

CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [8.00 pm]: I move —

That the bill be now read a second time.

The Corruption, Crime and Misconduct Amendment Bill 2021 is steeped in the public interest. It seeks to restore Hon John McKechnie, QC, the best corruption fighter Western Australia has ever had, as Corruption and Crime Commissioner. This reappointment is in line with the election commitment the McGowan Labor government took to the state election on 13 March 2021, which resulted in an overwhelming mandate from the people of Western Australia to implement its agenda.

John McKechnie, QC, clearly has the support of the people of Western Australia as Corruption and Crime Commissioner. In 2013–14, the last financial year before Mr McKechnie, QC, was appointed by the Barnett Liberal–National government, reports from members of the public accounted for just 12 per cent of total allegations investigated by the CCC. In 2019–20, when the term of Mr McKechnie, QC, expired, the proportion of allegations to the CCC from members of the public had risen to 45 per cent. It is difficult to think of a more ringing endorsement of the leadership of Mr McKechnie, QC. The CCC, after all, exists to protect the public from both organised crime and the insidious scourge of public sector corruption, which robs the public of hard-earned tax dollars and confidence in decision-making by public officials, including elected representatives.

Mr McKechnie, QC, has a 45-year record of public service to Western Australia, including 30 years occupying high legal offices after rising to the position of Chief Crown Prosecutor. Since then he has been consistently promoted and appointed by governments of either stripe. He was appointed as the state’s first Director of Public Prosecutions by a Labor government; reappointed DPP by a Liberal government; appointed as a Supreme Court judge by a Liberal government; and appointed as Corruption and Crime Commissioner by a Liberal government.

His appointment as Corruption and Crime Commissioner in 2015 came after he was recommended by the former Chief Justice of Western Australia, Hon Wayne Martin, AC, QC, in his capacity as chair of the nominating committee set out under section 9 of the Corruption, Crime and Misconduct Act 2003. The former Premier and member for Cottesloe duly submitted Mr McKechnie, QC, to the Joint Standing Committee on the Corruption and Crime Commission in the thirty-ninth Parliament—chaired by the Liberal MLC Hon Nick Goiran—and the nomination received bipartisan and majority support at that time.

Of the CCC’s four commissioners since its inception, Mr McKechnie, QC, is the only one to have served a full term and the first to seek reappointment. He also substantially reorganised and refocused the commission. This included establishing an operations committee, reviewing all aspects of the agency’s work, reducing the backlog of investigations and assessments, making the commission more transparent and public facing, working with agencies to help them understand misconduct risks, and requiring agencies to report on progress in implementing recommendations. This is in addition to taking on increased functions by way of unexplained wealth examinations, all within existing budget allocations.

It is a matter of public record that, under the stewardship of Mr McKechnie, QC, the CCC achieved significant successes in combating corruption in Western Australia. To name but a recent few cases: inquiries into the North Metropolitan Health Service procurement, which uncovered the fact that senior bureaucrat John Fullerton billed taxpayers \$170 000 for home renovations while accepting \$200 000 worth of travel and hospitality from companies in return for millions of dollars’ worth of public contracts; the former trade commissioner to Japan, Craig Peacock, who fleeced taxpayers of more than \$500 000 by double-dipping his cost-of-living allowance amongst other fraudulent claims; the activities of former Sir Charles Gairdner Hospital clinical trials manager Judith Innes-Rowe who, at the estimate of the State Solicitor’s Office, owed taxpayers more than \$1 million in false representations of overtime and unauthorised work absences; and the shocking siphoning by Paul Whyte, over many years, of funds meant for Western Australia’s most disadvantaged citizens. It is to this state’s shame that the theft from the Department of Communities and former agencies of an estimated \$22 million stands as the biggest single act of public sector corruption in Australian history. The failure to reappoint the commissioner who presided over these operations, which have saved taxpayers tens of millions of dollars, has been a further stain on Western Australia.

In recent years, the Parliament has been diminished in the eyes of the public over revelations made in the course of the Corruption and Crime Commission’s Operation Betelgeuse. As part of that operation, the CCC investigated allegations of serious misconduct by certain former Liberal members of Parliament and, in December 2019, issued

a report into the misuse of taxpayer-funded entitlements. In that report entitled *Misconduct risks in electorate allowances for members of Parliament*, the CCC delivered an opinion of serious misconduct in relation to former Liberal MLC Phil Edman over his misuse of his parliamentary allowances. The report also brought to the public's awareness the existence of a grouping of upper house Liberal parliamentarians called the "Black Hand Gang", which used taxpayer money to fund its functions at restaurants. Liberal members of Parliament have since publicly clarified that the "Black Hand Gang" consists of all Liberal members of the Legislative Council. The report concluded with a warning that it was an interim report and that "Operation Betelgeuse is ongoing".

It was against that backdrop that, prior to his five-year term expiring in April 2020, the McGowan government sought to reappoint Mr McKechnie as commissioner for a further five years. Under section 9 of the Corruption, Crime and Misconduct Act, the Chief Justice of Western Australia is the chair of the nominating committee, which also includes the Chief Judge of the District Court and a community representative nominated by the Governor. The nominating committee must submit the names of three eligible nominees to the Premier of the day. The Premier can recommend that the Governor appoint a preferred nominee as commissioner only if that nominee has the bipartisan and majority support of the Joint Standing Committee on the Corruption and Crime Commission.

Bipartisan support is defined in the act as —

... the support of —

- (a) members of the Standing Committee who are members of the party of which the Premier is a member; and
- (b) members of the Standing Committee who are members of the party of which the Leader of the Opposition is a member;

Majority support is not defined in the act, but can be taken to have its ordinary meaning as "most" of the joint standing committee, which under section 216A(1) must have an equal number of members appointed by each house. As members know, despite Mr McKechnie, QC, being described as the "outstanding nominee" by the nominating committee chaired by Chief Justice Peter Quinlan, SC, the joint standing committee in March 2020 was unable to reach bipartisan and majority support for his reappointment.

On the recommendation of the then Leader of the Opposition, the Premier resubmitted the nomination of Mr McKechnie, QC, to the joint standing committee in April 2020 with her letter of "unequivocal support", only for the committee to again reach a deadlock. This indicated that the only Liberal member of the then joint standing committee, Jim Chown, a member of the "Black Hand Gang", did not support the return of Mr McKechnie, QC.

The inability to reappoint Mr McKechnie was met with public dismay and scepticism. I read from the opinion of *The Sunday Times* dated 12 April 2020 —

WA parliamentarians—all of them—will look like they are engaging in a cover-up if John McKechnie is not reappointed as CCC boss with an investigation into the possible misuse of politicians' \$78,000-plus parliamentary allowances ongoing.

An almost identical version of this bill was introduced to the Legislative Assembly on 16 April 2020, but lapsed on prorogation. The Liberal and National Parties opposed the Corruption, Crime and Misconduct Amendment Bill 2020 in the Legislative Assembly. This was despite the now Leader of the Opposition, Hon Mia Davies, MLA, describing Mr McKechnie, QC, during the debate as "eminently and suitably qualified". In addition, the member for Vasse indicated that she would not oppose the reappointment of Hon John McKechnie, QC, telling the Legislative Assembly —

I am aware that many in the community are disgusted by the secrecy surrounding the matter and dismayed by the impasse we are now facing. It is clear that this current situation is not acceptable to the people of Western Australia. This is why I believe efforts must be made to ensure Mr McKechnie is able to continue to complete the inquiries he is currently conducting, with the extension of his tenure for another term.

The Corruption, Crime and Misconduct Bill 2020 did not progress to the Legislative Council, in which the government did not have a working majority in the fortieth Parliament. WA Labor went to the March election promising to restore Mr McKechnie, QC, as commissioner. After the election, on advice, it was determined that the best way to proceed would be to re-commence the appointment process set out under section 9. The position was nationally advertised on 27 March 2021. By letter dated 7 May, the nominating committee wrote to the Premier advising that Mr McKechnie was the outstanding candidate, as he had been when the section 9 process was performed last year, and the committee was not aware of any matter that would adversely affect the suitability of Mr McKechnie, QC, for appointment. Furthermore, an opinion was obtained from the Solicitor-General, Joshua Thomson, SC, as to the eligibility of Mr McKechnie, QC. The Solicitor-General advised that Mr McKechnie, QC, was eligible to be appointed for a full five-year term under the Corruption Crime and Misconduct Act 2003 and its schedules. In addition, under section 9(3a), the nominating committee can only submit candidates to the Premier who are eligible for appointment. Mr McKechnie, QC, was submitted to the Premier by the nominating committee, which includes

the Chief Justice and Chief Judge. Ergo, he is eligible for appointment. There can be no question about the eligibility of Mr McKechnie, QC, as Corruption and Crime Commissioner. Mr McKechnie, QC, also received support from the Commissioner of Police, Chris Dawson, APM, praising the crime-fighting credentials of Mr McKechnie, QC, and endorsing him “as a person of unquestioned integrity, tenacity and strength to perform the role in leading the CCC”. The Premier subsequently wrote to the new joint standing committee shortly after it was appointed, recommending that Mr McKechnie, QC, be reappointed. Whereas the previous joint standing committee consisted of two Labor MPs, a Green MP and a Liberal MP, the current committee comprises two Labor MPs and a representative from the Liberal Party and the Nationals WA, which is the party of the current Leader of the Opposition.

I advise the house that on 2 June, the joint standing committee replied to the Premier advising that it had met on that day and had been unable to achieve majority and bipartisan support for the appointment of Mr McKechnie, QC. This indicates that the representative on the joint standing committee from the National Party was unwilling to provide bipartisan support. The Premier made it clear before the election that if opposition members of the joint standing committee were again unable to endorse the appointment, the government would introduce legislation to fulfil its election commitment. To that end, this bill introduces a single amendment to the process for the appointment of a commissioner, set out under section 9 of the act. This bill proposes the inclusion of a new provision, numbered section 9(4B), which states that “John Roderick McKechnie is reappointed as Commissioner for a period of 5 years”. The appointment will take effect the day after the bill receives royal assent. Put simply, this bill is about righting a wrong. It is absolutely wrong for the tenure of Western Australia’s most respected and decorated corruption fighter to be prematurely ended by opposition MPs at a time when the CCC is investigating opposition parliamentarians over the misuse of entitlements. It cannot be allowed to stand. I ask members to consider what message this Parliament would be sending should it fail to reappoint Mr McKechnie, QC. The state’s 145 000 hardworking public servants, who have got us through the pandemic, would be entitled to conclude that Parliament is content for the steely glare of the CCC to be trained on them, but not on us. It would indicate that a track record steering the biggest and most successful corruption investigations in the nation is not enough to overcome our own narrow interests. What future Corruption and Crime Commissioner would be bold enough to investigate politicians in Western Australia, as Parliament intended, knowing that the last officeholder to do so was sent into early retirement?

The CCC’s recent report titled *Report on electorate allowances and management of electorate offices*, dated 26 November 2020, which found serious misconduct on the part of former Liberal MLCs, only heightened the public’s suspicion that members of Parliament have much to fear from the CCC. It has been argued that the publication of that and other reports demonstrates that the CCC can perform well enough without Mr McKechnie, QC. I invite members to refer to the CCC’s most recent annual report. I quote acting commissioner Scott Ellis —

The current lack of a full time Commissioner is regrettable. It creates uncertainty for the Commission.

Commissioner McKechnie was a very effective and highly respected Corruption and Crime Commissioner.

The section 9 appointment process is clearly broken. A committee that by law can only have an even number of members is tasked with coming up with majority decisions on appointments, with no capacity under the act to break deadlocks. It was never the intent of Parliament for one member to have a power of veto over appointments. Members last year argued that the government should enact a wholesale overhaul of the act and it will. The Department of Justice is currently undertaking a major review of the act, including the appointment process. In the meantime, this bill seeks to return the public’s preferred Corruption and Crime Commissioner, restore the CCC’s strategic direction, give the WA Police Force back its preferred crime-fighting partner and remove the taint hanging over this Parliament.

Pursuant to standing order 126, this is not a uniform legislation bill as defined in standing order 126(2), as it does not ratify or give effect to an intergovernmental agreement; nor as defined in standing order 126(2)(b), as it is not a bill that introduces a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper [293](#).]

Debate adjourned, pursuant to standing orders.