

CORRUPTION AND CRIME COMMISSION AMENDMENT BILL 2012

Second Reading

Resumed from an earlier stage of the sitting.

MR J.R. QUIGLEY (Mindarie) [3.58 pm]: As I was saying, the exceptional powers legislation, which was very strong legislation, had fallen into disuse because the Commissioner of Police gave up after Aboudi took the matter to the High Court and challenged the constitutionality of it. I refer to a quote from CCC Commissioner Roberts-Smith in his evidence to the Standing Committee on the Corruption and Crime Commission, at page 85 of the committee's tenth report —

The granting of exceptional powers that WAPOL have only sought to exercise twice, the last time two years ago, reinforce their redundant nature and question their usefulness.

It was the police who gave up on the use of the exceptional powers legislation, which has seen organised crime get ahead of the game. The Parliament gave them these strong coercive powers. Superintendent Carver—who I am sure not even the Premier would have the temerity to describe as soft on crime—is the officer in charge of the organised crime squad and was responsible for cracking more clandestine drug laboratories in Western Australia than any other policeman before or since. I refer to his quoted evidence to the committee at page 168 of the same report, which reads —

Having another agency investigating organised crime in this state would only confuse things. It would be easier if sections of the CCC act were changed to allow investigations on the request of the Commissioner of Police to the CCC for exceptional powers and if those powers were broadened for greater use. If the CCC cannot assist and our own capabilities are inadequate, as we have found them to be in the past, other avenues and ways will have to be found, including utilising other law enforcement agencies such as the ACC and the AFP. The CCC will have a stake in fighting organised crime by way of coercive hearings and the utilisation of technical ability not presently held by WAPOL.

He did not support, in any measure, what the Premier is proposing. I turn now to another portion of Superintendent Carver's evidence. Superintendent Carver said —

Serious organised crime fighting is a very expensive business to get into ... I am also very cognisant of the fact that money is finite within WAPOL and that it needs to be distributed across the whole organisation. May I also be so bold as to say that if some funding were to be made available, it be quarantined or tied specifically to the fight against serious organised crime. If this is done, the results will only continue to get better.

That is why we support the transference of minor misconduct matters to the Public Sector Commission, that is why we support the transference of the educational function to the Public Sector Commission and that is why we support the quarantining of savings to the serious organised crime squad, as urged by Superintendent Carver.

On the suggestion of duplication by way of having two bodies looking at the same matter, the very experienced jurist and former Parliamentary Inspector of the Corruption and Crime Commission, Mr Chris Steytler, QC, said —

Human experience suggests that, when separate bodies are tasked (in a comparatively small city) with the same function, there will be competition between them, with resulting inefficiency and duplication of effort. This might especially be so when one of the two bodies has the responsibility for investigating misconduct and corruption on the part of the other.

That is why we say that the provision proposed in this bill will ultimately be a free kick to organised crime in the same manner as the abandonment of the coercive powers under the exceptional powers legislation has been a free kick to organised crime. Organised crime has got ahead of the game because people have given up. The Premier says, "We'll just reinvent the whole wheel and say we're tough on crime and you are weak on crime." What is the government saying? Is it saying that Superintendent Carver is weak on crime? What a joke! He is a policeman's policeman who is regarded in the police force as a policeman's policeman and he, if members read the report, is advocating throughout against the government's proposals.

I come back again to repeat on this very subject what WA Police Commissioner Karl O'Callaghan said —

If the Commission engages in joint operations with WA Police, the Commission, notwithstanding its appreciation of the risk of the connection between organised crime and public sector corruption, will be collaborating with those it is obliged under the CCC Act to oversee. Furthermore, any agency that investigates organised crime runs the risk of itself being infiltrated by corruption.

Just on the first of those two points—that is, “notwithstanding its appreciation of the risk of the connection between organised crime and public sector corruption, will be collaborating with those it is obliged under the CCC Act to oversee”—we very much look forward to the contribution of other wise heads in this chamber who have experience on committees and other matters on this very point; that is, the danger of taking away the independence of the CCC in overseeing crime. What chance have we got in this city of having rigorous investigations into police misconduct by the CCC if it is collaborating with the police? I have already demonstrated, by the documents I tabled earlier concerning the arrest of the 17-year-old girl in my electorate, the CCC’s reluctance to look at the matter when the mother approached the CCC and that it just flicked her away. This is about not just the CCC’s reluctance to look at the matter, but also when I wrote to the CCC about the matter, it offensively wrote back to me as a parliamentarian asserting that I was threatening the CCC.

I was not going to take the matter any further, other than mention that in this speech, but I have been approached by members from both sides of the chamber who have said that this is *prima facie* a breach of privilege of this chamber. Because I am saying I am going to raise a matter in this Parliament and the CCC is seeking to threaten me by saying that I am threatening it and seeking to intimidate me from raising it, members have urged me to take that matter to the Procedure and Privileges Committee. It is not a matter of me feeling particularly threatened because I have stood in this chamber and said that, but what about other members of this chamber? They will be inhibited themselves from taking matters to the CCC on behalf of their constituents knowing that the likely response from the CCC is intimidation. That should be a matter for the Procedure and Privileges Committee and that is where I will refer it on behalf of all members and not just myself. As I have previously mentioned, the CCC sought to do that to the former Parliamentary Inspector of the Corruption and Crime Commission, Mr McCusker, when he was going to report back to this Parliament on serious failures of the CCC. As I mentioned earlier, they shot down to the Supreme Court to injunct him from reporting back to this Parliament. What a disgrace! I remind members of the Parliament, as one member reminded me, that in this particular case the young lass who was arrested, and I say falsely arrested—she had done nothing wrong and they have given her a ticket for passive resistance, whatever that means—is by her account, and I have seen her, 44 kilos and five foot high. She is a wee slip of a thing. Constable—I will not mention his name; he is entitled to the presumption of innocence the same as all people—is a massive mountie who grabbed her arm up behind her back, threw her to the ground at the Clarkson community centre, which the member for Ocean Reef well knows, and then restrained her for a considerable time in handcuffs until a van came all the way up from Joondalup. What a bully! He then coerced her into signing a consent statement for the taking of identifying particulars under the Criminal Investigation (Identifying People) Act on threat of not releasing her from an adult cell until she so signed. These police are meant to be out there protecting us from burglary and hoons on the road and not sitting on a girl’s back until a van comes all the way out from Joondalup. As I pointed out to the CCC, that amounts to assault and deprivation of liberty. It is a very serious matter. I will not mention the constable’s name because he is entitled to the presumption of innocence, which I extend to him. The CCC did not want to look at it; they just flicked the mother away. When I raised it with the CCC, as I said, they sent me a personal confidential letter saying that I was threatening them.

There is a culture in the CCC to not look at complaints against the police, as identified by Hon Chris Steytler, QC, in his report to which I earlier referred. Out of the 381 complaints the CCC received between July 2009 and March 2011, it looked at one. Now we are going to put onto the CCC, without any extra resources, the whole jurisdiction of looking at organised crime. Also, included in the legislation is the power to grant these officers the right to undertake controlled operations with assumed identities and the ability to buy and sell drugs et cetera, as the police do already, without any independent oversight apart from the parliamentary inspector. We do not have a parliamentary inspector at the moment; we have an acting one. Even when we get a full-time one, he has a staff of one manning the office, Mr Murray Alder, who just receives letters. They are not in a position to do that. They said that if this legislation comes through and if there is to be true independent oversight of the operations of the CCC under these proposals put forward by the Premier, then the parliamentary inspector will need a massive increase of resources to properly independently audit the CCC. That is not proposed. It is not proposed in the budget.

This is very, very serious legislation. What we are looking for in the Premier’s response to the second reading debate is that he give an undertaking that this debate will not be guillotined. This is one of the most serious pieces of legislation to do with the fight against organised crime. It is a long piece of legislation that will require detailed examination when it comes to the consideration in detail stage. I think many people right across the chamber will want to make a contribution to this debate. The current act has 232 pages covering 227 sections plus three schedules. Our fear is that because of the examination in detail that this bill will require, there could be some attempt to guillotine the debate on this most important piece of legislation, which if passed in its current form will not only constitute a free kick to organised crime in this state, as has the abandonment of the exceptional powers legislation, but also stand as a massive conflict of interest between the body that is meant to be overseeing the police and the people who are investigating organised crime. I go back to the passage relating

to Dr Karl O’Callaghan’s evidence that there will be a massive conflict of interest—there is no getting around it. There is no getting around it by saying that we will have a separate assistant commissioner; there is no permanent post for a separate assistant commissioner. The assistant commissioners are barristers who work part time. In any event, the legislation states that if the commissioner of the CCC is absent from the jurisdiction, all his powers of investigation will be vested in the assistant commissioner. It could be that the assistant commissioner who is given the jurisdiction to look into complaints against the police suddenly becomes the acting commissioner for the purposes of investigating organised crime. That is a dreadful concept.

I can see the attraction for the government and the Premier to say that the CCC has to do something really useful and not muck around as it has done with minor misconduct matters, such as the public servant who was looked into because of toner cartridges. That is properly the fiat of the Public Sector Commission. The opposition agrees with that; however, we believe the savings there should, as Superintendent Carver implored, go to the organised crime squad and be quarantined. The exceptional powers legislation should be fired up so that people can be brought in and coercive powers should be applied against organised crime.

I talked earlier about forensic competency. Look at what happened when it tried to use the exceptional powers against the Coffin Cheaters. I think it was the Coffin Cheaters who were involved in a big fight at the motorplex. People said that they did not quite know what had happened or that they were drunk and could not quite remember. The commission said that they were not truly answering the questions, so it decided to send them to the Supreme Court on contempt for failing to answer them. When they sent the notice to the Supreme Court for failing to answer the questions, they did not particularise which questions stood in contempt of the commission. The court threw it out. Criminal procedure 101 means that a person cannot be prosecuted for perjury or contempt without identifying the exact question and the precise answer they gave. The commission’s forensic skills in pursuing organised crime were shown as less than wanting—they were shown to be pathetic. Taxpayers have invested money in this and when it got to the barrier, the CCC failed miserably and then sought to blame the Supreme Court for the delay. It made the Chief Justice fairly risible. I have his letter from the hearing. The Chief Justice said he was never advised by the CCC that the matter was an urgent matter. The Supreme Court has an expedited list and could have dealt with it in a timely matter. The CCC sought to blame the Supreme Court of Western Australia for delay in the matter and for letting the bikies get away with it. No wonder the Chief Justice was risible. The opposition rejects the absolutely brainless chant that it is soft on crime.

MR J.N. HYDE (Perth) [4.13 pm]: I also share great concerns about the amendments that are proposed in the Corruption and Crime Commission Amendment Bill 2012. I agree with a number of the amendments. However, having been involved in the oversight of the CCC since its inception and having sat in Parliament during the passing of the original legislation and then been involved with some of the amendments—I remember Hon Cheryl Edwardes sitting in front of where I sit now being consulted on a number of amendments and that changes were made to the act during that debate—I urge members to think clearly about this bill and to consider the amendments that are being put forward by opposition members and others.

I will start with a quick overview. I have a strong belief not only because I am the current deputy chair of the joint standing committee on oversight, but also because of my more than 12 years’ experience in this field, that the endorsement of the committee’s unanimous bipartisan view that transferring the role for organised crime for the CCC to work with the police will not work. I have a strong view that by undertaking this, we will increase organised crime and increase the efficiency of organised crime in this state.

The other issue we need to concern ourselves with is the impact on the budget. Economically, this is the most inefficient way to tackle the problem. If we concentrate on the outcome that we want as members of Parliament and citizens, which is to decrease —

Quorum

Mr J.R. QUIGLEY: Mr Deputy Speaker, I draw your attention to the state of the house, in particular, the fact that the minister handling this legislation, the honourable Premier, has just abandoned his post and walked out on this important debate.

[Bells rung.]

Mr J.R. QUIGLEY: The Premier has walked out and abandoned his post, and he was the person responsible for this legislation. It is a disgrace.

[Quorum formed.]

Debate Resumed

Mr J.N. HYDE: I note that officers from the department are here. I certainly hope that the Premier will take up my suggestions before we get into consideration in detail. I wish to address some of those issues. I have grave concerns about the education role of the CCC being given to another body. I fully understand and support the

movement of minor matters of administration to another body but best practice in tackling corruption around the world is that the anti-corruption body is a much better body when it has responsibility for the education role. When it has to go into workplaces, when it has to deal with police and members of Parliament and work with them on education to prevent corruption, the body itself not only gets a greater understanding of how to prevent corruption but also gets a first-hand understanding of how corruption is or may be occurring and where the holes may be. I strongly urge the government to reconsider this proposal to take the education role away from the CCC. People have misgivings about the CCC being an elite body and out of touch. Once we take the education role away, it is more and more isolated from the day-to-day running of the public service, Parliament and the police.

I have an amendment on the notice paper relating to the role of the Joint Standing Committee on the Corruption and Crime Commission. I seek the Premier's view on this in his response. The amendment seeks to insert proposed new clause 131A, with the effect that instead of the current situation in which the committee stops work once Parliament is prorogued or the Legislative Assembly is dissolved, the work of the committee continues. In Queensland, the Parliamentary Crime and Misconduct Commission continues to operate, and there is a very good reason why that happens. The work of oversight does not stop once Parliament is prorogued, once we go into an election campaign or once we have a hung Parliament with no decision having been made on the new government, in which case caretaker mode continues and Parliament does not sit for another month, as happened recently. There are many strong examples of anticorruption work continuing when this place is not sitting. The need to appoint a commissioner, assistant commissioners and a parliamentary inspector continues. I will give an example. I am clearly not able to discuss any current issues regarding the lack of a parliamentary inspector. I offer the situation in which the committee has performed its role in responding to the Premier with an endorsement of a commissioner or a parliamentary inspector and then the government does not act on that for whatever reason. So, we could be in a situation during an election period in which we do not have a commissioner or a parliamentary inspector. As is the normal role of the committee, and as we saw under our chairman, the Liberal member of Parliament Hon Nick Goiran, the chairman was able to advocate to the Attorney General and the Premier for an appointment that our committee had endorsed in a prompt manner, but the government had not progressed. By having the committee still in the role, that very important oversight role is able to continue. This works for a number of reasons. I have had advice in this place, and our Clerks have advised us, that this amendment is needed in Western Australia to achieve what happens in Queensland, which is done through standing orders. I seek the Premier's comments on that aspect.

Also pertinent to that is the existing amendment in the act under section 216A, which in subsection (3)(b) refers to the Anti-Corruption Commission. From my reading, I cannot see why that reference to the old ACC is still there. It may have been pertinent when we changed over the act originally in 2003, but to me it seems superfluous. If there is a reason we still need to refer to the same powers of the Anti-Corruption Commission, and if it has not been included in the previous act amendments and these act amendments, I seek some explanation. I propose that the whole of subsection (3) be deleted, and I hope this will be accepted in the same spirit that my amendment to enable the committee to continue on while Parliament is not sitting is accepted.

I also have concerns regarding the sections on the role of the parliamentary inspector. We do not seem to have addressed the situation of the role of the parliamentary inspector in overseeing the reference panel. If we have the new situation of the reference panel with the CCC and the police commissioner working together, under the existing powers of the parliamentary inspector he does not have the same rights and powers over activities of the police. Surely if the police and the CCC are working together, we cannot oversight what one person on the team is doing without being able to oversight the role of the other person. I strongly believe that this section would need to be amended or some sort of explanation given that if the reference panel scenario is to be adopted, we need to enhance the powers of the parliamentary inspector. As has been discussed, the resourcing has to be discussed in relation to this bill; we cannot increase the role of the CCC without doing so. Let us be very clear that what is proposed here is very expensive. I may not get a chance to speak on it in detail today, but I urge members to read the joint standing committee's unanimous and bipartisan tenth report of 9 September 2010. Fighting organised crime is expensive; it is unbelievably expensive. We detail it. Superintendent Charlie Carver details it. The former parliamentary inspector Chris Steytler details how expensive it is. There is a telling comment from Charlie Carver that if an organised crime emergency comes up, the police service in WA actually has the ability to draw on 5 000 staff very quickly; the CCC does not. We need to understand, I think, that in the development of the fight against organised crime, why the WA police service is seen as being exceptionally good in not only a Western Australian context but also in an Australia-wide context. It does not make economic sense to be suddenly providing for a new organisation to have police working for it in this role, when that organisation has publicly said it does not want that, in terms of finance and of public sector management of those employees.

Another area of the legislation I am a little puzzled about is that we seem to be deleting section 226, which refers to a review of the act. One of the good parts of legislation in recent years is that the Parliament has inserted a

mandatory sunset clause or a review of acts. My reading is that we are seeking to delete the old requirement for a review of the act rather than amending it by putting in, say, a five-year sunset clause. I think it is very healthy for the Parliament to say that in five years we should review the act. It is a discipline in making the Parliament look at legislation. This is very, very important legislation. Both my government and the current government have been tardy in not getting around to these amendments until 2012.

I refer to the foreword of the tenth report of the Joint Standing Committee on the Corruption and Crime Commission by the committee Chair's, Hon Nick Goiran, MLC, where he states —

There is an undeniable attraction in the proposition that the CCC should be doing more to combat organised crime. The challenge for this Committee has been to unpick this proposition and return to the conceptual origins of the CCC, while at the same time informing itself as to the level of organised crime in Western Australia ...

Let all of us who were involved in politics prior to 2001 remember that a stronger anti-corruption body was endorsed by the people of Western Australia at the election in 2001 because the people of Western Australia wanted a strong body oversighting the police. That is the core aim of an anti-corruption body in Western Australia. From a variety of ways of looking at this legislation, this move to set up the reference group panel actually dilutes that very important oversight role. I quote further from the Chair's foreword —

In the final analysis, it is the Committee's firm view that there are significant shortcomings in the Reference Group Model. The Committee concludes, after the benefit of reviewing the available evidence, including analysis of ICAC in Hong Kong, that the CCC's crime fighting role (as distinct from its corruption fighting role) is best left to its present function under the CCC Act, which is to confer Exceptional Powers upon the WA Police to fight organised crime.

The Committee believes it would be a mistake for the CCC to be given an expanded jurisdiction to fight organised crime along with the WA Police. The Parliamentary Inspector concurs with this view. The CCC must remain authentically independent from the WA Police. The CCC's most important function is to ensure that corruption in the WA Police is not allowed to flourish and propagate. The CCC can only effectively discharge this obligation if it remains authentically independent from the WA Police and maintains its reputation for integrity.

In this report, the committee quite openly includes the later views of the Commissioner of Police and the CCC in support of the government's position, so I urge people to read the report in its entirety. I conclude the Chair's foreword as follows —

If any reform is to be considered in amending the CCC Act, the Committee strongly recommends that such reform be limited to improving and increasing the access of the WA Police to the Exceptional Powers under Part 4 of the CCC Act, with the CCC remaining the gatekeeper to such powers.

It is a myth to say that the Corruption and Crime Commission is not combatting organised crime. There have been examples of the CCC working with the police under the current legislation and with its current responsibilities that have enhanced operations and made WA Police better at tackling organised crime. They have a strong role there, but it has been a better role because they are also independent of the WA police force. We have only to look at the example in New South Wales of the former assistant director of the Crime Commission Mark Standen, who has been jailed for involvement in drugs. The temptations for people who work day to day with organised criminals are huge. All the best advice understands that. All the best research into tackling organised crime recommends incredible firewalls and ways of operating so human beings are removed as far as possible from temptation. The issue of undercover operatives is a huge area of concern. The impact on their own lives and the temptation for them, through impersonating people who are working on the dark side, to move to the dark side themselves and engage in the behaviours that they are fighting is huge. It is something that has to be tackled as not only a manpower issue but also a psychological issue, with counselling and briefing. It is a very expensive undertaking to have an efficient organised crime-fighting body.

The report of the Joint Standing Committee on the Corruption and Crime Commission acknowledges, in many of the issues raised, how much more effective it would be if a larger sum of money was provided to WA Police to combat organised crime and that it would achieve a better result than having that money go to creating a new body or undertaking within the CCC. The experience of the Commonwealth Heads of Government Meeting, which the federal government funded and for which the state government found a little more money, was that it brought into and kept in WA a number of technologies and hardware that have significantly enhanced the organised crime-fighting capabilities of WA Police. Members have also got to understand, just as every other industry in WA is under pressure because of the mining boom and its effect on staff, wages, and expertise, that organised crime fighters are also elite employees and there are many bodies in Australia and overseas that want them. The WA Police now offer the ability to work with the best technology, the best equipment and better

working conditions since the additions from CHOGM and elsewhere. But if we set up in our own backyard an alternative employer, we all know the CCC will want to poach the best of the best as well, so we will be cutting our own throat. The police service, which is already under threat of losing its organised crime specialists interstate and overseas, will now have a cell within the CCC that will add to that pressure.

There are very huge economic impediments to this legislation. There are some very good amendments in this bill that are well needed and, as I have detailed, there are others that should be in here. I hope the Premier can give me some comfort on those. However, I support the opposition's position that unless this reference group model is fixed up, we cannot support this legislation in its entirety. There is some serious work to be done here. The member for Churchlands and I sat together on the oversight committee briefly in 2001–02 and I think she understands the real world of anticorruption. I urge the other independents and members of the Liberal Party to also consider this legislation carefully.

DR A.D. BUTI (Armadale) [4.35 pm]: I rise to contribute to the debate and continue to prosecute our opposition to the ill-conceived Corruption and Crime Commission Amendment Bill 2012. Our main opposition relates to one of the main purposes of this bill, which is to give the Corruption and Crime Commission an organised crime function by providing it with exceptional powers to assist in the police investigation of organised crime.

Other speakers, particularly the member for Mindarie, have outlined the development and the history of the CCC; the member for Perth mentioned that it was a major platform in the lead-up to the 2001 election. The CCC, of course, had forerunners. It was preceded by two earlier anticorruption commissions: the Official Corruption Commission, which was in existence between 1988 and 1996; and then the Anti-Corruption Commission from 1996 to 2003. The Official Corruption Commission was established by the Dowding Labor government in the period of what is known as the WA Inc controversy. It, of course, had flaws in its structure and operations, as did the Anti-Corruption Commission. That led to the creation of the CCC, which has been operational since 2004 when then Attorney General, Jim McGinty, brought in the appropriate legislation.

If one goes to the CCC website, one finds that the commission's jurisdiction covers more than 135 000 Western Australian public officers in some 550-plus public agencies that include government departments and boards, universities and local governments. More importantly, Western Australia Police also falls within the commission's jurisdiction. The jurisdiction of the CCC is very wide. As stated on the website, the two main purposes of the CCC are —

- To combat and reduce the incidence of organised crime. While the Commission does not itself investigate organised crime, it can grant the Commissioner of Police exceptional powers not normally available to police to investigate organised crime. The use of these powers is authorised and monitored by the Commissioner.
- To reduce the incidence of misconduct in the public service. The Commission's Corruption Prevention, Education and Research Directorate works with agencies to strengthen their corruption resistance and minimise the risk of misconduct.

The member for Mindarie outlined that our major concern is that the bill before the house gives the CCC an enhanced investigative ability in regard to organised crime.

One must ask: why is the Premier doing this? Does he not have confidence in the ability of the current Western Australian police force to investigate organised crime? In the Premier's response to the opposition's contribution to this bill we would like to hear whether he is confident that the Western Australian police force can investigate organised crime. If he is not confident, why is he confident that if he gives this increased power to the CCC—which has not had this power since its inception in 2004; it was never the purpose for the establishment of the CCC—it will do a better job than the Western Australian police force? It is very difficult to be confident that the CCC could do a better job, and I will shortly outline why.

But the other big issue is that the Premier, as shown by his very superficial interjection to the member for Mindarie earlier in the debate, does not seem to get the conflict of interest. He just did not seem to understand that in the view of the public probably one of the major functions of the CCC is to try to stamp out corruption in the police force. If we went and asked members of the public about the CCC, they might talk about corruption of politicians. I bet they would say that the CCC should be focused on allegations of corruption or abuse of power in the police force. Under this proposed bill, in which there is a close relationship between the police and the CCC in the investigation of organised crime, how will the CCC then be able to undertake an independent and original investigation into allegations of abuse in the police force? It is impossible to argue that the CCC will have a perception of independence and will have actual independence in investigating allegations of police corruption or police abuse when they are working in tandem in the investigation of organised crime. It is just not possible. It would be like a trustee, as I am sure the Premier would understand; a trustee has to be independent

and not engage in a conflict of interest. There will be a conflict of interest if the CCC is working in partnership with the police force in investigating organised crime and at the same time the CCC is investigating complaints of police corruption. That was outlined in the tenth report of the Joint Standing Committee on the Corruption and Crime Commission, which I will refer to later in my contribution.

The member for Mindarie mentioned the parliamentary inspector's report concerning the procedures adopted by the CCC when dealing with complaints of excessive use of force by police, which was tabled in this house on 8 September 2011. That was an interesting report. It was by former Supreme Court judge Justice Steytler, who is no longer in the position of parliamentary inspector. As relayed to the house by the member for Mindarie, page 28 of the report by the parliamentary inspector mentions that he was troubled by the information provided to him by the CCC, because it revealed that in that period, between 1 July 2009 and 31 March 2011, the CCC received 381 complaints of use of excessive force by WA police but independently investigated only one of those—one out of 381 complaints. He went on in the next paragraph to state —

Moreover, it seems that this state of affairs extends to complaints which, *prima facie*, are both serious and credible. Each of the complaints made in the two incidents —

That he describes earlier in the report, and I will refer to one of them shortly —

... seem to me to fall into that category. Furthermore, the incident involving Mr Quartermaine plainly fell within that category, as the CCC ultimately recognised, but this was, as I have said, investigated only after my intervention, some years after the complaint was made.

There was only one complaint that the CCC investigated without being prompted.

Page 13 of the parliamentary inspector's report refers to the first incident, which involved a middle-aged woman. He then refers to another incident that involved a man and a woman. This came up last year in a matter of public importance that we brought before the house. I know this incident very well, because the man involved is a former colleague and is still a current friend of mine, as is his partner. In his report the parliamentary inspector briefly outlines what happened. On a particular night in Fremantle in November 2008, Professor Cunningham, who is a professor of law at the University of Western Australia, was walking near the Esplanade Hotel in Fremantle with his fiancée to celebrate his birthday. Professor Cunningham and his fiancée were charged with obstructing police and other offences. What I am about to describe is not hearsay, because I saw it with my own eyes. I went to the court hearing and closed-circuit television footage was played. What we saw first were three men walking towards the Esplanade Hotel in Fremantle. They seemed to have had a few too many drinks but were not disturbing anyone. One of them fell into the flower bed or the bushes outside the Esplanade Hotel. Mr Cunningham and his fiancée were walking from the Esplanade Reserve towards the men. Mr Cunningham saw one of the individuals lying face down in the bushes. He climbed the small retaining wall and went to pick up the man who had fallen in there, while one of the other men who had probably had too many drinks came up behind him and pushed him into the bushes. In the meantime, the police arrived. Mr Cunningham was unaware that the police were there, but Mr Cunningham's fiancée had some words with the police officers; they were words to the effect of "Why don't you go and fight real crime and catch some real criminals." One of the police officers said to Mr Cunningham's fiancée, "Look; be careful or I'll give you a move-on notice." By that time Mr Cunningham had walked away, because he was unaware that the police were there. His fiancée remarked to the police, "You can't give me a move-on notice; I live in Fremantle." She then sought to walk away—this is on CCTV footage—when one of the police officers grabbed her arm forcefully and drew her towards him. By then, Mr Cunningham had turned around to see that his fiancée was being held forcefully by the arm by the police officer. He then rushed back. Mr Cunningham has a slight build. All he did was raise his finger and state to the police, "What are you doing? I'm her solicitor." The other police officer came up behind Mr Cunningham and forcefully pushed his hands behind his back. Both Mr Cunningham and his fiancée were then pushed out of the vision of the CCTV footage.

What was then relayed in court, and agreed to by the police officers, was that the police officers sought reinforcements. I have no idea why. Another two or three police cars arrived. Mr Cunningham and his fiancée, who were by that stage on the ground and unable to move, were then tasered. This is not denied by the police. They agreed in court that this happened. Mr Cunningham and his fiancée were then put in the police wagon and taken to Fremantle Police Station where they were questioned. When Mr Cunningham requested medical treatment, which he is entitled to under the procedures for the use of a Taser by police in Western Australia, he was told in language that I cannot repeat in this house where he should go. He made a complaint to the Western Australian police force and received an unsatisfactory response. He then made a complaint to the Corruption and Crime Commission. I should add that when Mr Cunningham and his fiancée were being put into the police van, two or three people were observing what happened from the balcony of the Esplanade Hotel. They yelled out to the police that they had filmed what had happened. I am told that the police then visited these people. Whatever was on the footage was never able to be utilised in evidence because the footage went missing.

Mr Cunningham's office at the University of Western Australia law school was broken into one weekend and his hard drive, on which he had footage of what had occurred, was removed. Also, his fiancée was visited by a police officer at her home one morning and she was informed that her car was involved in a hit-and-run accident. When she said, "I cannot remember being involved in a hit-and-run incident. What date are you referring to?" The date was relayed to her and she realised that her father had visited from the eastern states and he would have been driving her car at that time. She contacted her father who stated he was not involved in any hit-and-run accident. He then sent a sworn affidavit to the Western Australia Police to that effect. A complaint was sent to the Corruption and Crime Commission and then the case came before the court. By lunchtime the police prosecutor had informed the defence lawyer that if he wished to make a no-case submission, the police prosecutor would not object. The no-case submission was made. The magistrate agreed that there was no case to answer and awarded costs to Mr Cunningham and his fiancée. The magistrate also said that the police witnesses were unreliable and were not credible.

[Member's time extended.]

Dr A.D. BUTI: In the summation of reasons for his decision, the magistrate stated, as I said, that the police witness was not credible. In cross-examination of the police officer, he was asked whether he had corroborated his statement with the other arresting officer when he filled in his witness statement or proof of evidence. He stated, "No, I did not." As pointed out to him by the defence lawyer, that was interesting because there was only one spelling mistake in his statement and it coincided with the spelling mistake in the other police officer's statement. The magistrate made it quite clear that there was no case to be heard and the police were not credible witnesses. I have sought clarification on where the investigation is. The CCC has closed its books on it. Even though the parliamentary inspector expressed major concern with this case, and it came up in Parliament and was not investigated, the Premier has confidence that this organisation, the CCC, will have the ability to investigate organised crime. I think the Premier was out of the house when I first asked the question, but I ask the Premier: does he not have confidence that the police can investigate organised crime? If he does, why would he seek to give greater investigative powers to the CCC, which has shown an inability to investigate allegations of excessive use of force by the police? Its ability to improve in that domain will be severely compromised because there will be a major conflict of interest as they will investigate, in effect, their own. The police officers will be part of the investigative team for organised crime, but at the same time, when there is an allegation of police corruption or excessive use of power by the police, the CCC will seek to investigate the police who are also helping them investigate organised crime. It is absurd that the Premier, who has been in this Parliament for more years than I probably can count, could even consider that this bill has credit. I think the Premier should probably save himself from further damage on this bill and seek to withdraw it, because, really, there is no way in which the public of Western Australia can have any confidence that the Corruption and Crime Commission, with these new investigative powers, will have the ability to properly investigate organised crime. Even more serious: how will the CCC retain an original and independent ability to investigate police corruption? I see that as the major serious problem with this bill.

However, one does not need to listen to me. I am sure the Premier would not listen to me; he has not been listening to me for the last 20-odd minutes. One has only to refer to the tenth report of the Joint Standing Committee on the Corruption and Crime Commission and read the foreword of the chairman, Hon Nick Goiran. It was a unanimous report of the committee, which comprised two government members and two non-government members. The chairman's foreword states —

This Report seeks to demonstrate that:

- having a strong corruption fighter is more important to our society than any possible gains that may flow from granting the CCC increased powers to combat organised crime;
- the evidence supports the conclusion that any additional funding to fight organised crime is better spent with the WA Police, than with setting up a new crime fighting capacity within the CCC; and
- given the historical link between organised crime and police corruption, the fight against organised crime is best served by the CCC in monitoring the WA Police for corruption.

Further, the chairman states —

The Committee believes it would be a mistake for the CCC to be given an expanded jurisdiction to fight organised crime along with the WA Police. The Parliamentary Inspector concurs with this view. The CCC must remain authentically independent from the WA Police.

Here, the Joint Standing Committee on the Corruption and Crime Commission has in no uncertain terms made it clear that what is proposed in this bill should not happen; that in fact it is dangerous; and that the ability of the CCC to monitor corruption in the WA Police—the CCC does not have a great record in this area—will be reduced. That is what the joint standing committee has said. As the member for Mindarie mentioned, the

Commissioner of Police at various stages has stated that this should not happen. We need to find out from the Premier who supports this bill. What is the premise on which we should give this power to the CCC, which has been criticised by the parliamentary inspector about its ability to undertake an independent investigation of police corruption or excessive use of force by the police? The CCC has investigated only one out of 381 complaints. It decided that there was no case to answer in the case that I relayed to the house. In the court system, the magistrate found that there was no case to answer, and also questioned the credibility of the police officers involved as witnesses. The CCC was not even going to investigate the complaint. Even under the current legislation, the ability of the CCC to investigate an allegation of police corruption has to be questioned. If this bill is passed, with the conflict of interest and the perception of conflict of interest, the public must then be persuaded that the CCC will have an independent function in investigating police corruption and that it is not severely compromised.

Mr J.R. Quigley: As big as the elephant called Dumbo!

Dr A.D. BUTI: Exactly right; that is very correct, member for Mindarie.

Mr T.R. Buswell: Dumbo had big ears, but he wasn't a big elephant! Dumbo was actually a small elephant.

Dr A.D. BUTI: I am dumbfounded how the Premier believes —

Mr T.R. Buswell: Drop the “founded”! Just drop the “founded” and you're accurate.

Dr A.D. BUTI: I believe the Treasurer has had concerns about the CCC—how it functions. That is my intelligence, Treasurer. I would like the Treasurer to stand and tell us whether he has confidence that the CCC will do a good job in investigating organised crime, because my intelligence tells me that he has major concerns about the function and the ability of the CCC, and those concerns are well founded. I agree with the concerns that I have heard that the Treasurer has expressed. Therefore, I would be very careful about what you are about to say, Treasurer, because my intelligence might come to the fore in regard to what I have heard about your concerns—all right?

Mr T.R. Buswell: All I said was Dumbo wasn't a big elephant.

Mr J.R. Quigley: And the parliamentary secretary and member for South Perth has publicly expressed his concerns.

Dr A.D. BUTI: I will be interested also, member for Mindarie, if the —

Mr C.J. Barnett: All you've done is bag the CCC for the last half an hour.

Mr M.P. Whitely: He's just told an amazing story that you should be interested in, Premier, about what happened down in Fremantle.

Dr A.D. BUTI: The Premier can say that —

Several members interjected.

The DEPUTY SPEAKER: Members!

Dr A.D. BUTI: The Premier can say that we are now going weak on crime. The Premier's first interjection on the member for Mindarie, the pathetic interjection—we all predicted that he was going to say we are being soft on crime—does not wash. The Premier knows that does not wash! Now he will try to say that we are bagging the CCC. The parliamentary inspector, as the Premier would know if he was listening, said that out of 381 complaints about the police, the CCC investigated one. Would the Premier see that as satisfactory?

Mr C.J. Barnett: I'm just making the point that all you've done is bag the CCC!

Dr A.D. BUTI: Would the Premier see that as satisfactory?

Several members interjected.

The DEPUTY SPEAKER: Members!

Dr A.D. BUTI: Would you see that as satisfactory, Premier?

The DEPUTY SPEAKER: Member for Armadale, come back.

Mr C.J. Barnett: You don't know much about Parliament. I'll respond, but I make the point all you did was bag the CCC.

The DEPUTY SPEAKER: Members!

Mr C.J. Barnett: You bagged it continually!

Dr A.D. BUTI: Where was the Premier for the first 15 or 20 minutes of my speech? He was outside the chamber!

Several members interjected.

The DEPUTY SPEAKER: Members!

Mr C.J. Barnett: You were soft on crime and you bagged the CCC! That's your two contributions so far.

Dr A.D. BUTI: You are a joke, Premier—an absolute joke!

Several members interjected.

The DEPUTY SPEAKER: Members! You have all had your say on this. Member for Armadale, continue.

Dr A.D. BUTI: Thank you, Mr Deputy Speaker.

Mr J.M. Francis: Mercy!

The DEPUTY SPEAKER: Member for Jandakot!

Dr A.D. BUTI: In a rational manner, as was stated —

Mr M.P. Whitely interjected.

The DEPUTY SPEAKER: Member for Bassendean!

Dr A.D. BUTI: Under the Premier's premise, two members of his own government—the member for Swan Hills and Hon Nick Goiran—have also therefore bagged the CCC because they stated quite clearly in their report, the tenth report of the Joint Standing Committee on the Corruption and Crime Commission, that it would be ill-conceived for the CCC to be given these additional functions and powers that the government seeks to give them. The Premier can try to weasel his way out of this pathetic piece of legislation that is before the house by accusing us of being soft on crime. As the CCC says, the government will be compromising the fight on crime with its bill. As the CCC —

Mr C.J. Barnett: I concede you're all experts on the CCC because half of you have had experiences!

Dr A.D. BUTI: Ask Troy!

The SPEAKER: Take a seat, member.

Mr P. Papalia interjected.

The SPEAKER: Member for Warnbro, I formally call you to order for the second time today.

Mr M.P. Whitely interjected.

The SPEAKER: I do not mind; I am talking to the member for Warnbro. Member for Warnbro, if you are going to call someone in this place, you refer to them by the seat they represent, not by their first name. Member for Armadale, similarly. I presume for most people who are here at the moment, it is an important piece of legislation and I hope that you will treat it with the respect that it deserves and the importance it is going to have in this state.

Dr A.D. BUTI: Thank you, Mr Speaker, and I apologise to the Treasurer.

It is interesting, is it not, that I relayed a very serious case and the response by the Premier was that I was bagging the CCC. Is that not incredible? What the Premier cannot explain is how he is going to preserve the independence of the Corruption and Crime Commission in investigating allegations of police corruption. The Premier has to persuade this house and, more importantly, the public of Western Australia, how he will preserve the independence of the CCC if he is going to blur the investigative powers of the CCC and the police force. Does he not have enough confidence in the Commissioner of Police and WA Police to investigate organised crime? If he does have confidence in the police force of Western Australia, why has he brought before this Parliament an ill-conceived piece of legislation that will give additional powers to the CCC that go 180 degrees in the opposite direction of the recommendations made by the Joint Standing Committee on the Corruption and Crime Commission? The CCC committee has made quite clear that the propositions in this bill are dangerous.

Debate adjourned, on motion by **Mr T.R. Buswell (Treasurer)**.

House adjourned at 5.05 pm
