

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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**CORRUPTION AND CRIME COMMISSION AMENDMENT AND REPEAL BILL 2003**

*Receipt*

Bill received from the Council.

*Speaker's Ruling*

**THE SPEAKER** (Mr F. Riebeling): I have had the opportunity to look at the Corruption and Crime Commission Amendment and Repeal Bill 2003, which has been received from the Legislative Council. This Bill consists primarily of provisions that were deleted from another Bill passed by this House, but it remains a Bill that originated in the Legislative Council. Proposed section 146 of the Bill provides for allowances to be paid to witnesses. In particular, proposed subsection (4) is as follows -

For the purposes of this section the Consolidated Fund is, to the extent necessary, appropriated accordingly.

Section 46(1) of the Constitution Acts Amendment Act 1899 provides that Bills appropriating revenues or money shall not originate in the Legislative Council. Consequently, I rule that the Bill should not have originated in the Legislative Council and is therefore out of order.

*Standing Orders Suspension*

**MR J.C. KOBELKE** (Nollamara - Leader of the House) [4.29 pm]: I move without notice -

That so much of standing orders be suspended as is necessary to enable the following motion to be moved forthwith -

That this House -

- (a) recognises that the Speaker's ruling in relation to the Corruption and Crime Commission Amendment and Repeal Bill 2003 is in conformity with the practice of the House;
- (b) acknowledges the urgent need for this Bill to be brought into effect as soon as possible;
- (c) recognises that most of the provisions of this Bill originated in the Legislative Assembly and were split from the original Bill when it was in the Legislative Council;
- (d) suspends so much of the standing orders as is necessary for the Bill to be accepted from the Council and proceed through its stages in the Legislative Assembly; and
- (e) directs that the following message be sent to the Legislative Council -

The Legislative Assembly -

- (a) informs the Legislative Council that the Corruption and Crime Commission Amendment and Repeal Bill 2003, forwarded from the Legislative Council to the Legislative Assembly, contained in proposed section 146 within clause 17 a clear appropriation which does not conform with section 46(1) of the Constitution Acts Amendment Act 1899; and
- (b) asks the Legislative Council to ensure that it observes this section in relation to all future Bills.

I understand that the Opposition is in agreement that we should take up the debate on that matter. Therefore, I will not speak to it, but will speak to the substantive motion, if standing orders are suspended so as to allow that matter to be debated.

**MR M.W. TRENORDEN** (Avon - Leader of the National Party) [4.30 pm]: I am not even a party to the behind-the-Chair arrangements with the Labor Party; however, I am appalled with the process of this Bill. As most people in the Chamber will know, I spent a number of years on the oversight committee of the Anti-Corruption Commission. I have some knowledge of the ACC. I spent a fair amount of taxpayers' funds when I was involved in that committee and I went to Hong Kong and the United States.

The current situation is that we cannot get the amendments from the upper House. The upper House standing committee report has gone; we cannot get a copy of it. The only way we can access that information is on the Internet. The report is 160-odd pages long. It would be somewhat of a task to download that report, even if we

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pandal; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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were able to do it. However, our office has been online and offline all today and yesterday. I suspect most members are in the same position. We went to the Bills and Papers Office, but we could not get the amendments that we will be debating because they were not in this Chamber's records when we inquired late this morning. The National Party has not been able to obtain a copy of the upper House standing committee report. I understand amendments were passed in the committee stage in the upper House. We have not been able to obtain those amendments. We do not know which recommendations in the report the Government of the day has agreed to, and there is no document in this House for us to work from. Therefore, we are being asked to go into this debate today absolutely cold, with no information whatsoever. That is outrageous. It should never happen in a Parliament.

When I was driving to Parliament House today, I heard the minister say on ABC radio that he will double the size of the Corruption and Crime Commission compared with that of the ACC, and that it will have a whole range of powers. I have no idea what they are, and I will be asked to vote on them some time today. I believe my record in this House will show - someone will jump in and check the record - that I have never abstained from voting; that is, I have never walked out the back door and been absent for a vote. If I ever did that, it would have been in my very early days in the Parliament. I do not want to duck my responsibility as a member of Parliament and not vote on this matter; and I must say that, in principle, I am not opposed to what is happening. However, I cannot vote for something of which I have no knowledge.

I say to the Leader of the House that I know it is a difficult position. I do not want to get up everyone's nose. I know what the date is, and I want to have a break for Christmas too. However, I do not want to be in a debate in which I have to vote from a position of no knowledge. I am opposing whatever the agreement is. Even though only two National Party members are present, we will divide on this issue, because it is not acceptable.

**MR R.F. JOHNSON** (Hillarys) [4.35 pm]: The Leader of the House approached me this morning and asked whether the Opposition would agree to the suspension of standing orders so that this motion could be put before the House and this Bill could be dealt with. I take on board everything the Leader of the National Party has said. I agree with him that it is an appalling situation to see a Government on the run, and a minister who has stuffed this up. If he had got it right in the first place, the Bill would not have gone from here to the upper House in the way it did, and then come back as a new Bill. That is basically what has happened. The assurance I gave to the Leader of the House was that the Opposition would not oppose the suspension of standing orders, but it does oppose the substantive motion the House will debate before it even considers the Bill. I do not want to waste the time of the House. I normally make my speeches very brief, and I intend to do that in this instance, but I and other members on this side of the House will have more to say on the substantive motion.

Question put and a division taken with the following result -

Ayes (40)

Mr P.W. Andrews	Mr J.P.D. Edwards	Ms A.J. MacTiernan	Mr J.R. Quigley
Mr C.J. Barnett	Dr J.M. Edwards	Mr J.A. McGinty	Ms J.A. Radisich
Mr D.F. Barron-Sullivan	Dr G.I. Gallop	Mr M. McGowan	Mr E.S. Ripper
Mr M.F. Board	Mrs D.J. Guise	Ms S.M. McHale	Mrs M.H. Roberts
Mr J.L. Bradshaw	Mr S.R. Hill	Mr W.J. McNee	Mr R.N. Sweetman
Mr A.J. Carpenter	Mr J.N. Hyde	Mr A.D. McRae	Mr D.A. Templeman
Mr J.H.D. Day	Mr R.F. Johnson	Mr N.R. Marlborough	Ms S.E. Walker
Mr A.J. Dean	Mr J.C. Kobelke	Mrs C.A. Martin	Mr P.B. Watson
Mr J.B. D'Orazio	Mr R.C. Kucera	Mr M.P. Murray	Mr M.P. Whitely
Mrs C.L. Edwardes	Mr F.M. Logan	Mr A.P. O'Gorman	Ms M.M. Quirk ( <i>Teller</i> )

Noes (6)

Dr E. Constable	Mr M.W. Trenorden	Dr J.M. Woollard
Mr P.G. Pandal	Mr T.K. Waldron	Mr R.A. Ainsworth ( <i>Teller</i> )

Question thus passed with an absolute majority.

*Motion*

**MR J.C. KOBELKE** (Nollamara - Leader of the House) [4.40 pm]: I move -

That this House -

- (a) recognises that the Speaker's ruling in relation to the Corruption and Crime Commission Amendment and Repeal Bill 2003 is in conformity with the practice of the House;
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**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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- (b) acknowledges the urgent need for this Bill to be brought into effect as soon as possible;
- (c) recognises that most of the provisions of this Bill originated in the Legislative Assembly and were split from the original Bill when it was in the Legislative Council;
- (d) suspends so much of the standing orders as is necessary for the Bill to be accepted from the Council and proceed through its stages in the Legislative Assembly; and
- (e) directs that the following message be sent to the Legislative Council -
  - The Legislative Assembly -
    - (a) informs the Legislative Council that the Corruption and Crime Commission Amendment and Repeal Bill 2003, forwarded from the Legislative Council to the Legislative Assembly, contained in proposed section 146 within clause 17 a clear appropriation which does not conform with section 46(1) of the Constitution Acts Amendment Act 1899; and
    - (b) asks the Legislative Council to ensure that it observes this section in relation to all future Bills.

This entire matter arose from the establishment of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers, which was a commitment made by the Labor Party prior to the election and a promise that the Gallop Government has fulfilled. We know that members opposite were opposed to a royal commission. I mention that because of the delay that has occurred through a range of processes as the Government sought not only to have the royal commission report but also to put in place an effective and functioning corruption and crime commission to assist in rooting out corruption and organised crime wherever it exists in Western Australia. This indicates why this unusual measure is being taken; that is, this legislation is of extreme importance.

The conduct of the police royal commission resulted in a preliminary report that suggested the establishment of a corruption and crime commission prior to the conclusion of the work of the police royal commission so that any loose ends or ongoing investigations could be passed over to the new commission so that it would not miss a step and could continue to pursue corruption and organised crime in Western Australia. For that very purpose, the Government brought a Bill to the Legislative Assembly. That legislation was passed and sent to the Legislative Council in June of this year. The Government's clear intent was that the legislation should be given priority in the other place so that the Corruption and Crime Commission could be established prior to the final report of the police royal commission to ensure a smooth transition from the police royal commission to an effective and functioning Corruption and Crime Commission.

I do not intend to go through all the issues of the delay. The measure was sent to a committee in the other place, and it was sent back to the Chamber in the last week in which the Legislative Council could deal with it. Throughout that process, the Bill, which originated in the Legislative Assembly, was split into two Bills. One of those Bills was returned to the Assembly some weeks ago and has completed its passage. The remaining provisions were put into another Bill, which has been judged by you, Mr Speaker, to be a new Bill.

The fact is that when dealing with matters in the other place, the Labor Government does not have a majority. It must seek consensus and support from the Liberal Party and other minor parties in the other place. Therefore, the Government is in a difficult position when dealing with the important issue of fighting corruption and crime in this State in facing clear obstruction to the delivery of this important legislation in a timely way. The Government had to accept that a splitting of the Bill would occur. In doing so, the Government had to accept that it was not in its control to determine what amendments were made. Members might point to the divisions and votes in the other place and say that the Government went along with the amendments made. The Government did so because this is an urgent matter. If it did not seek to accommodate some of those views in the other place, we would be left without this important Corruption and Crime Commission, which must be established without any further delay.

The fact remains that both Bills that have been returned to the Legislative Assembly fulfil the clear intent of the original Bill that was established in this place. The technical issue - it is not just technical, as I take your ruling to be a matter of fact, Mr Speaker - is that in dividing the one Bill into two, one Bill was taken as originating here and the other Bill had to be taken as being a new Bill. In your ruling, Mr Speaker, you have upheld what has been a common practice of your predecessors in asserting that under section 46(1) of the Constitution Acts Amendment Act, a Bill that leads to expenditure cannot originate in the other place. Although the Bill as a whole originated in this place, the legislation with which we are now dealing is a separate Bill and is seen, through the way it has been constructed, to have originated in the other place. Therefore, it runs foul of section 46(1) of the Constitution Acts Amendment Act. That point is picked up in paragraph (a) of my motion.

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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Paragraph (b) of the motion acknowledges the urgent need for the Bill to be brought into effect as soon as possible. I do not want to go back over the provisions or the importance of this matter. However, anyone who is concerned about the issues of police corruption or organised crime knows that there is a real concern that this matter has not been addressed adequately in Western Australia, a view highlighted by the media from time to time. This matter must be treated urgently and we need to have this legislation passed through the Parliament immediately. We cannot wait another two, three or six months. The legislation has already languished for six months in the other place. If the other place had given this Bill the priority that this House gave it, the whole matter could have been dealt with by August. The Corruption and Crime Commission would have been set up and running by November. We are already behind time and further delays will not be countenanced.

Given the urgency behind this legislation and the Speaker's ruling, we had to work out how to deal with this Bill. The method we have put forward is the best method, but I will come to that after I discuss the other two options to which consideration was given. One option was to prorogue Parliament. The Legislative Council has, through a sessional order, put in place fixed sitting dates. Therefore, it will not be sitting until March next year for fixed times. If we establish this legislation as a new Bill originating in this House and pass it through this place - I am sure we would get cooperation to do that quickly, so that is not an issue - when it gets to the other place it will have to start the whole process again. If the other place is not sitting until March, we have real problems. Prorogation means both Houses could start sitting tomorrow, but there are a range of difficulties that come with that, such as re-establishing matters on the Notice Paper and the other place dealing with the legislation in an expeditious manner - simply passing it to the other place does not guarantee that happening. If the other place wanted to go through its procedures, the Bill would sit there for a week and then the House would sit again. Although prorogation offered a potential way of starting the process again, it was not a practical way of ensuring that the royal commission could complete its work, or, having completed its work, could hand down its report and set up the new body. We rejected the first option of prorogation.

The second option of seeking the agreement of the other place was even less practical given the delay that has already happened there. That is something that would require an absolute majority in the other place because it would mean overturning its current sessional order. To call that House back early in contravention of its sessional order would need a clear commitment from the Liberal Party and the Labor Party, which is far too difficult. Given the fact that the other place has not been conducive to expediting the Bill, it is highly unlikely that that would occur.

That then leaves us with the option now before us; that is, to proceed, even though the Bill has been judged by the Speaker to be contrary to section 46(1) of the Constitution Acts Amendment Act. We are also aware that, under section 46(9) of that Act, what we are wanting to do cannot be challenged in a court. The Assembly is within its rights to determine that course of action. As Leader of the House, I take seriously the balance of the powers between the two Houses - that is what section 46 of the Constitution Acts Amendment Act is clearly about - and the issue of delivering good government. Good government means that the Corruption and Crime Commission must be put in place without any further delay. This is not just a simple political point. The Government has gone to all the expense and trouble of having a major royal commission into the Police Service. That report has been concluded and needs to be brought down. The preliminary report stated that the Government should establish this commission. The whole thing was established so that there would be a smooth flow from the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers to the establishment of the Corruption and Crime Commission. This is a major issue for good government in Western Australia. It is not a simple administrative matter; it is not a political matter. On one side we have that situation, and on the other side we have a situation in which accepting this Bill from the other place and proceeding with it could be seen as conceding ground and power to the other Chamber. As Leader of the House, I do not do this lightly, but on balance we really need to do it in this case because of the importance of this Bill. This is not the first time this has been done. It was done in 1997, and I will talk about that a little later.

Paragraph (d) of the motion states -

suspends so much of the standing orders as is necessary for the Bill to be accepted from the Council and proceed through its stages in the Legislative Assembly;

I will make this clear for members. This suspension has nothing to do with the issues contained within section 46 of the Constitution Acts Amendment Act. Paragraph (d) prevents someone from seeking some provision in the standing orders to cause delay or to frustrate this process.

Paragraph (e) of the motion enables the Assembly to send a message to the Legislative Council. It is crucial that this message assert the primacy of the Assembly for Bills relating to the expenditure of money, and to make it very clear that the Assembly believes that section 46(1) of the Constitution Acts Amendment Act should be

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pandal; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

---

upheld and that the Legislative Council, for whatever reason, has simply not paid enough attention to this important matter. It seems strange that the Clerk in the other place ran down to the Supreme Court when he had a technical concern on another matter, but did not raise those concerns publicly when this Bill was introduced and appeared to be in contravention of section 46(1) of the Constitution Acts Amendment Act, and which the Speaker has ruled is in contravention of that section. The issue then is for the Legislative Assembly to send a message to the Council indicating that the Legislative Assembly preserves its rights, established under the Constitution Acts Amendment Act, to be the only House that can originate Bills that allow for the expenditure of money. This power should not be usurped by the other Chamber.

Mr C.J. Barnett: Paragraph (e) of the motion refers to “section 146 within clause 17.” Do you have that clause? We do not have a copy of the Bill; we are at a disadvantage.

Mr J.C. KOBELKE: I will obtain it before I sit down. That may have been the key issue that led to that ruling. Other parts of the Bill may also lead to that conclusion, but that clause, which I will read into the record in a moment, makes it absolutely clear that this Bill relates to the appropriation. Proposed section 146 (4) reads -

For the purposes of this section the Consolidated Fund is, to the extent necessary, appropriated accordingly.

In light of those clear words, the Speaker has made a ruling that the Government has accepted. Given the importance of the Bill and the need to establish the Corruption and Crime Commission, the issue now is that this legislation proceed along the lines suggested by the Leader of the Opposition, when he was the Leader of the House, for the Land Administration Bill. In some very important ways, this situation is markedly different from that which the Liberal coalition Government addressed in 1997. In this case the legislation was initiated in the Legislative Assembly as a single Bill. It was split in the other place, and one Bill came back here with the original title and the other has been transmitted as a new Bill. In that sense, the principle of section 46 of the Constitution Acts Amendment Act has been fulfilled. The Legislative Assembly initiated these matters. Nonetheless, it is a new Bill and, on that basis, it is contrary to section 46(1) of the Constitution Acts Amendment Act. The Land Administration Bill 1997 had been in the Parliament for about two years, so it was not urgent. The then minister, Doug Shave, on 27 August said -

I will give people an understanding of how the Bill came to this House and the manner in which it was introduced.

He stated further on -

It was read in the upper House because it was necessary to have both Houses operating effectively and, as not much legislation was going to the upper House at that time, it was regarded as the appropriate House in which to introduce it.

In 1997 the then Liberal coalition Government took similar action to that which we are taking now because it was administratively useful. I do not believe that purpose is valid and I spoke against the action at that time. However, the urgency of this legislation has led us to take this highly unusual and extreme step of proceeding with the Bill so that we can ensure that the Corruption and Crime Commission is established without further delay.

If anyone is worried about whether this action could be challenged in the courts, I draw their attention to section 46(9) of the Constitution Acts Amendment Act, which reads -

Any failure to observe any provision of this section shall not -

I emphasise “not”.

be taken to affect the validity of any Act whether enacted before or after the coming into operation of the *Constitution Acts Amendment Act 1977*.

That was used by the then Leader of the House in 1997 to point out that that action would not create any legal problems when that Bill became an Act. It is highly unusual. That is the only example that has been drawn to my attention. Given the importance of this Bill and that we should not allow corruption and crime to linger on and fester, it should be dealt with now as planned. The Government had hoped that it would be completed a month or two ago. We are already behind time. On that basis, I seek the support of the House so that we send a very clear message about why we are taking this exceptional step and to indicate that we uphold the rights and privileges of this House. In doing so, we are asking the Council to have more cognisance of the need to meet the requirements of section 46(1) of the Constitution Acts Amendment Act.

**MR M.W. TRENORDEN** (Avon - Leader of the National Party) [4.59 pm]: I accept the comments of the Leader of the House about the passage of the Bill. I am in no position to argue with him about the historic

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**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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background or legal principles of whether this matter can be challenged in court. If the Leader of the House wants to tell the House that that is the case, I am happy to accept that. It is not a problem for the National Party or me. What is a problem for the National Party is that we will debate the Bill with no knowledge whatsoever of the amendments. That is a problem for the Leader of the House because he knows the procedures of this House; he knows that the process cannot be put into place until the Bill is first and second read. We have no information. Two members of the Liberal Party from the other place were on the parliamentary committee. The Liberal Party will have been briefed by those two members. Hon Peter Foss is a very capable person in this area and the Liberal Party will be in possession of information that we do not have. We cannot support this Bill in good conscience. It is not that the National Party does not want to support a CCC Bill; it is because we have no idea what we will be voting on.

I will be leaving shortly; I am to attend a school function. It was not my intention to leave by the back door and not vote on this Bill. I would have liked to support a CCC Bill and know what I was doing. However, this is the position we are in. I do not believe this motion does the Leader of the House any credit. I accept his argument about the Speaker's ruling; I have no difficulty with that at all. I accept totally the statement by the Leader of the House, but I will not accept that he should ask five National Party members of Parliament - not all of whom are present - to support a Bill of which they have no knowledge. The National Party's position is as simple as that.

**MR P.G. PENDAL** (South Perth) [5.02 pm]: We are dealing with an appalling situation for several reasons. Unlike other members, I have had less time to prepare and understand the consequences of what we are doing. However, I understand several things - which I will outline - and I say that I want no part of this process. What we are doing is fundamentally wrong, illegal and unconstitutional. We will reap the appropriate "rewards" in the future. There was an incident in the upper House in 1992 when members were asked to take the Government of the day on face value by passing a Bill that members had not seen. I ask members to think about that. The Bill concerned non-financial financial institutions. Members at that time passed a Bill that they did not have before them! We were the Parliament and we accepted the word of the then Attorney General, Joe Berinson, that it was a once-off occurrence; that it had to be done and that we were adopting the Queensland legislation. However, we did not have the Queensland legislation in front of us. Even if we had, it did not represent the Bill before the Parliament of Western Australia. Because of the embarrassment I felt and that we had taken part in a dishonest act, I said at the time that I would never do that again. I will not do it again.

I am in a position similar to many members this afternoon. I intend to keep two appointments at two schools in my electorate, come what may. I have applied for an Independent pair, which was granted. However, I do not want to walk away from this place with members thinking that I took an easy way out by not explaining my position. What members are being asked to do is wrong. The situation is appalling because of what happened in 1992. It is also appalling because members are being asked to do something that, by extension, they are told will not set any precedents. That has a hollow ring because it was done in 1997. I said the same thing in this Chamber in 1997 that I am saying now; it is wrong. We were dealing then with the Land Administration Bill. Much the same sorts of issues arose and we were effectively asked to turn a blind eye to them. I have not had time to read my speeches on the matter in 1997, but I would be surprised if I had not cited the 1991-92 example because of the concerns that I had about it.

I am not attacking the Leader of the House, but I am attacking his argument. We are being asked to break the law. We are being asked to say that it is all right for the upper House to break the law. I say that it is not all right. I happen to have served in that place for 13 years and I have experienced some of the embarrassments that the Legislative Council should never have got itself into.

I was going to ask the Leader of the House a question by way of interjection - although it was not clear in my mind - about the consequences of our taking the "nothing" option. If the current Anti-Corruption Commission is coming to the end of its legislative life at the end of this month, at the very least we could have included in its legislation a sunrise clause, as distinct from a sunset clause. Why could we not have introduced into this House three weeks ago a Bill to extend the life of the current Anti-Corruption Commission by six months or a year and send it to the upper House? We knew, and the Government must have known, that we would be confronted with some of the difficulties that the Leader of the House has just outlined. We could then have got away from this place in early December 2003 and effectively sent a message to the upper House that it cannot keep coming at this trick.

Labor Party members, who have had an aversion to upper Houses and the Legislative Council for a century, should be the last people to accommodate the Legislative Council. The Legislative Assembly is the House of Government. It is the House that has control of the purse strings. The Leader of the House knows that because he is a student of those matters. I know that because I was a member of the place. We shall be sending to the Legislative Council, for the second time in six years, a message that it can initiate money Bills. We are being

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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dangled at the end of a string called the Legislative Council. I understand members of the Legislative Council have gone home for the year and there is no power to recall them. I think the Premier is in a position to go through a few acts of prorogation and to suggest to a few members of the Legislative Council that the Council is on notice that it will be called back to this place next month and that it is on stand-by. The Legislative Council should be told that it cannot close its door when it suits itself. It must have known all of this for months, yet it finished on Friday and it is calling the Government's bluff. It is calling the bluff of the Premier and every Labor member who has despised the notion that an upper House exists in the way that it has done for more than a century. The Government might be comfortable in going along with that, but I am not. I am less comfortable for reasons that might be different from the Government's. The Government's reasons should include a historic anger that it will not allow the Legislative Council to initiate money Bills. Yet it has. We are in this place today because of a message from the Legislative Council last Friday, as I understand it, by way of a fairly innocuous-looking clause on witness fees.

I will raise a separate issue. Why would we hold up a piece of legislation on witness fees that might not even be called upon to be paid over the next three months while the Legislative Assembly is in recess? The Government could decide to not pay the witness fees. It could explain to the witnesses that witness fees cannot be paid because the Parliament mucked up the legislation. How many people are we talking about? Are we talking about half a dozen, a dozen or 30 witnesses? The commission could tell them that there is no payment for witnesses because the legislation does not allow it. It could acknowledge that people are sometimes inconvenienced by these things and it could give an undertaking in writing that when the Parliament resumes next year it will introduce legislation to pay witness fees retrospectively.

For God's sake, we are being asked to break the Constitution of Western Australia on the off-chance that six, 10, 20 or 30 people will apply for witness fees in the next eight weeks. However, if that is not an out for us - I believe it is - I do not know, on the run, what will be the consequence of dealing with everything except that issue of witness payments. I presume we cannot send the Bill to the Governor, because the Bill passed by the Legislative Council is different from the Bill that will be passed by the Legislative Assembly. From some of the nods I have seen in the Chamber, I suspect that is the case. This is a case of the tail wagging the dog. I would like to learn, by way of interjection, what will be the consequences for the life of the current Anti-Corruption Commission if we simply pack up on this issue? Will it cease?

Mr M.W. Trenorden: No, it won't cease.

Mr P.G. PENDAL: No, and if it will not cease, we have a corruption commission. Let us deal in March with the audacity of the actions of the other place. If the Bill does not stay in this place, the Anti-Corruption Commission will cease. Let us discharge this item from the Notice Paper, leave the current Anti-Corruption Commission in place and by all means make it a priority when we return in February or March. That is a practical way out of the problem, but the message it would send is far more consequential than that in itself. The message it would send to the Legislative Council is that this has happened too often. Twice in the space of five years it has wandered down to this place and said, "We are overturning the Constitution of Western Australia and to hell with you." That is what members of this place are being told. They are now being asked to legitimise an illegal, unconstitutional action. Members should not take just my word for it; they should read the words of the motion that has been moved by the Leader of the House. Again I am not making my attack on him; he has to find his way out of this problem in some way or another. I am saying to him that the way out of it is for us to do nothing.

I recall the previous member for Floreat, Andrew Mensaros, who had fled to this country from a country that had been oppressed by fascists and later by communists. One thing he said against a very earnest young member, as we all were once, when I thought we should be getting something through the Parliament pretty quickly, was that it was an awful attitude for me to take. I remembered then where he had come from and I understood what had happened to the so-called Parliaments of countries such as he had come from; they became nothing. He was frightened that if we dealt with legislation quickly, we were likely to deal with legislation badly. There was every reason to slow down the process, not to speed it up. I say bad luck to people in society who say that Parliament is too slow. The Mensaroses of this world - I learnt to be a devotee of his outlook - would say that was good; if we slowed down things we would probably get them as right as we could.

What is the result tonight? For the second time in five years we are being asked to do the unthinkable. We are being asked to legitimise the Legislative Council's becoming the House of the money supply. Are members opposite serious when they tell me they are happy for that to be done? I suggest that we do nothing. I suggest that we continue with the current Anti-Corruption Commission; and, if there are any difficulties, the Parliament can deal with those in February.

I will finish at my starting point. I am absolutely appalled that I am being asked to consider a Bill that I have never seen and to understand a second reading speech that I have never heard. I am not the only person in that

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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position; 56 other people in this Chamber are in the same position. Therefore, I urge the Government to not go down this path. I am sure the Government is very uncomfortable about going down this path. However, something bigger is at stake than the Government's agenda; and, frankly, something bigger is at stake than the corruption commission legislation. That is whether we want to turn the Legislative Council into a mirror image of the Legislative Assembly and give it the right to initiate money Bills. Members say that will never happen. However, it happened in 1997. We said in 1997 that it would never happen again. Now it is happening again in 2003, but we are being assured that it will never happen again. This is not about party politics; this is about having regard for the institution of the Parliament. It does not matter which side of politics we are on. We spend much of our time talking about the rule of law and pontificating to people outside this place about how we need to obey the rule of law. In front of us we have the standing orders of the Parliament and copies of the Constitution of Western Australia. We, the custodians of the Constitution of Western Australia, are being asked in proposed section 146 to break the Constitution. I will not do that. I am opposed to our doing that. I believe we will do everyone a favour if we do nothing on the Bill and allow the Anti-Corruption Commission to continue in office until the new year. If the deadline makes that difficult, we can then recall the Parliament, and, above all else, the upper House, and ask it to do the job that it is supposed to do. If we do not do that, I will be getting very close to adopting the attitude that used to be adopted by the Labor Party; that is, it is time we did away with the upper House. I am serious about that. I ran that argument during the one vote, one value case. It is simply not good enough for the upper House to be a replica or mirror image of the lower House. If the upper House is not genuinely different and does not genuinely apply a scrutiny role, which often does not seem to apply in the lower House, then there is no reason for it to continue. I oppose what the Government is doing. I urge the minister at this late stage to ensure that we do not proceed with a new Bill that none of us has seen, and that we do not listen to a second reading speech that none of us has had time to absorb, but that we call the bluff of the other House and do our job properly.

**MR R.F. JOHNSON** (Hillarys) [5.17 pm]: I have made it clear that the Opposition will oppose this motion. We do not agree with what is happening in the Parliament today. I agree with many of the comments of the member for South Perth. However, I believe that the upper House does a great job in many respects, because it scrutinises legislation far more than we do in this House. It is very rare for the Government to agree in this House to any legislation going to a proper legislation committee that will not run just as a type of consideration in detail but will scrutinise legislation. In my view, this House does not scrutinise legislation anywhere near enough, because the Government wants to ram legislation through as quickly as it can and get it into the other place. Therefore, we pile up legislation in the other House and expect that House to do miracles. The Corruption and Crime Commission Bill was split in the other House in June, and it was referred to the Standing Committee on Legislation at the end of June. We all know that the Parliament does not sit in June and July. Therefore, in those two months no work could be done by the Legislation Committee. The earliest that the upper House committee could have properly considered and scrutinised this legislation would have been September. That is three months - September, October and November. I ask you, Mr Speaker, is that an inordinate amount of time in which to look at such a complex Bill that has massive ramifications? I suggest not. I believe that, hopefully, a committee would do it justice in that amount of time. It is all very well the Leader of the House criticising the upper House for taking that amount of time. However, the Government has control of the upper House. The Government, with its coalition partners, the Greens, has absolute control of the upper House. We know the deals that are done and the written agreements that the Attorney General has with the Greens. I have seen one agreement with the Greens signed off by the Attorney General. Not by any means will I stand here and allow derogatory comments to be made of all members of the upper House. They do the job they are paid and elected by the people of Western Australia to do; that is, scrutinise and review the legislation that comes from this House. Frankly, if they did not do a good job, we would not have to deal with so many amendments from the upper House as a result of this House's mistakes. I blame the ministers responsible. The classic example is the Attorney General. If fault is to be laid at anyone's feet, it must be laid at the Attorney General's feet. The Attorney General has stuffed this up. Had he got it right in the first place, instead of rushing it through this House and up to the other House, we would not be in the dilemma we are in today.

The first opportunity that members of this House had to view this legislation was at 12.15 pm today. That is when it became available. As the member for South Perth and the Leader of the National Party said, that provided nowhere near adequate time in which to truly reflect on legislation put before this House.

Mr P.G. Pental: And that is the concept, not the Bill.

Mr R.F. JOHNSON: Exactly.

Mr P.G. Pental: I still do not have the Bill. Does anyone else? Do you?

Mr R.F. JOHNSON: It is yet to be introduced.



Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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Mr C.J. Barnett: Most members do not have the Bill.

Mr R.F. JOHNSON: One would think that, in a situation like this, members would have been sent a copy of the Bill that is proposed to be introduced into the House so that members could consider it. It has not been introduced yet. I am happy to take an interjection from the Clerk! We have suspended standing orders, so why not make the most of it? I josh, but it is a very serious matter.

The Bill is now before us, but it first became available at 12.15 pm to our shadow spokesperson, the member for Kingsley, who will deal with the Bill. This is ludicrous. I agree with the member for South Perth. Earlier today I put it to the Leader of the House that the Government should reintroduce the Bill in March and do it the right way round, and that the Opposition would guarantee to pass it most expeditiously. Most of the issues have been dealt with, and we accept that. There are quite a few amendments, but we should deal with the Bill properly. The Opposition would cooperate fully to pass it through this House very quickly. It would not be a problem to deal with it in the first sitting week, and then it could go to the upper House. It should not take too long for the upper House to deal with it, because it has instigated this new Bill, and it is a new Bill because it has a new title.

Mr P.G. Pental: I think we should recall the upper House in January. It would be a salutary lesson for it and it would never initiate a money Bill again.

Mr R.F. JOHNSON: I take a different view from the member for South Perth. I have a lot of respect for my colleagues and members of the Labor Party and other parties in the upper House.

Mr P.G. Pental: But were your colleagues part of this?

Mr R.F. JOHNSON: A committee was set up, the chairman of which was a government member. The members of the committee controlled it.

Mr J.C. Kobelke: No, that is not true. The Government did not have a majority on that committee.

Mr R.F. JOHNSON: There was a Greens member - one of the Government's coalition partners - and two Labor members on that committee. The Government had three out of five members. If that number does not control it, I do not know what does. As I say, we have seen the agreements that have been made by the Attorney General with the Greens. I am sure he could have offered them something. We know what they want. That could have happened. The committee did its job. We must not criticise it for doing its job.

Mr P.G. Pental: I am not criticising them.

Mr R.F. JOHNSON: I am not suggesting that the member for South Perth is.

Mr P.G. Pental: I am criticising the House. It did not do its job.

Mr R.F. JOHNSON: I will not criticise the upper House.

Mr P.G. Pental: I do.

Mr R.F. JOHNSON: That is where I differ from the member for South Perth. I will not criticise the House because it does a great job 99.9 per cent of the time. It does its job properly and consistently. This is an absolute anomaly and it is against the Constitution - I accept that. It should not have happened. Everybody is blaming the upper House when the blame should be put fairly and squarely on the shoulders of the Attorney General. It is his Bill.

Mr J.C. Kobelke: He is not a member of the other place. He did not vote in the upper House.

Mr R.F. JOHNSON: A minister, who does not always seem to agree with the Attorney General, represents the Attorney General in the upper House. I wonder whether they are talking. They are probably from two different factions. In fact, I know they are. Maybe that is where the problem lies. I accept that we will deal with this motion, because the Government has the numbers to do that. However, the Opposition will oppose the motion because we do not agree with the way in which it is being handled. There is a much safer way to do it; that is, to leave it until March. It could then be brought into this House as a new Bill - I guarantee that we would pass it within the first week - and then sent to the upper House. The Council has already dealt with this legislation, so it will not take any time. It could declare it an urgent Bill. I am sure that my colleagues in the upper House would not delay it at all, because it is has come from that place. However, we should do it legally and constitutionally. We should not run the risk of having problems in perhaps 10 years, when somebody might raise a point of law.

The Leader of the House has argued, and I know other members have different views, that all this has happened before. History shows that Parliaments do not always get it right, particularly if they cut corners. In this instance, we are cutting corners. I agree with the member for South Perth; I do not believe that we should be cutting corners. This is the Parliament of Western Australia, not some ramshackle, hack Parliament in some Third World country in which things are not done properly. We work under the Westminster system. We also

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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reflect the federal Parliament and other State Parliaments of Australia. I like to think that we do things properly. However, we are not doing things properly today. As the member for South Perth said, the Anti-Corruption Commission could carry on. I agree. I do not see how it would cost taxpayers any more if it were to continue until such time as this legislation is dealt with properly and the new commission is in place. There is nothing wrong with that at all. It is the most sensible, logical, legal argument that can be put forward in this House today.

Unfortunately, we know the Attorney General. The Leader of the House must do what he is told by the Attorney General on this Bill. I accept that, because we know that the Attorney General is probably the most influential person in the Government. The Attorney General obviously wants to get this Bill through this House by hook or by crook. The Attorney General's motto is "whatever it takes"; that is quite obvious. He wants to do this even if it breaches the Constitution and puts cases in jeopardy in years to come. Whatever it takes is the way in which the Attorney General has handled this Bill. If he had got it right in the first place, we would not have this problem today.

I will not take up any more time, because we have been recalled today to deal specifically with this Bill. I am sure that the message from the Council could have waited until we come back in March, because it is probably not deemed to be as important as this Bill. This matter is of the utmost importance, because it involves the integrity of both Houses of Parliament and the way the Parliament works as an institution. I have grave concerns, as does the member for South Perth and the Leader of the National Party, about what we are truly doing today.

Government and backbench members will do as they are told. They are in the Chamber and the Government will use its numbers to pass the Bill without properly scrutinising it. Members on the Government side of the House have not seen the Bill - its backbench members would certainly have not. If the earliest the Bill was available was 12.15 pm today, they would not have a clue of its contents, and neither would our members. It is nothing to be ashamed of. However, I repeat the words of the member for South Perth. Members are being asked to pass a Bill when they have not got a clue about its detail. It will become law which could be questionable down the track. I find that absolutely appalling. I do not find it unusual for the Government to act in this way.

We have reflected on the 1997 passage of the Land Administration Bill. If I remember rightly, the Bill was deemed to have a monetary component, which was to do with setting up a board, committee or commission which involved a few thousand dollars - I think \$20 000. However, this Bill involves an amount of about \$20 million. I am not justifying what went on in 1997 by saying that we should do it today because of the precedent that was set then. The precedent being set today is very different.

I ask members to consider this seriously. I know that all my words will fall on the deaf ears of government members, because they will vote like sheep to pass this motion. By doing so, they will allow the Bill to be introduced into this House and accepted with all its faults in contravention of the Constitution. The Opposition will not delay it, because it is too late in the day. We do not oppose the Bill. We support what the Government has done to set up the Corruption and Crime Commission. All we are asking is that, for goodness sake, the Government do it properly and that it not pass rubbish legislation or legislation that may be deemed contrary to the Constitution, if not tomorrow at some later date.

If we do this today, people in future will reflect on this Parliament. Mark my words, something will happen in the next 10 years which will refer back to what happened in this Parliament today. Many members will not be here in 10 years. Ninety per cent of the members in 10 years may be new members who may well question what we have done. Members should remember that future members will be talking about them 10 years hence. The Opposition opposes this motion.

**MR C.J. BARNETT** (Cottesloe - Leader of the Opposition) [5.39 pm]: I will be very brief. I just want to make a few comments. The motion should be opposed. I want to restate some issues and react to some of the arguments made by the Leader of the House. First, I place again on the record that we are talking about the Western Australian Constitution; in fact, we are referring to section 46(1) of the Constitution Acts Amendment Act 1899, which reads -

Bills appropriating revenue or moneys, or imposing taxation, shall not originate in the Legislative Council;

Section 46(1) of the Constitution is quite clear: a Bill appropriating money cannot originate in the Legislative Council. Because of that, the ruling by the Speaker is correct. This Bill clearly appropriates money and it originated in the Legislative Council. In clause 16, proposed section 146(4) reads -

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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For the purposes of this section the Consolidated Fund is, to the extent necessary, appropriated accordingly.

There is absolutely no dispute. This Bill makes an appropriation. The other issue is whether it originated in the Legislative Council. It did. It was an odd circumstance that the original Bill was sent to the Council and was split so that part of it was returned at the time and the other part has now come back after consideration by a committee of the Council. This is a new Bill. It even has a different title. It was an unusual set of circumstances, but this is a new Bill. It originated in the Council, and one of the clauses appropriates money from the consolidated fund. There can be no doubt at all that this is a money Bill; nor that it is a new Bill that originated in the Legislative Council. The Speaker did what he is bound by the Constitution to do and ruled it out of order. It is absolutely clear.

The Leader of the House earlier tried to draw on some precedent. He referred to the Land Administration Bill 1997, which the Speaker ruled out of order because it was a money Bill. As the then Leader of the House, I introduced a similar clause to allow it to continue. However, there is a distinction. The contentious part of the Land Administration Bill 1997 was that it replaced the Pastoral Board with a body called the Pastoral Lands Board and established a right to compensation; however, it did not make any specific appropriation. It was a grey area. A debate occurred, and members argued on either sides of that debate. It was a grey area, but the legislation did not talk about appropriating money. During that debate, other legislation was referred to. The Gender Reassignment Bill 1997, which also started in the upper House, aimed to establish a gender reassignment board. That Bill was ruled out of order because it created a new body. Clearly, a new body would require funding. That was the correct decision; the Bill should have been ruled out of order. The Acts Amendment (Marine Reserves) Bill 1997 established a Marine Parks and Reserves Authority. That Bill was ultimately ruled to be in order because it was described as authorising an internal rearrangement of existing parts of the Department of Conservation and Land Management. The point is that there were grey areas in those pieces of legislation. The Gender Reassignment Bill, which created a board, the Acts Amendment (Marine Reserves) Bill, which rearranged affairs, and the Land Administration Bill, which changed the name of a board, all started in the upper House. There was a debate, and in each case it was unclear whether an appropriation was to occur. With respect, the way in which this House has treated those issues and the rulings of previous Speakers has not been entirely consistent. However, this legislation is a huge leap from that spectrum of grey. This is quite a different circumstance. The Corruption and Crime Commission Amendment and Repeal Bill is a new Bill that started in the Legislative Council. I repeat that proposed section 146(4) specifically states -

For the purposes of this section the Consolidated Fund is, to the extent necessary, appropriated accordingly.

There is no dispute. There is no grey area at all. This Bill authorises appropriations from the consolidated fund. Therefore, this House cannot support its passage. The reason is more than technical; it is stated in our Constitution.

Why does it matter? One might say that the original Corruption and Crime Commission Bill was debated in this House. It went to the upper House, there was a dispute and differences of opinion, and part of it was sent to a committee. The upper House committee did a good job and improved the Bill. That needs to be acknowledged. However, in the process of the upper House playing a constructive and positive role of reviewing and improving the Bill, it, whether intentionally or inadvertently, created a new Bill that included an appropriation. That contravenes section 46(1) of the Constitution Acts Amendment Act. That matters because, as the member for South Perth said, section 46 of the Constitution Acts Amendment Act is the one part of the Constitution that distinguishes between this House and the upper House. It says that the Assembly is the House in which the Government is formed and from which money can be appropriated. Section 46 gives this House executive power, which, by custom and convention, forms Cabinets and Governments and determines Premiers. It is the distinguishing feature. If we go along with whatever motion the Leader of the House moves to try to get around this, we will compromise this House. The Leader of the House probably argued in 1997 that I was doing the same thing. I believe it is quite different.

Mr J.C. Kobelke: How is it different?

Mr C.J. BARNETT: I just said that it is different because in that case the Land Administration Bill was replacing the Pastoral Board with the Pastoral Lands Board. One could argue whether that was an appropriation.

Mr J.C. Kobelke: It is irrelevant.

Mr C.J. BARNETT: No, hang on.

Mr J.C. Kobelke: In both cases you had a Speaker's ruling, and in both cases you accepted the Speaker's ruling.

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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Mr C.J. BARNETT: No. In that case, there were grey areas.

Mr J.C. Kobelke: No, but you -

Mr C.J. BARNETT: Hang on. The Leader of the House was out of the Chamber when I made the point previously. In that case there was a reallocation and a change of a name. It could be argued that that might have implied extra resources.

Mr J.C. Kobelke: I said that is irrelevant.

Mr C.J. BARNETT: The Leader of the House asked me the question. He should have the courtesy to listen to the answer. The other issue was the Gender Reassignment Bill, which created an entirely new body. That was ruled by this House to be a money Bill matter, and that prevailed. The other one was the Acts Amendment (Marine Reserves) Bill, which was deemed to be a rearrangement. That was probably not the greatest decision that was made. My point is that there were grey areas in those matters: was it a new body; was it an appropriation? There is nothing grey in what is happening in the Corruption and Crime Commission Amendment and Repeal Bill, because it contains the provision in proposed section 146 that states -

For the purposes of this section the Consolidated Fund is, to the extent necessary, appropriated accordingly.

The Bill itself states that, so there is no grey area and there can be no debate about it. That is an appropriation. If we allow this Bill to be accepted by this House, we will create a huge precedent whereby the Legislative Council can now appropriate money and take a direct role in the formation of government and executive powers. That should not be allowed to happen. The Government will prevail because it has the numbers today, and I do not think many government members will think about what they are doing.

If the Government passes this Bill and creates the Corruption and Crime Commission, it should remember what it is doing. Again, I repeat what makes this Bill different. It is a new Bill. It has not been seen in this Chamber before, which is the point that was made by previous speakers. It is not about a trivial change. We are talking about the creation of a corruption and crime organisation, which will have a budget of some \$21 million. It is a new entity, and it has within it a clear appropriation. I suggest to the Leader of the House that if he proceeds with this, he will create a potential risk in the future, when this corruption body is doing its task, that someone will challenge the legitimacy of the way in which it was established. This Parliament should not take that risk, for that reason alone.

If the Government proceeds down this track, which I believe is wrong, it might, after Parliament is prorogued in due course - the Leader of the House should listen to this - take the precautionary measure of re-enacting this legislation properly. It should bring into this House exactly the same Bill, pass it, replace this Bill with an identical one, and pass it through the upper House, thereby preventing in the future anyone who has been pursued by this corruption body from using that as a defence. I would hate to see a major drug dealer get off in the future because this Parliament did not properly pass this legislation. The Government would get the Opposition's cooperation to put that legislation through this House automatically, virtually without debate, and hopefully through the other place. The Government would then cover that point. If the Government goes down this path, it will be able to establish the commission and do whatever it needs to do. However, after Parliament is prorogued, whenever that happens - maybe in the middle of next year - the Government should re-enact the two Bills and put them straight through the Parliament, so there is no doubt about it. There is absolutely no doubt in my mind, as Leader of the Opposition - it is now on the public record - that this is wrong. I believe the Government is in contravention of the Constitution in doing this. With the previous Bills, there was a grey area in the debate, and we could argue the toss. In this case, there is no grey area at all.

I believe this is a serious mistake. It weakens our parliamentary system and our adherence to our constitutional arrangements. I believe the Government is doing the wrong thing. There are other solutions. As the member for South Perth said, the Government could arrange for the upper House to come back. I do not know why the upper House cannot come back. We came back. What is different? Who is running the show?

Mr J.C. Kobelke: Because it has a sessional order, and it cannot come back unless the Parliament is prorogued.

Mr C.J. BARNETT: The Leader of the House should think about what he is saying. If he is prepared to breach section 46(1) of the Constitution Acts Amendment Act because of an upper House sessional order, I put it to the Leader of the House that the Government has its balance wrong. What matters more in the Government of Western Australia: the Constitution of Western Australia or an upper House sessional order? I do not think there is any contest.

Mr J.C. Kobelke: We don't have the numbers in the other place.

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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Mr C.J. BARNETT: Sorry; the Government should put the Constitution ahead of the procedures of this House and the other place. The Constitution of Western Australia has precedence over sessional orders, whether in this place or the other place. If the Government is not willing to take on that issue, it should not be dealing with this legislation. If it intends to do so, it should put in the protection of re-enacting this legislation once Parliament is prorogued.

**DR J.M. WOOLLARD** (Alfred Cove) [5.45 pm]: I will not be supporting this motion, and I am horrified that the Government has placed it on the Table. This Government was elected on a platform of accountability to the community of Western Australia. I went to Government House with this Government and took an oath not to break the law. The Government, with this motion, is asking all members of this Parliament to break the law and act contrary to the Constitution. The member for South Perth said that this Bill was wrong; it was illegal and unconstitutional. I agree with all those comments. I am very disappointed in the Government, but it is not the first time the Government has broken the law. It broke the law over the Raffles Hotel development, when it refused to adhere to the Heritage of Western Australia Act. Just because the Government is happy with breaking the law does not mean that I will be happy with it. I will not go back to my community and say that I rubber-stamped something that was contrary to legislation in Western Australia. The Leader of the Opposition has pointed out that this legislation could be challenged later in court. It is a bit like one vote, one value. The Government knows that I, along with the other Independents, supported one vote, one value, but we will not support the Government in cooking the books, which is what it was trying to do then and is trying again to do now. It is wrong for members opposite to rubber-stamp this. The member for South Perth always says that the Government will have its way, but who is running the Government? Is it the Legislative Assembly or the Legislative Council? It is wrong for this Government to put this Bill on the Table. The report of the Standing Committee on Legislation on the Corruption and Crime Commission Act 2003 came out on Friday, and it has errors. The Bill the Government wants to rush through now also contains errors. It takes me back to the Bill that was put on the Table to close the Swan Valley Nyungah Community. That was rushed through very quickly and then the facts about why the Bill was rushed through came out later. The member for South Perth suggested recalling the Legislative Council. What other options has the Government looked at? What about the Loan Bill that went through last week? Surely the money that is needed for this corruption commission can be taken from the money rubber-stamped by the Loan Bill. Why is this Government asking members of Parliament to break the law? We encourage our children and the community to be law-abiding citizens, and yet once a person becomes a member of Parliament he or she can be asked to forget the law. If we forget the law this time, how long will it be before we are asked to forget it again? It is wrong. I will not be supporting the Bill. I have two school commitments this evening. I will be going to those but I am quite happy to come back later, and if debate on this Bill goes through to the early hours of the morning, so be it. It is incorrect for the Government to do this. It is not being accountable to the Western Australian community; it is not being responsible to this Parliament. People will look at government backbenchers and know they have broken the law by the way this Bill is to be introduced. All those members will be held accountable. I will not be supporting this motion.

**MRS C.L. EDWARDES** (Kingsley) [5.50 pm]: The Liberal Party does not support the motion before the House for a number of reasons. First, if one starts to devalue the institution of Parliament, and its members have no respect for it, how can we expect other people to respect us and Parliament? Any such motion is a serious detriment to us all, and particularly to the institution that we should hold so dear.

This Bill, rightly or wrongly, went through the other place last Friday afternoon. When I was asked at lunchtime yesterday how I thought the Bill would be debated, I assumed that we would deal only with the amendments from the other place. Lo and behold, I was told yesterday afternoon that a new Bill would be coming into this place. Although I had a copy of the Legislative Council committee report and the pink daily *Hansard* that outlined how the Legislative Council committee report recommendations were incorporated into the new Bill through amendments, no real discussion took place until last night with the Attorney General's office about how the Government would deal with the measure. At 20 to five, I rang the Attorney's office, and someone was to get back to me straight away. This is no criticism of the Attorney General's staff in any way; they have done a fantastic job in trying circumstances. I rang the head of the Government Media Office later that evening and said that I needed to track down the Attorney General or his chief of staff - whoever was handling the legislation. I had a return phone call not long after that. The matter of the appropriation and whether this Bill actually met the requirements of the Constitution arose in discussions. I expected a Bill to be available first thing this morning. A copy of the second reading speech, even though it had not been approved by the Attorney General, was forwarded to me mid morning, but discussion in the morning indicated that the first copy of the Bill needed to be printed again because the original reprint made overnight contained some major errors. Staff worked throughout the evening to try to get the Bill ready, but the reprinted copy was not available until 12.15 pm today. That was the process involved; it is not acceptable to staff in this place, and it is certainly not acceptable to parliamentary counsel or the staff in the Attorney General's office. They have done a superb job in attempting to

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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get the Bill to the stage that it has reached this afternoon. I oppose the motion on the solid ground that it is a total and absolute devaluation of the institution of Parliament.

Question put and passed.

*Message - Appropriations*

Message from the Governor received and read recommending appropriations for the purposes of the Bill.

*First Reading*

On motion by Mr J.A. McGinty (Attorney General), Bill read a first time.

*Second Reading*

**MR J.A. MCGINTY** (Fremantle - Attorney General) [5.55 pm]: I move -

That the Bill be now read a second time.

Given the rather unique history of the Bill currently before the House, I thought that it would be helpful to begin with a brief outline of the Bill's history. Members may recall that on 5 June this year the Corruption and Crime Commission Bill 2003 was third read in this House and then transmitted to the Legislative Council. For ease of reference, I will refer to the Bill in that form as the original Bill. On 26 June 2003 the Legislative Council essentially split the original Bill into two Bills. Those provisions of the original Bill that were considered to be essential to the establishment of the Corruption and Crime Commission and the office of the Parliamentary Inspector were left in the Corruption and Crime Commission Act 2003 while the remaining provisions of the original Bill were excised from that Bill and became the basis of a new Bill called the Corruption and Crime Commission Amendment Bill 2003. Both Bills were then referred to the Legislative Council Standing Committee on Legislation. Notwithstanding its referral to that committee, the Corruption and Crime Commission Bill 2003 was passed by this House on 26 June 2003 and is now the Corruption and Crime Commission Act 2003. Members will recall that, at the time of splitting the original Bill, it was hoped that the passing of an interim Corruption and Crime Commission Act would enable the Government to appoint the commissioner and the Parliamentary Inspector, which would, in turn, allow both officers to begin recruiting staff. Unfortunately, the delay in the committee's review of the split Bills led to uncertainty about the eventual powers and responsibilities of the Corruption and Crime Commission and the Parliamentary Inspector. This made the Government's task of appointing a commissioner or a Parliamentary Inspector practically impossible.

The report of the Legislative Council Standing Committee on Legislation was finally tabled in the Legislative Council on Tuesday, 9 December 2003. In that report the committee made 68 recommendations, 60 of which proposed that amendments be made to the Corruption and Crime Commission Amendment Bill 2003. In a spirit of cooperation the Government accepted many of the recommendations for amendment. As a consequence of one such amendment, the Bill is now called the Corruption and Crime Commission Amendment and Repeal Bill 2003. There were, however, a number of recommended amendments that the Government could not support. I will briefly outline the more significant of those recommendations.

The Government was fundamentally opposed to the amendments recommended by the committee at recommendation 1 of the report, which would have prevented the CCC from investigating misconduct unless it was serious misconduct. Put another way, the CCC would have been unable to investigate conduct that is currently defined as serious improper conduct in the Anti-Corruption Commission Act 1988. For example, the amendments recommended by the committee would have prevented the CCC from investigating a public service officer's repeated use of a work computer to access pornography unless such access also constituted a criminal offence punishable by two or more years imprisonment.

Similarly, the Government was unable to support the amendments recommended by the committee at recommendation 3 of the report, which, if adopted, would have prevented the CCC from investigating reviewable police action. Although matters falling within the definition of reviewable police action will often be minor in nature, the Government could not accept a complete removal of the CCC's power to investigate such matters, even where, for example, they are factually intertwined with more serious corruption. Fortunately, having been told of the Government's concerns about the amendments recommended at recommendations 1 and 3, the committee agreed to a number of amendments that were designed to rectify the problems identified by the Government. Thus, as a result of the Government's amendments, the CCC retains the power to investigate all misconduct, regardless of whether it is serious misconduct. Similarly, the CCC retains the power to investigate reviewable police action.

Recommendation 8 in the committee's report is another example of an amendment that did not have the support of the Government. The recommended amendment, if adopted, would have allowed the CCC to disclose the outcome of an investigation to the person to whom the investigation relates, provided that such disclosure did not

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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“prejudice the carrying out of any further action in relation to the allegation”. The Government was concerned that this proviso was too narrow and did not require the CCC to consider such matters as whether disclosure of the information could endanger the safety of, for example, an informant. Fortunately, the committee, when told of the Government’s concerns, agreed to an amendment, the effect of which is that the CCC may disclose only the outcome of an investigation to the person to whom the investigation relates if such disclosure “is in the public interest”. This will enable the CCC to take into account matters such as the safety of informants when deciding whether to disclose the outcome of an investigation.

The Government was also unable to support the amendments recommended by the committee at recommendation 35 of the report. The amendments allowed the CCC to form and publish an opinion that a particular person had committed a criminal or a disciplinary offence. Fortunately, the committee acknowledged that this was not its intent and the Government moved an amendment that prevents such opinions from being published.

Recommendation 62 is another example of an amendment that did not have the support of the Government. The committee recommended an amendment that purported to transfer “the rights, interests and welfare of any person employed by the A-CC” to the CCC. The Government had a great deal of doubt as to the meaning, if any, of the proposed amendment; however, the body of the committee’s report indicated that what was intended by the amendment was that all persons employed by the ACC be transferred to the employment of the CCC. The Government was fundamentally opposed to this suggestion, as it has always maintained that it is vital that the recruitment process for the CCC be merit based and that the commissioner of the CCC have as much involvement in the selection of staff as possible. The Government would not consent to any individual, whether from the ACC, the Ombudsman’s office or the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers, being given preference in respect of employment by the CCC. Accordingly, the proposed amendment was not included in the Bill and, in its place, clause 2 of the Bill was amended, in order to ensure that the Anti-Corruption Commission Act 1988 is not repealed until such time as the commission has certified that each employee of the Anti-Corruption Commission has either -

- (a) been employed by the CCC;
- (b) become an officer of an organisation - other than the ACC - within the meaning of the Public Sector Management Act 1994;
- (c) been registered under part 4 of the Public Sector Management (Redeployment and Redundancy) Regulations 1994;
- (d) reached the end of his or her fixed-term contact;
- (e) resigned; or
- (f) had his or her contract terminated.

Having identified some of the committee’s recommendations that the Government did not support, I will now identify some of the amendments that were recommended by the committee and, 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.

One such amendment, which will be of particular interest to members, is the insertion of clause 29 on page 136, which provides that the Houses of Parliament are to establish a joint standing committee comprising an equal number of members appointed by each House. The standing committee has a number of functions under the Bill, including a function in respect of the appointment of the commissioner of the CCC and the Parliamentary Inspector. This leads to another change - that is, a change in respect of the procedures to be followed when appointing the commissioner of the CCC and the Parliamentary Inspector. While the changed procedure does not apply to the first appointment to either office, future appointments to both offices are to be made on the recommendation of the Premier, who is able to only recommend a person whose name is on a list of three persons that is submitted to the Premier by a nominating committee comprised of the Chief Justice, the Chief Judge of the District Court and a person appointed by the Governor to represent the interests of the community, and who has the support of the majority of the standing committee and bipartisan support. The same procedures are to apply to the appointment of a person to act in the office of the commissioner or the Parliamentary Inspector.

Another change that relates to the standing committee that will be of interest to members is set out in clause 24 on page 126 of the Bill. It provides that the Parliamentary Inspector “is an officer of Parliament whose primary function is to assist the Standing Committee”.

**Extract from Hansard**

[ASSEMBLY - Tuesday, 16 December 2003]

p14906c-14922a

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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Two other amendments that were made to the provisions of the original Bill are found in clause 17, proposed sections 94(5) on page 73, and 145(1) on page 106. The effect of the amendment to proposed section 94(5) is that a statement of information obtained from a public officer in compliance with proposed section 94 may now be used in evidence against that person in disciplinary proceedings, regardless of whether that person is a police officer or another type of public officer, such as a public sector employee. Previously, such statements were admissible only in disciplinary proceedings if the person providing the statement was a police officer. A similar amendment has been made to proposed section 145, which relates to the admissibility of statements made by a witness in answer to a question that the CCC requires the witness to answer.

Other amendments that are worthy of note are as follows: the new offence of knowingly making a false or misleading, or malicious or reckless, report to the CCC is set out in clause 17, proposed section 25(5) on page 23; the new procedure for dealing with allegations of "misconduct" - other than "serious misconduct" - made against a member of the Legislative Council or the Legislative Assembly in the performance by him or her of the functions of that office - set out in clause 17, proposed sections 27A and 27B on pages 25 to 28; the amendments to clause 21 on page 112, which now provides that the minister must review the CCC Act in three, rather than five, years and which also sets out a number of specific matters that must be considered in the course of that review; including, for example, whether the Act should be amended to include a multi-person commission; and the amendments to clause 17, proposed section 27(3) on page 25, increase the jurisdiction of the CCC in relation to allegations about a person in his or her capacity as the holder of a judicial office. The CCC may now receive an allegation about such a person if it is of a kind that, if established, would constitute grounds for removal from judicial office. The CCC's jurisdiction in respect of holders of judicial office was previously limited to receiving allegations relating to the commission, attempted commission etc of an offence under section 121 of the Criminal Code, which deals with "judicial corruption".

Finally, I draw members' attention to some provisions of the Bill that were strenuously opposed by the Government in the Legislative Council, but were nevertheless passed by the Council and included in the Bill. For instance, as a result of the amendments recommended by the standing committee, should the CCC choose to investigate misconduct that is not serious misconduct, it will not be able to utilise the arrest power set out in clause 17, proposed section 148 on pages 107 to 109 and will be unlikely to be able to utilise the search warrant power set out in clause 17, proposed section 101 on pages 78 to 80.

Apart from the amendments outlined above, and a number of less significant amendments, which time prevents me from mentioning, the majority of the clauses of the Bill will be familiar to members as they are identical to the provisions of the original Bill. For instance, the majority of the clauses of the Bill that deal with the use of exceptional powers in the context of organised crime are identical to those in the original Bill.

Together with the Corruption and Crime Commission Act 2003, this Bill will create an effective corruption-fighting agency. This will demonstrate to the people of Western Australia the Government's resolve not to tolerate the appalling behaviour being exposed by the Police Royal Commission. I have much pleasure in commending the Bill to the House.

**MRS C.L. EDWARDES** (Kingsley) [6.07 pm]: The Opposition supports the legislation for a number of reasons. It has always supported the legislation. Despite the Leader of the House's comments earlier, it was not true that we did not support the legislation. The original Corruption and Crime Commission Bill passed through this House with amendments from the Legislative Council on 26 June. At the time the Attorney General said -

This procedure is a productive example of the high level of cooperation in this Parliament to achieve what three divergent groups wanted to achieve from the Corruption and Crime Commission Bill. Yesterday the Greens (WA) and the Liberal Party were approached -

Obviously by the Government -

to give consideration to splitting the Corruption and Crime Commission Bill, and to enable those parts of the Bill dealing with the establishment of the Corruption and Crime Commission to proceed without delay. The beauty of enacting those provisions is that it achieves the Government's objective of getting on with the appointment of a commissioner, the establishment of the commission, the recruitment of staff and all those important administrative matters, so that we will not lose time if we honour the royal commission's self-imposed objective of achieving a seamless transition

As the Attorney General acknowledged in his second reading speech, the CCC Act has not yet come into operation despite receiving royal assent on 3 July 2003. The second reading indicates that the reason it has not done so is the uncertainty that would arise from any amendments from the review of the remaining legislation, which is what is before us. I do not see that that was not in consideration on 26 June. It would have been clearly in consideration on that date. The powers and functions have not changed that much. I doubt that they would change so dramatically that such an appointment could not have taken place and that the leasing of premises and



Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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other fundamental administrative arrangements could not have been made. In his response, I ask the Attorney General to highlight exactly where things are regarding appointments, the leasing of premises, and which premises the Corruption and Crime Commission will use.

The other matter is that of the staff. The Attorney General referred to the amendment made to clause 2 by the other place. It was to the effect that the CCC would not come into effect until the functions of the Anti-Corruption Commission had been substantially exhausted. The amendment encompassed six criteria. Is the Attorney General able to identify how many officers are affected by the last criteria, which refers to the termination of employment contracts? I understand it may relate only to one officer, who has an extensive long-term contract that will not expire for some considerable time.

Mr J.A. McGinty: It might be as many as three; maybe a few more. It is only a handful.

Mrs C.L. EDWARDES: I understand that other contracts may expire soon but that there is only one officer who may have his contract terminated. Is that individual - or individuals - comfortable with the process to be followed in any payout of a contract?

The treatment of officers employed with the ACC was appalling. They were left with a great deal of uncertainty; slurs were placed on their characters and abilities. There were differing opinions about their status. That was shown in a letter by the Premier to the Community and Public Sector Union on 25 June, which regarded them as permanent public servants; that is, if they were not employed by the new body, they would be eligible for the redundancy package that applies to all public servants. Despite that, on 26 June, the Attorney General displayed a different view. Committed professional people, whether they are staff at the ACC, other public servants or whistleblowers, are human beings and we must remember that. We cannot deal with people in such an offhand manner whereby their characters and abilities are slurred in a generic sense. There may very well be one or two individuals who the Government does not like, but, as the Government of the day, it is not the Government's role to make a general slur on the characters and professional status of all the officers at the ACC. As I have observed, the staff of the ACC are particularly committed to the task in hand. There was a concerted attack on the ACC over a number of years, which I believe was unfair. There were major issues between the ACC and the Director of Public Prosecutions, just as there were major issues between the ACC and the Police Union (WA). There was a sense in the media that the lack of convictions meant the ACC was not doing its job. That was a very unfair assessment of the performance of the ACC. I hope that a similar assessment is not applied to the Corruption and Crime Commission. In four or five years, I hope we do not have the same debate in this place that was had on the Official Corruption Commission and the ACC. The same debate is likely to take place on the CCC unless we support the people in it and the legislation we give them. The legislation we provide them with is the tool with which they have to work. The current staff and the commissioners of the ACC have done a difficult job in a difficult climate over the past few years. I commend them for the professionalism in which they have conducted themselves.

In commending the legislation, I would like to wish the new commission all the very best. It faces a difficult task. It has to deal with the transition of the work of the police royal commission and the ACC. The new commission must gain the confidence of the public and the other stakeholders. The Parliamentary Inspector's position will be very important. He will be the go-between for the community, the ACC and the Parliament. Having been a member of the Joint Standing Committee on the Anti-Corruption Commission, I can say that it was somewhat difficult to draw a line when people complained about our role. The role of the joint standing committee was not to investigate. The Parliamentary Inspector will undertake an important function in that role. I wish that person all the very best in his endeavours. As with all new legislation, there will be bumps along the way. I hope that the community, the Parliament and this Government will be professional enough to allow the CCC to get on with its work that we have appointed it to do. I wish it all the best.

**MR J.A. MCGINTY** (Fremantle - Attorney General) [6.17 pm]: I will respond to the three matters that the member for Kingsley raised that require a response. Decisions relating to the appointment of members to the commission and the location of its premises have been put on hold pending the passage of the legislation. I have been quite religious in not making commitments to matters that in my view should be made by the commissioner of the Corruption and Crime Commission. I intend to move with great expedition to make appointments. I have drawn up a short list of people, many of whom I have not spoken to about this matter. As is required under the legislation, I will consult with the leaders of the political parties over the next few days with a view to making early appointments to the positions of commissioner and Parliamentary Inspector. No appointment has been made, and consultation will hopefully take place within the next few hours and days with a view to making an appointment in the near future. Similarly, the Department of Justice has done some work with regard to the commission's premises, but no commitment has been made pending the ascertainment of the view of the commissioner. Unfortunately, everything was put on hold, as it had to be, once it became apparent that there was great uncertainty about the form of the legislation. I am happy to say that in its final form the legislation is

Speaker; Mr John Kobelke; Mr Max Trenorden; Mr Rob Johnson; Mr Phillip Pental; Mr Colin Barnett; Dr Janet Woollard; Mrs Cheryl Edwardes; Mr Jim McGinty; Mr John Bradshaw

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not unlike that which originally passed through the House some six months ago. Had we been confident that that would be the case, it might have been possible to appoint a commissioner with the confident expectation of knowing what it was we would have appointed him to do. However, we did not have that confidence until the committee reported last week.

Secondly, with regard to the staff of the ACC, I think I commented by way of interjection while the member for Kingsley was on her feet that the general understanding of how the staff will be treated was the subject of undertakings given in the upper House. The staff will be treated as would anyone else in a public sector organisation. We did not want to compromise the establishment of an effective CCC by requiring it to take on the staff of an existing organisation. I think that when the Official Corruption Commission, chaired by John Wickham, became the Anti-Corruption Commission, chaired by Terry O'Connor, one of the defects was that it was perceived publicly as simply a re-badging of the old organisation, with some enhanced powers. We are very determined that the CCC will be a fresh start, and that, as the member for Kingsley said, it will garner significant public and bipartisan political support for the very difficult job it will have to do. For that reason, we wanted to give the new commissioner a fresh start in determining how he - or it may be she, at this stage - will deal with the matter of staff. With regard to the uncertainty surrounding the staff of the Anti-Corruption Commission, we did not know until very recent days the form in which the legislation would be passed, or even whether we would succeed in getting the legislation through at all. Consequently, it would have been inappropriate, if not impossible, to give commitments to the staff. To the extent that uncertainty has been hanging over the head of staff of the Anti-Corruption Commission, that is unfortunate. To a significant degree, it has been beyond my capacity to control things. Hopefully now that this legislation is about to be passed by the Parliament, everyone will be dealt with properly. There will be merit-based selection for the new organisation, and the staff that remain with the ACC at this time will be looked after appropriately.

With those few comments, I thank members opposite for the expeditious passage of this legislation. I believe it will herald a new era in the fight against corruption in Western Australia.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

*Third Reading*

**MR J.A. MCGINTY** (Fremantle - Attorney General) [6.28 pm]: I move-

That the Bill be now read a third time.

**MR J.L. BRADSHAW** (Murray-Wellington) [6.28 pm]: One of the things that concerns me about this Bill is that unless the investigations are made more open and public, the Corruption and Crime Commission will face the same problems that occurred with the Anti-Corruption Commission. What tended to happen with the ACC is that no-one knew what was going on behind the scenes. The people who were accused then came out fighting and saying that they had been wrongly accused and investigated. In the past I supported the secrecy of investigations, because it provided the opportunity for those who were accused to be investigated, and if nothing came of the investigation, their names would not be sullied. However, certain people have tended to abuse that process. I believe the Western Australian Police Union was a party to that to some extent, as were those who were accused of certain misdemeanours. However, because of what happened with the ACC, I am now totally opposed to the idea of secrecy. The commissioner of the ACC, Mr Terry O'Connor, has said that the previous legislation was set up to fail. I could never work out why he stayed there for so long if he really believed that was the case. In the end, because it was hitting the fan and he was taking a bit of heat, all of a sudden he said the legislation was set up to fail. Is this legislation set up to fail? I guess we will find out in due course. However, it astounds me that when things go wrong for people, they suddenly say that the system was set up to fail. Why did they not say that from day one or not take on the position? I cannot work that out and I am still baffled by it. Unless it is done more openly so that everyone can understand what people are being accused of, this legislation will be set to fail as well.

Question put and passed.

Bill read a third time and passed.