he referred to various documents that have been tabled in the other place in the context of some discussions about what the now former parliamentary inspector had had to say with regard to a range of things. Is the parliamentary secretary in a position to table those documents?

Hon MATTHEW SWINBOURN: Member, I am able to table the documents that we tabled in the other place previously. I have here an email chain between Michael Murray and John McKechnie, I think it is. These were the documents. I table these documents.

[See paper 352.]

Hon NICK GOIRAN: Mr Deputy Chair, I ask that those documents be circulated to members.

The DEPUTY CHAIR: The question is that clause 1 stand as printed. Hon Nick Goiran.

Hon NICK GOIRAN: Thank you. I thank the parliamentary secretary for tabling that document, which is a series of emails by the former parliamentary inspector. During the parliamentary secretary's reply to the second reading debate, he referred to a number of letters to the editor. I cannot recall how many there were, but I think that he read from at least two. Were either of those letters authored by Mr Cunningham, Ms Atoms or Mr Martin?

Hon MATTHEW SWINBOURN: No.

Hon NICK GOIRAN: No; I would not have thought so. It is all very good for Mr Quigley to perhaps arrange for some of the government's ghostwriters to write letters to the editor in a complimentary fashion on the performance of the commissioner, but it is of no comfort whatsoever to Mr Cunningham, Ms Atoms or Mr Martin—no comfort to them whatsoever.

As I indicated earlier, the opposition will not be supporting this particular appointment. We will be voting against clause 1 because after a detailed examination of clause 1, we know that the government has been unable to provide the chamber with the core document upon which it is relying. According to the government, the most important document for our consideration, and the very reason why we should provide support for this bill, is a letter from the nominating committee to the Premier of Western Australia dated 4 May 2021. The government refuses to provide that information. It is not that it does not have it available, it is not that it is covered by legal professional privilege and it is not that it is covered by parliamentary privilege; the government says that it is confidential. It says that the main document it is using to justify this bill cannot be provided to the chamber. This is the same government that promised gold-standard transparency. The Leader of the House said that these processes would help to improve the legislation of this same government, yet we as members of the opposition find ourselves in a situation in which we are once again prevented by the McGowan government from sighting a core document.

I did not expect it to happen yesterday or today, but, remarkably, we found out during consideration of clause 1 of this bill that the Premier of Western Australia did not even provide that core document to the Joint Standing Committee on the Corruption and Crime Commission. The four members of that committee in this forty-first Parliament did not get to see that document. If I were a member of that joint standing committee in this Parliament, I would not provide my support for that appointment either, if I were dealing with a government that was hiding information from me.

The government decided to embark upon this process and is asking us to support clause 1, but it expects us to do so blindfolded. Under no circumstances are members of this chamber allowed to see the letter from the nominating committee, according to the McGowan government. This is absolutely unacceptable, and is precisely why the opposition will be opposing this bill and opposing the passage of clause 1.

Hon MARTIN ALDRIDGE: I raised a question in the course of the second reading debate and I am not sure whether the parliamentary secretary replied to it. It goes to the issue of the nomination process. I understand that on 2 June, the joint standing committee replied to the Premier, advising that it had met on that day. Did the joint standing committee advise the government which members of the committee voted against the nomination put forward to them by the Premier?

Hon MATTHEW SWINBOURN: No, member.

Hon MARTIN ALDRIDGE: On what basis does the parliamentary secretary express the view, as articulated in his second reading speech, that it was a member of the Nationals WA who was unwilling to provide bipartisan support?

Hon MATTHEW SWINBOURN: The answer is deduction, member—simple deduction.

Hon MARTIN ALDRIDGE: The parliamentary secretary said "deduction"?

Several members interjected.

Hon MARTIN ALDRIDGE: Bipartisan support requires that the government members and the members representing the party of the Leader of the Opposition in the Assembly agree to meet the threshold for that bipartisan support. Therefore, if the members of the committee are a Liberal, a National and two Labor members, I assume that we will need the Labor members and the National member to agree in order to achieve the bipartisanship threshold. Could it not have been the case that a Labor member, or the Labor members, disagreed with the nomination, and therefore it is indicated that the Labor members on the committee were unwilling to provide bipartisan support?

Hon MATTHEW SWINBOURN: The member for Kalamunda voted for the bill in the Legislative Assembly, and I was here earlier today when Hon Klara Andric also indicated support for this bill. I might add that the nature of the way this bipartisanship works is about the Premier's party and the opposition party, so through a process of deduction, it is able to be concluded that it is highly unlikely that the Labor members of the committee would have voted against a position put forward by their Premier.

Hon MARTIN ALDRIDGE: This is quite extraordinary. The parliamentary secretary has just —

Hon Darren West interjected.

Hon MARTIN ALDRIDGE: Hon Darren West can stand in a moment.

It is extraordinary that the parliamentary secretary has defended the claim that he has made in his second reading speech on the basis that the member for Kalamunda voted for the bill in the other place. I suspect it is the same words that the Attorney General read into the other place before the member for Kalamunda voted for the bill—I will have a look at that later—and before Hon Klara Andric voted for the second reading of the bill, and that is the basis upon which he has deduced that it was the National Party that did not provide bipartisan support; or perhaps the members got whipped, after they had made their decision, and were told that they had to support the bill. It is just extraordinary. This second reading claim cannot be substantiated by the parliamentary secretary. The events that he has just explained happened after the second reading speech was given in this place, so the parliamentary secretary cannot possibly know that to be the case unless the Joint Standing Committee on the Corruption and Crime Commission is leaking again.

Hon NICK GOIRAN: I have one final question, parliamentary secretary, about clause 1. How many complaints during the five years of Mr McKechnie's term were received with regard to his conduct?

Hon MATTHEW SWINBOURN: Can the member clarify—received by whom?

Hon NICK GOIRAN: Parliamentary secretary, it troubles me that the complaints might be so massive in volume that we now need to clarify who might have received the complaints. But for the purposes of this exercise, did the Corruption and Crime Commission receive any complaints about the conduct of its commissioner during the five-year tenure of Mr McKechnie?

Hon MATTHEW SWINBOURN: I take the member to section 27 of the Corruption, Crime and Misconduct Act, headed "Allegation about Commissioner, Parliamentary Inspector or judicial officer not to be received or initiated", which states in part —

(1) An allegation about the Commissioner must not be received by the Commission.

Therefore, the commission does not receive those complaints.

Hon NICK GOIRAN: Is it not the case, parliamentary secretary, that the commission did receive a complaint, because the commission is well aware of the Cunningham matter and the highly publicised set of circumstances, including that set out by the parliamentary inspector? Is it the position of the government that Mr Cunningham never complained to the CCC during the five-year term of Mr McKechnie?

Hon MATTHEW SWINBOURN: In terms of what I said previously, it was a complaint about the commissioner, as opposed to a complaint to the commission about an outcome—for example, the Atoms and the Cunningham case that the member referred to. I think it is a matter of public record that Dr Cunningham and Ms Atoms were unhappy with the process the CCC followed with their complaint about how they were treated and then took that matter up with the parliamentary inspector.

Hon NICK GOIRAN: First, is the parliamentary secretary in a position to advise the chamber how many complaints were received by the commission during the period that Mr McKechnie was the commissioner from people dissatisfied about the outcome of the commission's work under his stewardship? Second, is the parliamentary secretary able to advise the chamber how many complaints the parliamentary inspector's office received about Commissioner McKechnie?

Hon MATTHEW SWINBOURN: We do not have those figures. The best I can do is undertake to try to get those figures to the member at a later date. It would probably involve looking at the annual reports of the parliamentary inspector to see what is reflected there. But those reports may not even capture all the complaints that have been made, because some of those complaints may have been frivolous or without merit. I undertake to have a look at it, but we are not going to be able to provide the exact number the member is asking for.

Hon NICK GOIRAN: I just make this point in conclusion with regard to clause 1. We can now add this to the litany of information that the McGowan government cannot provide the chamber tonight. It cannot tell us how many complaints were received during the five years of Mr McKechnie being commissioner. The government tells us that he was outstanding, but it cannot tell us how many complaints were received. The government tells us that he was outstanding, yet it cannot tell us whether, on even one occasion, he undertook his duties under part 4 of the act with regard to organised crime. Did he bring anybody in? Did he summons anybody? Did he examine anybody under the organised crime function? We are not told, because the McGowan government comes in here ill-prepared for a bill that it says is the top priority prior to the winter recess—the top priority! One of the members earlier was complaining about the priorities chosen by the government, and the government doubled-down and said that this is the most important bill as far as it is concerned, yet it comes in here ill-prepared.

When it is asked to table and provide information, it says that the information is not available. We can now add to that the list of complaints. There must have been some kind of record set tonight as to how many times information cannot be provided because "we don't know". No wonder the Leader of the Opposition wanted this matter referred to the Standing Committee on Legislation so that we might know these things. But according to the government, that is not going to happen. The parliamentary secretary provided a range of apologies, which I have every confidence were genuine and well-meant, but, ultimately, they are of no use to members of the Legislative Council when they are expected to provide their vote. Yet, as sure as night follows day, we will find that later today, Friday, 25 June, the Attorney General of Western Australia will be running around and telling everybody that the Liberal Party was trying to block the appointment of Mr McKechnie. However, the *Hansard* of the Legislative Council will reflect that his government repeatedly refused to provide information to the Parliament or, alternatively, government members were unable to provide it because they simply did not know and had not done their work, yet they expect us to support clause 1.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: I move —

Page 2, line 6 — To delete "and 2" and insert —

to 3

Hon MATTHEW SWINBOURN: I stand to make it clear that the government will not be supporting this. I think this amendment follows further amendments that the member has put on the supplementary notice paper.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: No? Sorry; my mistake, but we do not support the amendment to clause 2 that the member has put forward.

Hon Nick Goiran: Is there a reason that the parliamentary secretary can provide?

Hon MATTHEW SWINBOURN: I can give the member a reason. It is contrary to the practice of the Parliamentary Counsel's Office to bring clause 3, "Act amended", into operation at the same time as clause 1, "Short title", and clause 2, "Commencement". It makes more sense to bring in the "Act amended" provision at the same time as the provisions that are doing the amending.

Amendment put and negatived.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 9 amended —

Hon NICK GOIRAN: Clause 4 of the bill is extraordinary, but, as the parliamentary secretary will be quick to remind us, it is not unprecedented. In response to some questions asked by my colleagues during the second reading debate, he referred us all to an ancient act that had named some individuals. It is that ancient act that the government relies upon as its precedent to ignore and subvert the process that is currently the law of Western Australia and instead to mandate by force of law —

> … John Roderick McKechnie is reappointed as Commissioner for a period of 5 years commencing on the day on which … section 4 comes into operation.

I foreshadow an amendment standing in my name—I will not move it just yet, Mr Deputy Chair—but I want to explain to members the rationale behind it. I was away on urgent parliamentary business when Hon Martin Aldridge was making his second reading contribution, but I recall hearing him encourage members to contemplate the possibility of pausing this matter. I concur with the member that, at absolute best, this appointment and this process that we are embarking upon on the final sitting day, extended as it is, before the winter recess is premature. It is premature for one reason: we are all waiting for a judgement of the Supreme Court of Western Australia in CIV 2717 of 2019. It is a highly publicised expensive piece of litigation best explained by the content of the sixty-first report tabled by the Standing Committee on Procedure and Privileges. A trial has taken place and a judgement is pending. Until such time as that judgement has been delivered, we do not have the umpire's decision on these important matters of parliamentary privilege. It will make a mockery of this particular process that we are embarking upon at the moment if the judgement comes down a particular way. We do not know what that judgement will be, but like any other litigant in Western Australia who has to wait for their judgement, we need to exercise patience. But patience is not a virtue that has ever been demonstrated by the member for Rockingham and his government. They insist on things happening on their timetable, not in accordance with the timetable that every other citizen of Western Australia needs to comply with. Other citizens have to wait sometimes months and months, and sometimes even years, for judgements, but the McGowan government is above all these things and it decides the timetable.

I just foreshadow that at this early stage in the consideration of clause 4 so that members can have a proper opportunity to consider the position they might take on this matter. To be clear, if the amendment that I have foreshadowed is successful, it would simply mean that Mr McKechnie could still be appointed once there had been a resolution from the other place and from this place on the day after we all have the benefit of knowing what is contained in the judgement, and we can make an informed decision, an informed choice, at that time. Alternatively, that amendment could be defeated and we could take the approach that the McGowan government tends to prefer, which is to do things in a hurry and potentially in due course end up with egg on its face. I thought that the approach proffered by Hon Martin Aldridge, which was for us to hit the pause button here, was an eminently sensible one. We will see what the view is of the government and other members when I eventually move that amendment, but I am conscious that there is another amendment on the supplementary notice paper in the name of Hon James Hayward and there may be other questions on clause 4.

Hon JAMES HAYWARD: I move —

> Page 2, lines 16 to 19 — To delete the lines and insert —
>
> reappointed as Commissioner commencing on the day on which the *Corruption, Crime and Misconduct Amendment Act 2021* section 4 comes into operation:
>
> (a) for a period of 5 years; or
>
> (b) the term of the McGowan Government,
>
> whichever is lesser.

Hon NICK GOIRAN: Is the government going to respond to this?

Hon JAMES HAYWARD: I would like the opportunity to speak to the amendment. As we know, this decision has been made by the Premier. I think I described it earlier as sticking the bolt in the fuse box to get the thing going. The Premier is obviously dissatisfied with the fact that the fuse box has tripped out three times, so he has decided to stick the bolt in and get the thing going. I mentioned that I believe there is some risk involved in that, but that is the Premier's decision, and, inevitably, we are getting closer to that decision being made in this chamber. This amendment would simply limit the appointment to the term of the McGowan government or five years, which is what the government is proposing. That would seem to be a fair approach, given that it is an appointment made by the Premier.

Hon MATTHEW SWINBOURN: I can confirm that we will not be supporting the member's amendment. I do not think that will surprise anyone. We do not think it is appropriate to tie the commissioner's term to the term of government. Despite what members have unfairly said about the politicisation of the appointment process, the reality is that the role of the commissioner is apolitical when he is in that position. The term, as with many of these kinds of positions, is fixed for five years; it is not tied to the government of the day. The bill simply provides a five-year term, which is the term provided for commissioners under the act, and we will not be deviating from that.

Hon MARTIN ALDRIDGE: I rise to support the amendment moved by Hon James Hayward. I think it is eminently sensible. The government claims that it has a mandate for this bill. It may have a mandate for a four-year term, but it is trying to make a five-year appointment. Why is it binding a future government—a future incoming government in less than four years, hopefully—to a decision that this government is forcing through the houses of Parliament this morning? I think this amendment is a sensible solution that will make it clear that it is only one party—the Labor Party—in this place and the other place that has supported this appointment and therefore the appointment should exist only as long as the government exists.

Amendment put and negatived.

Hon NICK GOIRAN: Clause 4 seeks to appoint Mr McKechnie for a five-year period. The government has just refused the amendment proposed by Hon James Hayward. During Mr McKechnie's five-year tenure, is the government aware whether the Parliamentary Inspector of the Corruption and Crime Commission has expressed concern about Mr McKechnie's disinclination to investigate allegations of excessive use of force by police?

Hon MATTHEW SWINBOURN: Chair, we are diligently looking for information but we cannot bring anything to light at this point in time, so I am not going to be able to answer the member's question at this time in a way that is going to satisfy him.

Hon NICK GOIRAN: The question relates to whether, during the time that Mr McKechnie was the CCC commissioner for a period of five years, the government is aware that the Parliamentary Inspector of the Corruption and Crime Commission expressed any concerns about Mr McKechnie's disinclination to investigate allegations of excessive use of force. At this particular point in time, despite diligent searching, the government has not been able to avail itself of some pretty landmark reports by the parliamentary inspector and the Joint Standing Committee on the Corruption and Crime Commission. I refer the parliamentary secretary to the fifteenth report in the fortieth Parliament, presented by Margaret Quirk, MLA, and Hon Jim Chown in September 2020, entitled *If not the CCC … then where?: An examination of the Corruption and Crime Commission's oversight of excessive use of force allegations against members of the WA Police Force*. Let us put to one side the issue about the parliamentary inspector expressing any concern, or, indeed, the joint standing committee. If the parliamentary secretary has a copy of that report handy, I encourage him to turn to the executive summary on page 4. It is listed as page 4, but I am not sure that the committee had its numbering correct. Nevertheless, it is the penultimate page of the executive summary. Halfway down the page, a comment is made by the committee. Let us keep in mind that the member for Kalamunda was a member of the committee at this time and there was no minority report on this one, despite the fact that it was laid on the table on 24 September 2020. The comment is —

> The Committee was particularly troubled to learn that over the past two years, the Aboriginal Legal Service of Western Australia … has only referred a handful of matters to the CCC because the CCC very rarely conducts its own investigation into complaints about police. The ALSWA raised a number of key concerns about the CCC's lack of responsiveness to the needs of Aboriginal people, including the identification of ongoing systemic issues.

Has the Premier or anyone within the McGowan government consulted with the Aboriginal Legal Service of Western Australia about the appropriateness of the appointment of Mr McKechnie for another term of five years?

Hon MATTHEW SWINBOURN: No, member.

Hon NICK GOIRAN: Are any members of the Legislative Council of Western Australia concerned or interested in the Aboriginal Legal Service of Western Australia? Are they concerned that the Aboriginal Legal Service of Western Australia has expressed concern about this for over two years? Those two years coincide and overlap with the five-year tenure of Mr McKechnie during which the Aboriginal Legal Service of Western Australia has raised

a number of key concerns, according to the Joint Standing Committee on the Corruption and Crime Commission—not a concern, but a number of key concerns. What are they about? They are about the Corruption and Crime Commission's lack of responsiveness to the needs of Aboriginal people. Who was responsible for that? Who was at the helm of the Corruption and Crime Commission at the time? It was John Roderick McKechnie.

In the meantime, no-one in the McGowan government has decided to consult with the Aboriginal Legal Service of Western Australia. Why not? Why does the McGowan government not care about its views? Does it care that the CCC was not responsive to the needs of Aboriginal people? Does the McGowan government care about that? It does not care enough to consult with the ALS. Yet, remember, this is the top priority of the McGowan government. That is not our judgement on that matter; the government admitted yesterday that this was going to be its top priority. Once again, the McGowan government expects us to support clause 4 of the bill by naming this individual, who, according to the Aboriginal Legal Service of Western Australia, was at the helm over the two years during which the CCC lacked responsiveness to the needs of Aboriginal people. There is no mention of that. Can members find it anywhere in the government's second reading speech either in the other place or in this chamber to justify the appointment? They do not mention it. In fact, the parliamentary secretary, in his speech, to justify this legislation, simply said that this individual is "the best corruption fighter Western Australia has ever had"—the best! But we do not ask the Aboriginal Legal Service of Western Australia for its opinion, because the McGowan government does not care. If it cared, it would ask it, but, then again, perhaps it was unaware of this situation. Perhaps there are some fair-minded members opposite who are unaware of this report and the concerns of the Aboriginal Legal Service of Western Australia. Might this be a time to pause? Might this be an opportunity to reflect on these matters and say that maybe we should not rush ahead with this? Maybe there are some fair-minded members opposite who do care about the Aboriginal Legal Service of Western Australia and its views and want to investigate this matter a little further. They might investigate it, come back to the chamber and say that they have satisfied themselves that the appointment is still appropriate. But at the moment, they do not know that because they have not asked. It is not the fault of members, but it is the fault of those responsible for this particular bill. They had the opportunity to consult and they decided not to do so.

It makes one wonder whether the McGowan government actually read any of the reports of the Joint Standing Committee on the Corruption and Crime Commission from the fortieth Parliament. As I was at pains to explain during my second reading contribution, it does not take long to read through some of the parliamentary inspector's reports and the joint standing committee reports to quickly come to the conclusion that Mr McKechnie most certainly has not been the best corruption fighter in Western Australian history; indeed, the record reflects to the contrary. It is in the background of those comments that I will seek the support of members for the amendment that I will move momentarily, which I foreshadowed a little earlier in the consideration of clause 4, which simply seeks for us to pause at this time and allow the appointment of Mr McKechnie in due course. That "in due course" period has some parameters; it has two components to it. The first component is that the judgement in the litigation between the President of the Legislative Council of Western Australia and the Corruption and Crime Commission is handed down and, thereafter, there is a resolution from the other place and this place that endorses the reappointment. That is the pause button we would be hitting if we agree with the amendment for which I seek the support of members. I move —

> Page 2, lines 17 to 19 — To delete the lines and insert —
>
> > commencing on the day after a resolution endorsing the reappointment has been agreed to by both Houses of Parliament following delivery of a judgment in Supreme Court matter CIV 2717 of 2019, *President of the Legislative Council of Western Australia v Corruption and Crime Commission of Western Australia & Ors*.

Hon MATTHEW SWINBOURN: The government will not support Hon Nick Goiran's amendment. The court case is about the commissioner exercising his statutory powers under the Corruption, Crime and Misconduct Act 2003 to investigate and fight corruption. To put the reappointment on hold pending the determination of this case would set a precedent that the commissioner could not hold office while any legal challenge to the exercise of the commissioner's powers was before the courts. Section 12(1) of the CCM act already provides for the removal or suspension of the commissioner by the Governor on address from both houses of Parliament. Subsection (2) provides that the Governor may suspend the commissioner from office if the Governor is satisfied that the commissioner —

(a) is incapable of properly performing the duties of office; or

(b) has shown himself or herself incompetent properly to perform, or has neglected, those duties; or

(c) has been guilty of misconduct …

We are not supporting this amendment for two reasons. First, we do not think it is necessary due to the existence of section 12 in the act, which we think is the appropriate mechanism to deal with any question about performance of duties or misconduct. Second, we do not think it sets a desirable precedent if every time there are legal proceedings concerning the interpretation of the act or the exercise of the commissioner's power, Parliament's view is that the commissioner should be suspended, or might be suspended, from office.

Hon NICK GOIRAN: There is a big difference here because the circumstances of this matter are that the then commissioner, Mr McKechnie, has already been reprimanded once by the Standing Committee on Procedure and Privileges with regard to an indiscretion of parliamentary privilege. Despite the fact that he told people publicly that he would take a more timorous approach to this matter, the record reflects that he did the exact opposite, so much so that there has been this massive dispute in the Legislative Council. I agree with the parliamentary secretary that ordinarily there cannot be a situation in which every time somebody wants to dispute the interpretation on something, the commissioner of the day needs to stand down and be suspended, but this is no ordinary matter. These are extraordinary circumstances, and I do not think it is appropriate for Mr McKechnie to be the commissioner while this judgement is pending. I respect the fact that the government holds a different view about that matter. That said, parliamentary inspector—I mean parliamentary secretary; I really want you to have that job obviously!—is the government saying that its position in regard to the highly publicised investigation into former MPs, which I think is called Operation Betelgeuse, is that that operation can continue only if Mr McKechnie is the commissioner?

Hon MATTHEW SWINBOURN: No, member, that is not our position.

Hon NICK GOIRAN: Is it not? It is not the government's position according to its representative here today. This is the first time that we have heard this. It is not the government's position that the appointment of Mr McKechnie is some kind of prerequisite for the continuation of that operation. To be very clear: the Corruption and Crime Commission has the full support of the opposition for that operation, and it is clear from the record that it has the full support of the Standing Committee on Procedure and Privileges, so much so that the Standing Committee on Procedure and Privileges has recently invited and encouraged the CCC to access the more than 450 000 records and documents, including the much-publicised laptop. It is all available. According to the Parliamentary Secretary to the Attorney General this can be done. It does not matter whether Mr McKechnie is there or not.

I wonder whether somebody has told the Premier of Western Australia that and I wonder whether somebody has told the Attorney General that, because all the public comments have been to the contrary, and there have been these continuing false comments made. The beautiful thing about this chamber is that there is an honourable member like Hon Matthew Swinbourn here, and he knows full well that he cannot mislead Parliament. The Premier of Western Australia and the Attorney General run around saying whatever they like without any regard whatsoever, but when there are an honourable member and advisers here who bother to tell the truth, we suddenly realise that they are not going to mislead Parliament. The truth of the matter is that that operation has always been able to continue. It has nothing to do with Mr McKechnie and his reappointment—nothing whatsoever. Of course, the CCC could continue to do it. If anyone has even a basic understanding of how the CCC operates, they will understand that it has been able to continue under the acting commissioner. I entirely agree with the parliamentary secretary, and I reiterate that the opposition supports the continuation of that operation. The false comments made by Hon Darren West on Facebook during the course of this debate are reprehensible, and he would do well —

Several members interjected.

The DEPUTY CHAIR: Order, members!

Hon NICK GOIRAN: Does the honourable member see—I think it is Hon Dan Caddy—that sharing it would be an incredibly stupid thing to do, because this member needs to get some advice from a defamation lawyer. I do not think that sharing it would be an intelligent thing to do, but I will leave that to the government to work out. The last time that honourable member did something stupid, he had his Twitter account revoked. These are serious matters. The opposition supports the continuation of that operation. We always have. The Standing Committee on Procedure and Privileges has always supported it. But our position has always been that we cannot access the privileged documents. That means that if there were draft parliamentary questions, it would be a case of: "No Mr McKechnie, no the CCC, you cannot have access to draft parliamentary questions. You cannot have access to draft parliamentary speeches." There are 1 120 documents, as best that I can recall, that the expert committee of the Parliament of Western Australia has audited and determined are not available—should not be available—yet the law of Western Australia has been breached a thousand times and the Attorney General and Premier of Western Australia are running around and we, particularly Liberal members, have been putting up with this garbage for more than a year. It has been nothing but another Labor lie.

I am grateful that if nothing else has been achieved out of this process and this bill goes ahead and Mr McKechnie ends up being the head of the CCC, at least the parliamentary record will reflect that that operation was never, ever impeded by this process. We, the opposition, look forward to the outcome of the judgement, whatever that might be, and we continue to thank the hardworking members of the procedure and privileges committee for the work they did. Nevertheless, our position is that this would be an appropriate time to pause and wait for that judgement to be delivered and we seek the support of members for the amendment currently before the chamber.

Hon MARTIN ALDRIDGE: This is the last time I will speak this morning on the committee stage of this bill. I implore members that if there is one amendment on the supplementary notice paper that should be supported, and if they can support only one amendment tonight, it is this amendment. We know that the CCC has extraordinary powers. It is a powerful entity of the state. The sixty-first report of the Standing Committee on Procedure and

Privileges sets out quite clearly the abuse of power and the potentially unlawful conduct of the CCC and others, which is exactly the reason we are in the Supreme Court litigating on behalf of this chamber to protect the privileges of this place, but also to defend the law of Western Australia.

The trial has occurred, the judgement has been reserved and I suspect it is imminent. The government just needs to be a little more patient because if that judgement does not go the way of the CCC, it could have implications for the office of the commissioner. There is an acting commissioner in place. He has been doing a good job. The government has the numbers in both chambers; it has absolute control. It could pass a resolution on the next sitting Tuesday. But no, just like when this chamber considered the sixty-first report, again government members have been muzzled and, I suspect, they will not stand tonight and support this amendment, but they should. If there is any amendment on the supplementary notice paper that should be supported tonight, it is this amendment.

Division

Amendment put and a division taken, the Deputy Chair (Hon Peter Foster) casting his vote with the noes, with the following result —

Ayes (11)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon Peter Collier	Hon James Hayward	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*
Hon Donna Faragher	Hon Sophia Moermond	Hon Wilson Tucker	

Noes (16)

Hon Klara Andric	Hon Peter Foster	Hon Kyle McGinn	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Sandra Carr	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Darren West
Hon Sue Ellery	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*

Pairs

Hon Dr Steve Thomas	Hon Kate Doust
Hon Dr Brad Pettitt	Hon Rosie Sahanna
Hon Steve Martin	Hon Ayor Makur Chuot

Amendment thus negatived.

Clause put and passed.

New Clause 5 —

Hon NICK GOIRAN: I move —

Page 2, after line 20 — To insert the following new clause —

5. Section 204 amended

After section 204(4) insert:

(5) For the duration of the reappointment of John Roderick McKechnie as Commissioner, the Parliamentary Inspector is to prepare reports on the performance of the Commissioner and table those reports by no later than 30 September each year.

(6) Without limiting what may be contained in a report prepared under subsection (5), it must include —

(a) the number of complaints received about the Commissioner;

(b) the number of claims of parliamentary privilege received by the Commissioner.

By way of explanation, section 204 is found in part 13, "Parliamentary Inspector of the Corruption and Crime Commission", of the Corruption, Crime and Misconduct Act 2003. The part has several divisions, including division 3, "Reporting". Specifically, section 204 deals with periodical reports to Parliament by the Parliamentary Inspector of the Corruption and Crime Commission. The parliamentary inspector is already required by law to provide an annual report within three months after 30 June every year. This amendment specifically seeks that the parliamentary inspector provide a periodical report to Parliament by no later than 30 September every year. Members may ask why we would need the parliamentary inspector to provide a periodical report by 30 September each year. It is because it is fair to say that the reappointment of Mr McKechnie, if nothing else, has been controversial. I think members could generally agree that it has been a controversial reappointment.

The reappointment has clearly not received bipartisan support and in actual fact, as I mentioned earlier, it has received the support of no party other than the Australian Labor Party. Nevertheless, the reappointment is going ahead because the first four clauses of this bill have been agreed to, in particular clause 4. If the appointment is going

ahead and Mr McKechnie is to be the head of the CCC, despite this controversial process, it seems to me that it would be appropriate for the parliamentary inspector to provide particular oversight and scrutiny of the performance of Mr McKechnie. The report that he would provide on the performance of Mr McKechnie would include at least two things. Of course, the parliamentary inspector would be free to include whatever he likes in the periodical report but it would include at least two things. They are set out in the amendment on the supplementary notice paper, specifically in proposed section 204(6). It would require the number of complaints received about the commissioner to be disclosed—not what the complaints are but just the number, the raw data—and, in addition, the number of claims of parliamentary privilege received by the commissioner, for obvious reasons given that the commissioner has already been chastised once by the Standing Committee on Procedure and Privileges and is now at the centre of a major Supreme Court litigation in relation to this issue. I seek the support of members with respect to this idea of oversight by the parliamentary inspector specifically with regard to these issues.

Hon MATTHEW SWINBOURN: We will not be supporting Hon Nick Goiran's amendment because it would include provisions in section 204 that are inconsistent with the existing operation of the legislation and would otherwise be superfluous. The parliamentary inspector's functions are included in section 195 of the act and the inspector's powers are included in section 196. Neither provision expressly contemplates that the parliamentary inspector will be responsible for monitoring the performance of the commissioner as opposed to allegations of misconduct or the operations of the commission et cetera. The parliamentary inspector already has the function to report and make recommendations to Parliament and the joint standing committee via section 195(1)(e), as well as the power to, at any time, prepare a report regarding matters affecting the commission, and lay it before both houses of Parliament. I refer the member to section 199. The parliamentary inspector also already has the obligation to provide an annual report, which must be laid before each house of Parliament.

Hon NICK GOIRAN: I ask the parliamentary secretary to turn to section 195(1)(f) and confirm that he still maintains the advice he has given to the chamber, given that it is clear in that section that a function of the parliamentary inspector is —

> to perform any other function given to the Parliamentary Inspector under this or another Act.

Hon MATTHEW SWINBOURN: If I can summarise what I have just been told, I think it relates to the lack of connection between what the member is proposing and the actual functions that exist for the parliamentary inspector. The parliamentary inspector already has a range of reporting powers, and we feel that is sufficient for him to be able to address any number of issues that may arise with the commissioner.

Hon NICK GOIRAN: I do not disagree with the parliamentary secretary that the parliamentary inspector already has the capacity to do these things. There is sufficient scope for him to do that. He has a function under section 195 to report and make recommendations to either house of Parliament. He also has a power under section 196 to investigate any aspect of the commission's operations, or any conduct of officers, and one of those officers is the commissioner himself. I agree with the parliamentary secretary that there is already capacity for the parliamentary inspector to do that. The difference here is that this would be this chamber saying to the parliamentary inspector, "We definitely want you to be doing this for the period that Mr McKechnie is in the role."

For the reasons I indicated earlier, I seek the support of members for new clause 5.

Division

New clause put and a division taken, the Deputy Chair (Hon Peter Foster) casting his vote with the noes, with the following result —

Ayes (11)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon Peter Collier	Hon James Hayward	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*
Hon Donna Faragher	Hon Sophia Moermond	Hon Wilson Tucker	

Noes (16)

Hon Klara Andric	Hon Peter Foster	Hon Kyle McGinn	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Sandra Carr	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Darren West
Hon Sue Ellery	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*

Pairs

Hon Dr Steve Thomas	Hon Kate Doust
Hon Dr Brad Pettitt	Hon Rosie Sahanna
Hon Steve Martin	Hon Ayor Makur Chuot

New clause thus negatived.

New Preamble —

Hon NICK GOIRAN: There is a proposed new preamble standing in my name on the supplementary notice paper. I move —

Page 1, the line following "An Act to amend the *Corruption, Crime and Misconduct Act 2003*." — To insert —

Preamble

Whereas:

A. The WA Inc Royal Commission *Final Report* contained detailed proposals concerning the establishment of the Office of the Commissioner for the Investigation of Corruption and Improper Conduct so that the appointment process would not create a political appointment.

B. In enacting the *Anti-Corruption Commission Act 1988*, Parliament established a process that would not create a political appointment.

C. In enacting the *Corruption and Crime Commission Act 2003*, Parliament rejected an appointment process proposed by the Government that created a political appointment and established a process that would create an apolitical appointment with bipartisan support.

D. John Roderick McKechnie was appointed Commissioner on 28 April 2015 for a five year term that ended on 27 April 2020.

F. Premier Mark McGowan recommended the reappointment of John Roderick McKechnie in March 2020.

F. The reappointment did not have the support of the majority of the Standing Committee and bipartisan support.

G. Premier Mark McGowan resubmitted the reappointment recommendation in April 2020.

H. The resubmitted reappointment did not have the support of the majority of the Standing Committee and bipartisan support.

I. A new Standing Committee was established in May 2021.

J. Premier Mark McGowan recommended the reappointment of John Roderick McKechnie in May 2021.

K. The reappointment did not have the support of the majority of the new Standing Committee and bipartisan support.

L. In enacting this legislation, Parliament recognises that it is making a political appointment.

Hon Sue Ellery interjected.

Hon NICK GOIRAN: I am disappointed that before there is even an opportunity to persuade members, the Leader of the House has already indicated, I take it, the position of members. I cannot imagine that government members will take a position contrary to her. That said, I think that the amendment is self-explanatory. The preamble simply sets out a series of facts. If it is the case that the government does not support this particular amendment, I ask the parliamentary secretary to clarify which of the stated facts are incorrect.

Hon MATTHEW SWINBOURN: I am not going to go through the member's list and say which ones are incorrect. I am going to say simply that the government does not support the amendment. We do not think it is appropriate to include a preamble of this type. The matters that are stated are already matters of public record. The use of preambles in statutes is apparently a somewhat archaic practice. They are still used, of course, in private law instruments such as deeds or contracts. I have certainly drafted a few of them myself. The advisers here have only ever seen them used in old statutes. I have been advised that to include a preamble of this nature would be contrary to current drafting practice. These types of matters are included in the proposed amendment, and that is, as I say, on the public record, including in debates on the bill, and these matters already form part of the legislative history of the bill and may be used to assist in understanding and interpreting the legislation. We say that there is no need to include a preamble in the bill. God forbid that we revive an apparently long-abandoned drafting practice that used to occur. Member, we will not be supporting the amendment.

Hon NICK GOIRAN: The parliamentary secretary might be interested to know that the practice is not as ancient as he might think. If he were to ask the Leader of the House, who has been here for, as I recall, just over 20 years —

Hon Sue Ellery interjected.

Hon NICK GOIRAN: — the honourable member would be able to tell him that during the time that she has been a member of this place, indeed a preamble has been moved with respect to at least one bill that I am aware of, and I suspect that there may well be more than one, so the practice is maybe not as ancient as the parliamentary secretary might think.

Hon Matthew Swinbourn: I said archaic.

Hon NICK GOIRAN: Sorry; not as archaic as the parliamentary secretary might think. Nevertheless, I seek the support of members for the amendment. I think it is telling that the government has been unable to indicate which of the statements are not accurate. I could understand it if the government was not excited about the last limb in the proposed preamble, because obviously that is clearly a point of contention between the government and other members in this place. We say that very clearly what is occurring here is that a political appointment is being made. The parliamentary secretary and the government say that is not the case. In fact, I recall that the parliamentary secretary indicated that that is not the case because of the nominating committee and this infamous letter that has been prepared by the nominating committee, which this chamber is not able to see.

I could understand if government members might want to delete the final line, but it is not clear to me why any of the other facts stated in the proposed preamble might not enjoy the support of the government. In the absence of an explanation to the contrary, I seek the support of members for the insertion of this proposed preamble.

Division

New preamble put and a division taken, the Chair casting his vote with the ayes, with the following result —

Ayes (11)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon Peter Collier	Hon James Hayward	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*
Hon Donna Faragher	Hon Sophia Moermond	Hon Wilson Tucker	

Noes (16)

Hon Klara Andric	Hon Peter Foster	Hon Kyle McGinn	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Sandra Carr	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Darren West
Hon Sue Ellery	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*

Pairs

Hon Dr Steve Thomas	Hon Kate Doust
Hon Dr Brad Pettitt	Hon Rosie Sahanna
Hon Steve Martin	Hon Ayor Makur Chuot

New preamble thus negatived.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [1.49 am]: I move —

That the bill be now read a third time.

HON NICK GOIRAN (South Metropolitan) [1.49 am]: I rise on behalf of the opposition to speak to the third reading of the Corruption, Crime and Misconduct Amendment Bill 2021. The bill that is currently before the house is identical to the bill that was passed at the second reading. What has happened, however, in the intervening period of time is, as I recall, the second reading vote was taken at approximately 8.45 pm yesterday and it is now just after 1.45 am the following day. In the preceding period, the Legislative Council formed a Committee of the Whole House and interrogated this four-clause bill. The casual observer might remark that that period seems significant for a four-clause bill, and in one sense they would be right, but what is happening is significant. What is happening is the appointment of the Corruption and Crime Commissioner of Western Australia. It is being done pursuant to a process that subverts the ordinary law of Western Australia.

The ordinary law of Western Australia sees the Premier of the day, whether they are Liberal, Labor or otherwise, receive three names from a nominating committee, which is chaired by the Chief Justice of Western Australia, select one of those names and provide it to the Joint Standing Committee on the Corruption and Crime Commission, and is only ever then able to recommend that appointment to the Governor if that recommendation attracts the

majority and bipartisan support of the Joint Standing Committee on the Corruption and Crime Commission. This is a process that has been in place in Western Australia and has been tried and tested for just shy of two decades. It has worked well. Premiers of the day have not always had their appointments endorsed—that is a matter of public record—including a time when I was a member of the then government and chaired the Joint Standing Committee on the Corruption and Crime Commission, and we said to Premier Barnett that we did not agree with his appointment.

This process has been tried and tested through multiple governments of different persuasions, but it is only this government, the McGowan government, that has such arrogance that it says that the rule of law does not apply to it, and when it cannot get its way, it decides that the solution is that it will simply change the law, despite the fact that the whole construction of the process was to avoid exactly this. The whole point of attracting bipartisan support was to ensure that these appointments would be apolitical, yet the McGowan government decides to do the opposite.

Regrettably, I take this opportunity to report to the President that during the consideration of the bill by the Committee of the Whole House, we were impeded in our work. I regret to inform the President of that. The government was ill-prepared for the consideration of the bill, despite the fact that we found out yesterday that it is the top priority of the government. Despite it being the top priority of the government, it was unable to provide us with information that was key to our deliberations. No data was able to be provided on whether Mr McKechnie had, over the course of his five-year tenure, utilised the very important and extensive powers to fight organised crime—no data was able to be provided. The government was not willing to provide the advice that had been obtained by the independent Solicitor-General on the eligibility of Mr McKechnie. The government refused to provide a copy of the letter that the Premier sent to the Joint Standing Committee on the Corruption and Crime Commission, claiming parliamentary privilege, which is particularly ironic, given the circumstances of this matter. But, most critically, we were impeded in our deliberations during the Committee of the Whole House because the government refused to provide a copy of a letter from the nominating committee received by the Premier, yet it is that letter from the nominating committee that the government relies upon to say that this is why the process is not political. This is why this person is said to be the outstanding candidate, but it refuses to provide that information to the house. It refused to do so in the Committee of the Whole House. It is my view that that matter needs to be investigated by the Auditor General of Western Australia to see whether it was reasonable for the government to withhold that information. We will see whether the McGowan government decides to comply with the law of Western Australia under the Financial Management Act.

In the meantime, most particularly, we were in effect being asked to assess one individual's candidacy for this very important position, but we were unable to ask any questions, either directly to that individual or through other means, all of which could have been avoided in the event that this matter had been referred to the Standing Committee on Legislation. This is the government that promised gold standard transparency and when a matter of its highest priority was brought to Parliament, it decided that it was not going to provide information to Parliament. I very much regret that in the course of the debate that had to occur over the last two days, very robust remarks had to be made about an individual in Western Australia. But the opposition will not apologise for doing its job. If the McGowan government wants to change the law, it is entitled to do so. It knows full well that it has the numbers and total control of both houses of Parliament to do that, yet it is the duty and responsibility of the opposition to ask the questions that need to be asked. When we have an appointment of this magnitude and the government is unable to identify whether any complaints had been made about that individual, that is a dereliction of responsibility by the government. When it is unable to identify data with regard to that person's performance over five years, despite it being prioritised, that is a dereliction of duty.

I very much regret that once this bill receives royal assent in due course, the following day McKechnie will start a new term that will be forever clouded as a political appointment. That need not have been the case, but such has been the insistence of two individuals in particular, the Premier and the Attorney General. Nevertheless, President, I am pleased to report to you that the Committee of the Whole House was able to ascertain from the government that the much sensationalised operation about some former members of this place has been able to continue, notwithstanding that Mr McKechnie has not been the commissioner for more than a year, and that that would continue to be the case irrespective of whether this bill passed. I am particularly pleased about that because it not only is a matter of public record that the opposition supports the work of the CCC in pursuing that operation for any possible misconduct by former members or any unlawful conduct by members, but also once again highlights the importance of the work of the Standing Committee on Procedure and Privileges in the previous Parliament and the very difficult task it had to audit more than 450 000 documents and determine whether those documents were subject to parliamentary privilege.

On behalf of the opposition, I once again thank the members of that hardworking committee for the work that they undertook, despite all the controversies associated with it, and particularly the pressure that was wrongfully applied by the Premier and Attorney General. It has been exposed today that they have repeatedly over the course of the last year said inaccurate, false things. I encourage members in this place, irrespective of the position they took on this bill, to think very carefully about false statements that they make outside this place.

I thank the Parliamentary Secretary to the Attorney General for the way he has handled this debate. Obviously, the opposition strongly disagrees with the approach the government has taken and we will not endorse this process, which clearly subverts the ordinary law. Nevertheless, we recognise the efforts of the parliamentary secretary in the circumstances in which he has found himself.

In closing, I indicate that the opposition will not support the third reading of the bill because the McGowan government has hidden from the Legislative Council the key document that it is relying on. The opposition might have taken a different view if it had been provided with information, but we cannot provide support for a process in which we are blindfolded and the government is ill-prepared for a bill that it has prioritised. I encourage members to oppose the third reading of the bill.

Division

Question put and a division taken with the following result —

Ayes (16)

Hon Klara Andric	Hon Peter Foster	Hon Kyle McGinn	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Lorna Harper	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Sandra Carr	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Darren West
Hon Sue Ellery	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*

Noes (11)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon Peter Collier	Hon James Hayward	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*
Hon Donna Faragher	Hon Sophia Moermond	Hon Wilson Tucker	

Pairs

Hon Kate Doust	Hon Dr Steve Thomas
Hon Rosie Sahanna	Hon Dr Brad Pettitt
Hon Ayor Makur Chuot	Hon Steve Martin

Question thus passed.

Bill read a third time and passed.

CATHERINE MARRIOTT

Statement

HON JACKIE JARVIS (South West) [2.05 am]: I rise this morning to speak in support of my friend Catherine Marriott. I know it has been a very long day, but I thought it was important to make this member's statement before the winter recess. I have known Catherine, who is also known as "Maz", since 2012 when she was named the Western Australian Rural Women's Award winner. I watched her build a very successful career in roles that have included being a commissioner for the Australian Centre for International Agricultural Research, CEO of the Kimberley Pilbara Cattlemen's Association and WA program manager for the Cooperative Research Centre for Developing Northern Australia. In 2019, Maz was awarded a University of New England distinguished alumni award. At that time, Fiona Simson, the respected president of the National Farmers' Federation, said of Maz —

> Rarely do you find someone seemingly larger than life but so sensitive and caring of others at the same time … She is smart, articulate, passionate, professional, bold and loyal …

That is certainly the Maz who I know. NFF president Fiona Simson was also one of the first people who came out in support of Maz in early 2018, and she certainly needed the support because that was when it was revealed that Barnaby Joyce was a subject of a confidential sexual harassment complaint Maz had made to the federal Nationals.

In 2018, it was not the first time that I had heard that man's name linked to claims of sexual harassment. In 2014, I was the WA winner of the Rural Women's Award, and I, along with other state winners and runners-up, all gathered in Canberra ahead of the national award event. A number of us were told by a person involved in organising the event to be careful of Barnaby Joyce because he had a history of groping women. It has been a very long day so I want to make myself absolutely clear. I was the WA representative in Australia's leading award for rural women and I was warned that the then federal agriculture minister was known to sexually harass women at events.

By early 2018, journalists had obviously been backgrounded by someone and a rumour was circulating that a past Rural Women's Award winner was lodging a complaint about Barnaby Joyce. In fact, so many of the rural women's award alumni were getting calls from journalists, that we convened a teleconference involving participants from around Australia. From memory, six or eight women were on that call. What was interesting to note from that call is that a lot of the women on that call had either witnessed some form of harassment or had heard firsthand accounts from other women. Whilst a rumour was circulating about a past Rural Women's Award winner, it was actually hard to pinpoint which one it might have been.

Then, on the morning of 14 February 2018, I heard David Littleproud, who is now the Deputy Leader of the federal Nationals, on ABC radio say that anyone with a harassment complaint against Barnaby Joyce should put up or shut up. Again, to be clear, five years after Julia Gillard's powerful misogyny speech, a coalition cabinet minister thought that it was okay to publicly tell women with sexual harassment claims to put up or shut up. These are women who were building careers in rural industries and who were concerned about the impact a public complaint would have on their lives, their families, their careers and their standing in the community.

Today, I have Catherine Marriott's permission to tell her story. When Maz made her complaint, it was never intended to be made public. The incident did not happen at the Rural Women's Award event but at another professional industry event. Despite that, someone leaked the story that a past winner of the WA Rural Women's Award had made the complaint. Maz believes the story was leaked to the media by another member of the federal National Party. She was devastated when her name and complaint became front-page news. In her own words, it was one of the most frightening things she has had to live through. Catherine Marriott was then subjected to a barrage of falsehoods. I want to set the record straight this morning.

Maz had never had anything but a professional, albeit friendly, business relationship with Barnaby Joyce. This was not a flirtation gone wrong; there was nothing consensual about the incident. Maz has never been in a same-sex relationship with another politician, which was another scurrilous rumour that bizarrely did the rounds even though it had no relevance to the initial complaint. Maz did not seek publicity; she actively went into hiding, abandoning her home at short notice and taking refuge at a friend's farm for a number of weeks. She turned down sizable financial offers made by media outlets, including *60 Minutes*, to tell her story. She did not make any money from the story. In fact, the huge media attention required the services of a professional media manager, and I know that because it was paid for by fundraising events organised by me and others.

It took more than six months for Catherine Marriott to be told by the New South Wales branch of the National Party that it was unable to make a determination on her complaint, despite the report it prepared finding that Maz was forthright, believable, open and genuinely upset about the incident.

The Australian Human Rights Commission defines sexual harassment as any unwanted or unwelcome sexual behaviour where a reasonable person would have anticipated the possibility that the person harassed would feel offended, humiliated or intimidated. The Sex Discrimination Act 1984 makes sexual harassment a civil, not a criminal, offence; but in many cases, sexual harassment can also be criminal. Any victim who chooses to go down either a civil or criminal path must be prepared for the full details of the offence to be in the public domain. Is it any wonder that the very small percentage of people who actually report sexual harassment generally choose to do so via the employer of the person who committed the offence and not through the courts? In this instance, the New South Wales Nationals was deemed to be the employer and, as I said, it was unable to make a determination in the case. That left Catherine with no further avenue to make a complaint other than to seek damages in a civil case, which is a significant impost for a victim of sexual harassment.

Part of the reason I stand here this morning is as a reminder that that man did not resign or retreat to the back bench for three years because he had an affair—members will be glad to know that I have no interest in the consensual sex life of any member of Parliament—rather, he was on the back bench because he was subject to a sexual harassment investigation. Yesterday, this man was confirmed as a new member of a cabinet task force that deals with, amongst other things, the safety of women. During the 2014 Rural Women's Award, which I attended, Barnaby Joyce stood up and said —

> Australia is lucky to have so many strong, dedicated women who are leaders in their community.

President, I can assure you that those same strong women are rallying the troops and we will not let a new generation of bright young women be harassed by that man.

To the women who have not yet told their stories, I ask you to look to Catherine Marriott, Grace Tame and Brittany Higgins for the strength you need to do what is right for you. I will quote from the speech that Brittany Higgins made when she spoke at the women's march earlier this year —

> Speak up, share your truth and know that you have a generation of women ready, willing and able to support you.
>
> Take ownership of your story and free yourself from the stigma of shame.
>
> Together, we can bring about real, meaningful reform to the workplace culture inside Parliament House and, hopefully, every workplace, to ensure the next generation of women can benefit from a safer and more equitable Australia.

We have been in this place for more than 16 hours and over those 16 hours, indeed, over the past four weeks, honourable members on the opposition bench have continually told me, and some other of my colleagues who are new to this place, that we have been gagged and are not allowed to speak. I am speaking today. I am speaking because this is incredibly important to me and I want to show all of you that I am not being gagged in any way.

ASIAN RENEWABLE ENERGY HUB

Statement

HON NEIL THOMSON (Mining and Pastoral) [2.14 am]: Understanding the late, or early, hour of this morning, I feel like it is coming into Broome time, because in Broome we get up very early in the morning, so I am getting a little wound up here to start the day! I rise to discuss the Asian Renewable Energy Hub, which is a major project coming to the Pilbara region, and one that I support in principle, but that I believe should be done in accordance with the highest environmental standards, unlike the state government. The project will provide an incredible opportunity to transform the north by creating a sustainable energy source that can deliver outcomes for our iron ore industry, fertiliser industry and hydrogen industry. It can provide additional power for Port Hedland and the Pilbara by creating downstream processing utilising seawater, and renewable power to produce green hydrogen and ammonia as stored renewable energy, replacing the transmission of power to South-East Asia as outlined in the original proposal.

It is noted that the original proposal was to export power by cable. This has been replaced with the idea of a desalination plant with intake and discharge pipelines, and creating ammonia product that would then be exported via pipelines and loaded out into commonwealth waters to be shipped 20 kilometres offshore. There are also plans to replace the fly-in fly-out or drive-in drive-out workforce with a larger accommodation space, and that will be quite considerable. The project will provide three gigawatts of power generation for use for the Pilbara.

The revised project has been rejected under the commonwealth Environment Protection and Biodiversity Conservation Act, because of its unacceptable impacts on sensitive wetlands and other habitats in the region of Eighty Mile Beach. However, yesterday—or it might be the day before now; I am a little confused about what day it was!—we heard the Minister for Regional Development blaming the federal government about the EPBC act and the decision, and making rather nonsensical comparisons with the Adani project. As we move into the federal election space, we understand that the Labor Party is particularly focused on garnering as much support as it can from those who have concerns for the environment, but I can assure members that this position simply will not cut it with the environmental movement.

I know people would like to get home to their beds, but the reason I am giving this statement today is that I got a text message from Mr Martin Pritchard, CEO of Environs Kimberley, yesterday, and I want to read it into *Hansard*, because I think it is very important. It says —

> Hi Neil, We support minister Ley's decision. Renewable Energy cannot come at a cost of internationally significant wetlands, Australia is a signatory to the Ramsar Convention as well as the JAMBA and ROKAMBA. 80 Mile Beach is a major turtle nesting area, they are a threatened species. We call on the McGowan government to take a responsible approach to development, we have globally significant environmental assets and we welcome the Commonwealth government's approach to assessing development in sensitive areas like this. Cheers, Martin

That came from Environs Kimberley. There was a statement from the minister's spokesperson on 23 June and it came directly from the minister's office. It said —

> It is important to note, the original approved proposal for the Asian Renewable Energy Hub that can provide wind and solar renewable energy (approved in December 2020) remains in place.
>
> Minister Ley last week found that a revised proposal, involving expansion through the Eighty-mile Beach RAMSAR site and an ammonia plant, was 'Clearly Unacceptable' in accordance with the EPBC Act.
>
> The proponent can resubmit a revised proposal.

I have one simple comment, and I counsel those opposite who have attempted to make a point out of this to stop trying to blame others and get involved to see whether they can get this proposal to conform with acceptable environmental standards. I live in the region and I am very passionate about the environment in my region, but I am also passionate about economic development. If I were in government, if I were the Minister for State Development, Jobs and Trade, or the Minister for Regional Development, I would take every step I could to work with the proponent to ensure that this project met the requirements and addressed the environmental issues.

So that is my counsel for the morning. I hope people will take it for what it is because I believe that is the right approach. This is a visionary project, but it does not have carte blanche for a proponent to bulldoze its way through the environment, and this should not be the approach of those opposite.

SEXUAL MISCONDUCT

Statement

HON SOPHIA MOERMOND (South West) [2.20 am]: I was not going to give my statement this morning due to the time, so I appreciate members all being here; thank you. However, after hearing the awful experiences that have befallen Hon Jackie Jarvis, I felt that the time was right for my statement after all. I want to say that I see her courage and the courage of the many women and girls who are speaking out right now. It does take courage. I had

to file for a violence restraining order last Friday due to phone calls, texts and the threat of blackmail—so that is going quite well! I had to present my case to the judge. Going in there and trying to articulate what had been going on and then presenting the messages, which were not particularly flattering of me, was scary and intimidating. Most of what was in the messages was not true, by the way.

I would like to comment on the fact that Barnaby Joyce was inaugurated as the Deputy Prime Minister. Quite frankly, that is absolutely astounding considering the allegations of sexual misconduct against him. My first point here is that in light of this, we can put to rest how allegations of sexual misconduct can damage the careers of men; they simply do not. I mention this because this is one of the many strategies used to silence victims, but do not fall for it.

Yesterday, I found out about a man with an extensive history of sexual violence again women. He raped a 15-year-old girl after plying her with alcohol. He has a history. Why was he out? Why was the safety of women and girls not considered here? Why are we less important than violent men? It is well known that recidivism is common and that the violent behaviours escalate.

The last thing I would like to discuss is consent. There seems to be a lot of confusion about what consent actually means. There are six very clear points. Consent needs to be enthusiastic or engaged. If someone is drunk or under the influence of anything, they are not engaged. Consent can be withdrawn at any time. There must be no negative consequences attached to not providing consent or withdrawing consent. Consent must be fully informed. If consent is obtained due to a power differential, as might be found in a case of grooming by a paedophile or by a person of a higher socio-economic standing, it is not consent. Lastly, consent cannot be bought, guilted or bargained for. There must be no coercion of any kind involved in obtaining consent.

MARK EXETER — TRIBUTE

Statement

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [2.23 am]: Today I would like to pay tribute to Mark Exeter, who passed away suddenly last week. Mark served the state of Western Australia for more than 40 years, making a significant contribution to the tourism industry through his work in the public sector. He leaves a legacy to the south west through many projects he supported and advocated for. The member for Bunbury, Hon Don Punch, wishes to have his name added to this tribute, as he greatly respected Mark.

Mark's career in the state government saw him work for the then Western Australian Tourism Commission, the Western Australian Tourism Commission office in Sydney and the Western Australia Visitor Centre in Perth. He was also the great southern regional manager for Tourism WA before becoming south west regional manager. Most recently, he worked for the South West Development Commission. He was highly commended for his advice and involvement in the ministerial task force established when I was the Minister for Planning and Infrastructure. The task force examined the trends of introducing residential components to tourism developments on tourism-zoned land, and the implications of strata titling of tourism developments. Mark's advocacy has assisted in unlocking the south west's tourism potential, helping to get many projects off the ground, including Busselton's Underwater Observatory. His volunteer work saw him facilitate an international wildlife agreement between Bunbury and Borneo.

Although Mark is deservingly well-remembered for his work supporting the tourism industry, he is also equally known for his larger than life character. He had a big, exuberant personality and a clear passion for tourism. He loved sharing this with his colleagues, friends and students, whom he influenced over the years. He was a great friend of the south west and the WA tourism industry, and will be greatly missed. Our deep condolences to his wife, Heather, and family.

CONSERVATION AND LAND MANAGEMENT AMENDMENT BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)** on behalf of Hon Stephen Dawson (Minister for Mental Health), read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.26 am]: I move —

> That the bill be now read a second time.

The purpose of the Conservation and Land Management Amendment Bill 2021 is to amend the Conservation and Land Management Act 1984—the CALM act—to implement government policy commitments, including the joint vesting of marine parks with traditional owners. Traditional owners have long held aspirations to be joint managers of their sea and land country with a formal vesting interest.

In 2015, Parliament made changes to the CALM act enabling terrestrial reserves to be jointly vested with the Conservation and Parks Commission and an Aboriginal body corporate. The amendments in this bill extend the joint vesting provisions to marine parks, marine management areas and marine nature reserves.

Leading into the March 2017 election, the Labor Party said —

> At its heart, A McGowan Labor Government will protect the rights of Traditional Owners to their land and sea Country. We will recognise rights through improved consultation, recognition of indigenous leadership in land management, supporting participation in economic activities on Country, and the joint vesting of marine parks.

The Minister for Environment is excited to deliver on this commitment as we implement the Plan for Our Parks initiative to jointly manage and jointly vest lands and waters with Aboriginal people. In delivering new and expanded reserves, we will deliver the intended environmental, social, cultural and economic benefits with traditional owners and learn from what they have to offer.

This bill will also recognise that the conservation purpose of marine parks includes the protection and conservation of the value of marine parks to the culture and heritage of Aboriginal people. This means that in special purpose areas, referred to as special purpose zones in management plans, the protection and conservation of Aboriginal culture and heritage values will be a conservation purpose in addition to the other purposes referred to in section 13(1) of the act that are considered when determining incompatible uses. This will ensure that when we design and manage marine reserves, traditional owner cultural heritage values will form part of the legislative framework governing the ongoing management of sea and land country. Special purpose zones in marine parks will continue to be identified through the well-established consultative marine park planning processes that require the approval of the Minister for Environment and the concurrence of the Minister for Mines and Petroleum and the Minister for Fisheries.

The bill also includes amendments that clarify the regulatory framework for the management of section 8C lands. Section 8C provides for unallocated crown land and unmanaged reserves to be managed by the CEO responsible for the CALM act, with the CEO's management functions for the land specified in the order. Crown land remains subject to the provisions of the Land Administration Act 1997 and its regulations. The amendments will clarify that the CALM act and its regulations will apply only to the extent specified in the section 8C order. Specifically, part IX of the CALM act, which provides for compliance and enforcement, and the Conservation and Land Management Regulations 2002 will apply only to land subject to a section 8C order if the section 8C order specifies that they apply. Similarly, a function of the CEO in section 33 of the CALM act will apply only if it is specified in the section 8C order.

Other amendments that the bill will make are administrative in nature and will update and modernise the CALM act in accordance with the government's goal of pursuing legislative reform to reduce red tape and ensure that legislation operates efficiently. These include amendments that will remove the requirement for permit and licence forms to be prescribed and other amendments to address miscellaneous minor anomalies and omissions.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 353.]

Debate adjourned, pursuant to standing orders.

METROPOLITAN REGION SCHEME (BEELIAR WETLANDS) BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.31 am]: I move —

> That the bill be now read a second time.

I am pleased to introduce legislation that will permanently protect Beeliar Regional Park—the Beeliar wetlands—and forever exclude the area from development. This bill was presented to the Parliament in the last term. It passed the Legislative Assembly in 2019, but, unfortunately, could not be considered in this place due to the actions of delay by the Liberal Party.

This government has made significant progress to save the Beeliar wetlands for future generations. Last year, we created an A-class conservation reserve of 610 hectares. Today, we are finishing the job to ensure that these highly valued wetlands remain protected for future generations.

The Beeliar wetlands are internationally and nationally significant. The vegetation communities found within Beeliar Regional Park are significant, as they represent communities that have been widely cleared from the Swan coastal plain. A number of areas in Beeliar Regional Park contain priority flora species. The wetlands and surrounding

areas provide important nesting and feeding habitats, as well as act as summer refuges for a diverse bird population. Beeliar Regional Park also has high cultural significance for Aboriginal people, particularly North Lake and Bibra Lake, which have spiritual importance.

The bill will rezone 34 hectares in the metropolitan region scheme from a primary regional roads reserve and urban zone to a parks and recreation reservation. A small area is also being zoned urban to reflect existing local roads. The 34 hectares are a key part of the Roe 8 reserve, which is now classified as an A-class reserve.

Land for future road corridors was reserved in the metropolitan region scheme in 1963 when the MRS was created. Since that time, development across the metropolitan area has expanded considerably and we have seen hundreds if not thousands of changes to the MRS. Although there has been and continues to be significant political debate about Roe 8 and the Perth Freight Link, it is our considered view that these reservations are no longer warranted, given the environmental values of the wetlands and the government's freight strategy for the future.

In short, we are delivering on our commitment to increase the volume of freight on rail. The percentage of freight on rail has increased under the McGowan government to approximately 20 per cent and we will continue to work to increase this percentage even further. We are also working with industry to provide additional train paths for container freight and to facilitate the development of intermodal terminals. The intermodal network plan will provide for new and existing precincts to transfer freight efficiently from road to rail, further improving the competitiveness of rail. The movement of freight efficiently and safely around the state to our ports is a priority of this government. We are a trading state and we need to make sure that we can facilitate strong trade growth into the future.

The Westport Taskforce has recommended a new port in Kwinana and work is actively underway to deliver on this recommendation. So, too, is the work to plan the road and rail connections to this new port. This will not require the Roe 8 and 9 road reservations; instead, work is underway to plan the Thomas Road and Anketell Road east–west corridor.

In recent decades, we have seen the development of the eastern corridor with the Tonkin Highway projects, and new and significant development in transport planning. Tonkin Highway stretches from Muchea to just north of Byford, and works will soon commence to extend it to Mundijong. This significant corridor, together with the development of logistics parks and intermodals in Forrestfield, a new intermodal planned for Kenwick, and future possibilities of intermodals at Mundijong and Bullsbrook, show that this eastern corridor is growing in its importance to meet the freight challenge.

I would like to draw reference to the Stephenson plan. First of all, let me say that the Stephenson plan is more than 60 years old, and although it has been the fundamental guiding document for the development of Perth and Fremantle, things have changed dramatically. For example, road corridors like the extension of Tonkin Highway past Armadale and the extension of the freeways were never imagined. However, even the Stephenson plan—more than 60 years old—noted that the inner harbour had a limit and that the outer harbour would need to form a fundamental part of the Fremantle port over time.

Throughout the document, reference is made to the expansion of the Fremantle port to Cockburn Sound. On page 17 it notes —

> The port will continue to grow, with increasing emphasis on the Outer Harbour in Cockburn Sound.

On page 136, the plan states —

> There exists in the south-eastern part of Cockburn Sound area a vast hinterland capable of accommodating all the uses associated with a major port and industrial area without any of the restrictions on space, becoming more and more apparent, in the vicinity of the Inner Harbour.

It is clear the new port has always been on the agenda and part of the longer term plan. We are ensuring that we have dedicated freight corridors from the east to serve the new port.

Clause 4(1) of the bill will amend the metropolitan region scheme by deleting the primary regional roads reserve that traverses the Beeliar wetlands and a small portion of the urban zone, reserving that land for parks and recreation.

Clause 4(2) of the bill will amend the metropolitan region scheme by deleting a small portion of the primary regional roads reserve—shown in the area shaded reddish brown on the plan—and will zone that portion of land urban. This area will be zoned urban, rather than reserved for parks and recreation, in order to ensure consistency with the zoning of adjacent land. This will ensure that any use and development of land reserved for parks and recreation must preserve the natural environment and provide public recreational opportunities. Rezoning of the land through this bill will ensure that the Beeliar wetlands are preserved for the enjoyment of future generations.

The next stage of the process, after the bill has passed, will take place through a standard metropolitan region scheme amendment to engage on rezoning the remaining 84 hectares of land located to the west of North Lake Road that is currently designated as a primary regional road. We will be consulting widely with the community and other stakeholders on the most appropriate future use for this land through a separate planning investigation process.

The retention and protection of the Beeliar wetlands is an issue that we have taken to two elections. We have a clear mandate to deliver on this commitment. This bill will preserve these wetlands for future generations. I believe we need to put an end to the debate about development in this area once and for all. Let us ensure the Beeliar wetlands are protected and reserved for our use and benefit.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 354.]

Debate adjourned, pursuant to standing orders.

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT AMENDMENT BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Alannah MacTiernan (Minister for Regional Development)**.

Second Reading

HON ALANNAH MacTIERNAN (South West — Minister for Regional Development) [2.39 am]: I move —

That the bill be now read a second time.

The purpose of the Railway (BBI Rail Aus Pty Ltd) Agreement Amendment Bill 2021 is to ratify amendments to the Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017. Firstly, this will extend the deadline for the submission by BBI Rail Aus Pty Ltd, as the company under the BBI state agreement, of initial proposals for the railway project by a period of 18 months, from the current deadline of 30 September 2020 to 31 March 2022, and provide, at the minister's discretion, a further extension of up to 18 months beyond this date. Secondly, it will expressly provide, given the extension of the deadline for submission of initial railway project proposals, that force majeure may not be claimed by the company for any reason to justify any future delay in submitting the proposals. Thirdly, it will expressly recognise that the state may enact general legislation that may substitute for, or modify, clauses in the BBI state agreement relating to local participation.

The bill being introduced today is consistent with the government's vision to support the Pilbara mining industry, and with the long-established practice for significant railway infrastructure to be developed under state agreements. As a reminder, the BBI 2017 state agreement was entered into by the state and ratified by Parliament to facilitate the development by the Balla Balla Infrastructure Group of a 165-kilometre heavy haulage railway that will link a number of iron ore deposits, known as the Pilbara iron ore project, to a transhipment port to be constructed at Balla Balla Harbour. The BBI state agreement stipulates that the port be capable of exporting not less than 50 million tonnes of ore per annum.

The BBI state agreement has a term commensurate with the special railway licence to be granted under it—namely, 20 years from the grant date, with provision for two 10-year extensions. Total capital investment for the integrated mine, rail and port project is expected to be in the order of $5.6 billion, generating 3 300 jobs during construction and 900 jobs once in operation.

Since the BBI state agreement was ratified by Parliament in 2017, the proponents have continued to develop the commercial requirements to deliver an integrated mine, rail and port project, along with meeting many of the obligations contained within the BBI state agreement that concern the construction of the railway. To date, the proponents have achieved the following milestones. They have submitted reports on investigative works under clause 5 of the BBI state agreement. These are the preparatory works for geological, geophysical, geotechnical, engineering and environmental investigations and studies, as well as marketing and finance studies. They have received approval for submissions made under clause 7 for the railway corridor. They have received approval under clause 8 of the state agreement for submissions detailing the area and layout of the railway in the port area. They have received approval under clause 9 of the state agreement for a community development plan. They have received approval under clause 10 of the BBI state agreement for a local industry participation plan. They have formed an incorporated joint venture to enable the Flinders Mines Pilbara iron ore project to be developed and to be the foundation customer for the project under a long-term infrastructure services agreement.

The BBI state agreement stipulates that the carriage of ore will be for no less than 20 years and no less than 25 million tonnes per annum from the PIOP. The proponents have also reached all native title and heritage agreements with the Ngarluma, Yindjibarndi and Wintawari Guruma people upon whose lands the integrated mine, rail and port project will be developed. They have negotiated and agreed to agreements with many of the underlying landholders, including pastoralists and mining companies. They have received primary approvals for the integrated project, including environmental approvals under ministerial statements 945, 1006, 1014 and 924; environmental approvals under the commonwealth Environment Protection and Biodiversity Conservation Act 1999; and rail safety accreditation.

Despite the significant progress made to date, recent world events have contributed to delays to the project. The variation agreement will overcome the time constraints within the BBI state agreement for the submission of initial project proposals for the railway, which would otherwise have been required by 30 September 2020. In agreeing to this extension, the McGowan government reinforces its commitment to supporting projects that can deliver growth and economic development to Western Australia, noting the many challenges that we, as a state, have faced in the past year. The variation agreement also contemplates the potential for future general legislation to enhance local participation and procurement. This may apply to the railway project under the BBI state agreement in substitution for or in modification of the existing provisions of the state agreement relating to local participation. This is consistent with the government's policy to maximise local participation and the ongoing work to develop policy and legislation that focuses on the delivery of these outcomes.

Although the integrated project has yet to make a final investment decision, the proponents have commenced engagement with the local community, which has included the establishment of regional offices, a commitment to the early listing of proposed packages of work, and an undertaking that the project's head contractor and tier 1 and tier 2 contractors will be contractually obligated to appoint a local engagement resource. This is to ensure that procurement planning and decisions are made with an understanding of the capability of local industry and, when possible, for those contractors to work with local and Western Australian–based industry to maximise business engagement with the project.

As noted during the ratification of the BBI state agreement in 2017, this railway project and the integrated project will facilitate the delivery of significant positive outcomes for local communities and those businesses servicing the mining and ancillary sectors of the Western Australian economy. The integrated project has the potential to generate significant jobs in both its construction and operation phases, and I would like it acknowledged that it is a project that has had the support of both sides of the house.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 355.]

Debate adjourned, pursuant to standing orders.

PUBLIC HEALTH AMENDMENT (SAFE ACCESS ZONES) BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Kyle McGinn (Parliamentary Secretary)** on behalf of Hon Stephen Dawson (Minister for Mental Health), read a first time.

Second Reading

HON KYLE McGINN (Mining and Pastoral — Parliamentary Secretary) [2.48 am]: I move —

That the bill be now read a second time.

The Public Health Amendment (Safe Access Zones) Bill 2021 aims to deal with ongoing instances of women being confronted by protesters when accessing abortion services in Western Australia. These confrontations cause anxiety and distress for both patients and staff. Except for a few minor changes, the bill before us is identical to the bill that was debated and passed by this house late last year. However, due to the prorogation of Parliament, the bill needs to be reintroduced. Today, we are fulfilling the McGowan government's commitment to reintroduce the bill as early as possible in 2021, and we will ensure that it be made law.

Two years ago, during April and May 2019, a significant public consultation process was undertaken in which the Department of Health sought community feedback on the value of introducing safe access zone legislation in Western Australia and on key considerations in the design of a new legislative framework. We received an extraordinary level of community and industry engagement, with 4 000 responses from individuals and organisations, including support from the Australian Medical Association, the Public Health Association of Australia, and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists. Seventy per cent of respondents supported the introduction of new legislation to provide safe access zones. Approximately 50 submissions provided reports from patients and staff regarding interactions with demonstrators outside abortion clinics. Of these submissions, the majority described the experience as traumatic, stressful, overwhelming, awful, horrible, painful, hard, scary and hurtful.

Since the legalisation of abortion in WA, protesters have regularly gathered outside termination clinics. Over the past five years, the following behaviours have been observed by patients and staff outside the Marie Stopes Midland clinic: patients and staff being asked whether they were having an abortion; being approached and followed; being confronted with banners displaying emotive language and disturbing imagery; having their cars obstructed and

car windows tapped on; being forcefully provided with pamphlets and brochures; and being provided with bags containing baby items and rosary beads. All these things were done in an attempt to deter women from accessing the clinic and discourage staff from working there.

The consultation process illustrated that our existing laws are unsatisfactory and that women and staff are not adequately protected from harassment. Protests and gatherings outside abortion clinics are currently being managed by the Western Australia Police Force through the permit system under the Public Order in Streets Act 1984 and existing criminal and civil courses of action. The Western Australia Police Force issues up to 40 permits a year for the express purposes of procession to prayer vigil and peaceful prayer vigil for locations in front of the two main private abortion clinics in WA. These permits are issued to one person on behalf of a group. Although conditions may apply to these permits, there is currently no offence for breaching the conditions. Breaches are dealt with by police officers as they see fit when they attend.

It is evident from the reports of private abortion providers in WA and the number of personal accounts in submissions that there have been a number of harrowing incidents. WA's existing laws do not adequately address the full range of behaviours engaged in by people who demonstrate at or near premises at which abortions are provided. This may be explained by the nature of the demonstrations outside these premises and the unique effect on the target audience. The vulnerable nature of the audience means that they are likely to be particularly affected by the presence and behaviour of demonstrators.

In February 2020, the Department of Health, in its final report following the consultation process, recommended tailoring a specific regulatory approach to address the problem—that is, to create safe access zones around abortion services, a measure that is consistent with the approach taken around the country. All Australian jurisdictions have already introduced safe access zone legislation, except for WA. It is time to bring WA into line with the rest of the country.

Research from around the nation supports safe access zones as a way to protect the privacy and dignity of both staff and patients and protect them from harassment, obstruction and intimidation. The Castan Centre for Human Rights Law at Monash University, the University of Queensland Pro Bono Centre, the South Australian Law Reform Institute and many other organisations have all recommended that governments progress similar legislation.

The bill before us today, which adds new provisions to the Public Health Act 2016, has been modelled on the equivalent legislation in Victoria, which withstood a challenge in the High Court in Clubb v Edwards. The High Court decided that safe access zones do not impermissibly infringe the implied freedom of political communication and that such legislation is constitutionally valid. In addition, reports from clinics indicate that the Victorian model works in achieving the objectives of the legislation in facilitating a safe environment for women to access abortion services.

I now turn to the provisions of the bill. The bill stipulates safe access zones around premises at which abortions are provided, which may include abortion clinics, public and private hospitals and outpatient services such as general practitioners. However, it will not cover pharmacies that supply drugs that may induce an abortion. To date, there has been no evidence of regular protests outside pharmacies that provide this medication. The zones will ensure that anyone who wants to access abortion services, including employees working in those premises, can do so in a safe and private manner.

The bill will create a new offence of engaging in prohibited behaviour within a safe access zone, which would mean the area within 150 metres outside the boundary of the premises at which abortions are provided, including the area within the boundary of those premises. The offence will specify the circumstances in which a person is considered to have engaged in prohibited behaviour, including intimidating or obstructing another person accessing premises at which abortions are provided; communicating by any means in relation to abortion in a manner that is able to be seen or heard by another person accessing premises at which abortions are provided and is reasonably likely to cause distress or anxiety; impeding a footpath, road or vehicle, without reasonable excuse, in relation to abortion; recording by any means, without reasonable excuse, another person accessing premises at which abortions are provided without the person's consent; and any other behaviour prescribed by the regulations.

There is an exception for communication that applies to all employees and contractors who provide services to the premises. This will ensure that employees and contractors who may need to communicate with a patient or other staff about abortion inside the safe access zone will not be committing an offence. Some elements of the offence will also not capture law enforcement officers acting reasonably in the performance of their duties; journalists reporting on a matter of public interest outside abortion clinics; security or construction services working at or near the premises; staff engaged in lawful industrial action; and other similar situations for which a "reasonable excuse" is evident.

The bill will also prohibit someone from publishing or distributing a recording of another person accessing or leaving premises at which abortions are provided if the recording contains particulars that are likely to lead to the identification of that other person as someone who accessed those premises. The prohibition against publishing or distributing recordings extends to recordings taken from outside the safe access zone. The prohibition applies only to recordings made or published without the person's consent, and also provides for an exception of reasonable excuse.

The intention of the prohibition is to protect the privacy of those accessing premises at which abortions are provided and to protect them from the intimidatory conduct of taking photos, videos or other recordings with the explicit or implicit threat of publicly exposing individuals who access lawful abortion clinics or provide those health services.

The Western Australia Police Force will be the agency responsible for enforcing the new offences and for prosecuting any breaches, using their ordinary powers. A review clause has been included in the bill that will require the Minister for Health to assess the operation and effectiveness of the amendments five years after they come into force. I would like to clarify what should be obvious to everyone: this bill is not about legalising abortions. That issue was discussed and resolved by this Parliament more than 22 years ago, in 1998. The scope of the bill before us involves only one aspect: ensuring safe and private access to legal abortion clinics.

I will finish by stressing that the proposed safe access zones do not prohibit protests in relation to abortions. The bill only creates a safe buffer to move protesters away from the immediate vicinity of premises that provide abortion services. Anyone who wishes to will still be able to protest 150 metres outside the boundary of the premises, subject to the usual protest permit requirements. By creating such a buffer, we will prevent most harm to patients or staff, as well as largely avoid the current need for police officers to respond only after inappropriate conduct has occurred.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

The McGowan government believes that the right to safety, privacy, dignity and respect for women accessing health care, especially during what is a very difficult time, is a right that should be protected by this Parliament.

I commend the bill to the house and table the explanatory memorandum.

[See paper 356.]

Debate adjourned, pursuant to standing orders.

COMPLIMENTARY REMARKS

Statement by President

THE PRESIDENT (Hon Alanna Clohesy) [2.59 am]: Members, before we adjourn, I want to take this opportunity to acknowledge and thank all the staff who have been involved in this extraordinary sitting, from the Legislative Council parliamentary services right across the whole Parliament. I thank them for their patience and work.

House adjourned at 2.59 am (Friday)

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

COURTS — AVAILABILITY

144. Hon Nick Goiran to the parliamentary secretary representing the Attorney General:

I refer to my question without notice asked and answered on 26 May 2021 and the Parliamentary Secretary's request that I place the final part of my question on notice, and I ask:

(a) will the Minister table the briefing note or other documents received from staff or the department in preparation for the roundtable meeting;

(b) will the Minister table the minutes and/or documents recording the outcomes from the roundtable meeting on 18 May 2021; and

(c) if no to (a) or (b), will the Minister undertake to comply with section 82 of the *Financial Management Act 2006*?

Hon Matthew Swinbourn replied:

(a)–(c) Material prepared for the roundtable discussion comprises documents which were prepared for the Attorney General's ultimate discussion with cabinet ministers. These discussions are yet to take place and the Attorney General is not in a position to disclose material which would form the basis of a submission to cabinet ministers. Once cabinet ministers have considered and made a decision, the Attorney General will make public the McGowan Government's response to the issues considered at the roundtable meeting.