

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
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CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

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

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

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

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

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

And others. It continues —

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

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

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

Hon Alannah MacTiernan: What state is that?

Hon JAMES HAYWARD: It is New South Wales.

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

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

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

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

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

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

Why does every other jurisdiction in Australia—certainly the couple I pointed out, the bigger ones and WA—require this? Why it does the Australia Institute, which, as I said, is a left-leaning organisation, champion the need to have bipartisan support? Why do members opposite not see that having bipartisan support is a reasonable safety net for everybody involved? This has not happened before. Since the Corruption and Crime Commission's inception there has been bipartisan support for putting people into those roles, but today we are seeing the two-inch fuse going to the fuse box and the power turned on, because we are going to get the job done. We are not worried about safety. There is no doubt that here we are seeing a political appointment. The danger of a political appointment is that it is solely being made by the Premier and his supporting party. No other party in this house or the other house has voiced support for this bill. This is being forced through. I have heard analogies like "battering ram". That is exactly what is going on. This is being forced through, and the danger in having a political appointment is that it creates questions about the ability of that individual to work independently. I do not say that with any malice or disrespect to Mr McKechnie, but I make the point that he will know that he does not have bipartisan support. He will be working in Western Australia with the two-inch bolt in the fuse box keeping the power on, but he will know that he does

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not have the bipartisan support of the Parliament of Western Australia. He will know that he will probably be the only commissioner, I imagine, in this situation in the country. I am not sure what the arrangements are in the Northern Territory, but I suspect it has a commissioner with bipartisan support as well. He will be the only commissioner working in that situation where he does not have a safety switch—that RCD. The residual current device flicks off when danger approaches, when somebody's life is potentially on the line; that is what RCDs are in the fuse box for. He will not have that because he does not have bipartisan support. He will go into the job knowing that he does not have that. It is really not a great place for us to be. It is not a great place for the state, as I said. I think there should be concern on both sides of the chamber, not just on our side, around this appointment.

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

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

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

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

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

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

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

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

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

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

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

One of the things I did as a journalist was cover the story of a young Indigenous girl who died in a Homeswest—Department of Housing—home after residual current devices were not installed. It was a terrible tragedy. That is one of the things that can happen when we take a short cut—when we forget about the safety measures and decide that they are not important. This legislation is before us because somebody did not get their own way. The Premier decided that he wanted this person but he did not have the authority to appoint that person. What is the solution? “Oh, well, we have two houses of Parliament now; we can just slam it through. We will rewrite the history, we will rewrite the bill and we will rewrite the rules to suit us.” One of the problems we have with that approach is that in

Extract from Hansard

[COUNCIL — Thursday, 24 June 2021]

p2020a-2073a

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four years' time, eight years' time, 12 years' time or at some point in time, government members will be sitting on this side of the chamber and the same approach will be used with them. I think that will be a terrible outcome as well. I say to honourable members: really think about what you are doing here today, whether you want to be signing your name to this, whether you want to be putting your name against the fact that you have rewritten the rules so that you can get your own way, and ask yourself, "Is that really in the best interest of the state?"

HON DONNA FARAGHER (East Metropolitan) [5.28 pm]: I rise to make a few brief comments on the Corruption, Crime and Misconduct Amendment Bill 2021. My position on this bill is simple. It relates to proper process. I am going to confine my comments to that in this second reading debate today. I want to pose a couple of questions. First: does this bill seek to subvert a process put in place through legislation introduced by a former Labor government and a former Labor minister? Yes, it absolutely does. Does this bill seek to subvert a process that was recommended by a former Standing Committee on Legislation in its twenty-first report tabled in December 2003? That committee was chaired by a former Labor member, Hon Jon Ford, and its members were Hon Peter Foss, Hon Giz Watson, Hon Derrick Tomlinson, former members of this place, and Hon Kate Doust, a current member of this house. That report was referred to by Hon Nick Goiran. Does it seek to subvert the process that was recommended in that report? Yes, it absolutely does. That 2003 committee report very clearly stated after long consideration that the appointment of the commissioner should be "apolitical and bipartisan". The act as it stands, and as it has stood since 2003, clearly states the process for the appointment that must be undertaken. Quite obviously the Premier and the Attorney General are not happy with the process that was put in place by a former Labor government. As others have said, the Premier and the Attorney General have consistently put forward the notion that the Liberal Party, of which I am a member, has blocked Mr McKechnie's reappointment. What the Premier and the Attorney General have failed to do, and one might say quite deliberately so, is to set out the true facts of the matter. It might be an inconvenient truth to the Premier, but section 9 of the act as it stands today stipulates that the Premier must provide the bipartisan Joint Standing Committee on the Corruption and Crime Commission with a recommendation from three nominees for appointment. The bipartisan committee then advises if the recommendation is supported on both a majority and a bipartisan basis. If it is not supported, the Premier's recommended nominee cannot ultimately be recommended to the Governor. Those are the facts of the matter.

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

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

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

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

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

The Committee met on 22 April 2020.

It took into account the matters which were recently brought to the Committee's attention by the Premier.

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Again it was unable to reach either a bipartisan or a majority decision in support of the recommendation to reappoint the current incumbent.

The Committee operates under Standing Order 270:

“Committee deliberations will be conducted in closed session.”

However, because of unfounded public speculation about the motives for the Committee’s previous deliberations, it has resolved to unequivocally reject any suggestion that the motivation for any members not supporting the appointment recommendation was the Corruption and Crime Commission’s focus on parliamentary electoral allowances.

A range of reasons were canvassed at length. As has been the practice since the Committee’s inception, all points of view by members were made in good faith and given respectful consideration.

The nature of those discussions is not detailed because it includes information provided by third parties in confidence and matters which may impact on the operational performance of the Commission.

As has been the previous practice, the Committee interviewed all persons on the list considered by the nominating committee. We note in the report of the nominating committee that, although the incumbent is described as outstanding, the observation is also made that *“each of the nominees is qualified for appointment to the position of Commissioner.”*

This Committee notes that a suggested 2016 amendment to the provisions of the *Corruption, Crime and Misconduct Act 2003* dealing with the appointment of both the Commissioner and Parliamentary Inspector has never been introduced.

That recommendation occurred after a similar dilemma had arisen where the previous Joint Standing Committee *“recommended to the Premier that he appoint a person other than the proposed candidate due to a specific operational reason for the Commission.”*

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

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

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

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

HON DR STEVE THOMAS (South West — Leader of the Opposition) [5.42 pm]: It is going to be somewhat difficult for me to make a significant contribution to the debate this evening, given my position on the current Joint Standing Committee on the Corruption and Crime Commission, so I do not intend to give a particularly long address. To be honest, I think this is the first time in the last few weeks that I have stood to give a contribution to

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a second reading debate and the clock has been on me, so it is a fairly momentous occasion in itself to be restricted to an hour. I can guarantee members that I will not be filling in that entire hour.

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

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

We find ourselves in very unusual times. I must say, I was drawn to Hon Martin Aldridge’s speech, as I quite frequently am. That is not to say that the contributions by other members were not excellent; they were. But Hon Martin Aldridge’s focus on the process of appointment warrants some review. I think his suggestions are worthy and should be taken on board. I note that it is a highly unusual step for anyone to be appointed by an act of Parliament. When the parliamentary secretary replies to the second reading debate, I will be interested to find out whether he knows of any precedents for that occurrence in this or any other jurisdiction. I would have thought it would be remarkably rare. I am not aware of any precedent. The parliamentary secretary can perhaps give us some examples of this having occurred before, or are we very much in uncharted waters?

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

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

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

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

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

Perhaps the recommendation panel or the Joint Standing Committee on the Corruption and Crime Commission should be empowered to do more. I would have concerns if it were purely the executive arm of government that were empowered to do the job. We have choices here, honourable members. We can empower the Parliament or we can empower the selection panel, but none of those is the path proposed by the government. The government is proposing to empower itself. If ever there was an issue of inappropriate oversight or use of power, I suggest that it is in the executive appointing someone whose job it is to watch the executive for corruption. That is not to say that the person proposing this bill cannot do the job or that I have no faith in the person named in the bill. None of that is true. I will fulfil my obligations to the committee; I will certainly not be the person who makes any of that public. I have no doubt that Hon Klara Andric will feel exactly the same. It is a committee that can function. I think we have proved that, even though we have not been at it for very long.

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

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

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

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

- (1) That the Corruption, Crime and Misconduct Amendment Bill 2021 be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 12 August 2021.
- (2) The committee has the power to inquire into and report on the policy of the bill.

HON SUE ELLERY (South Metropolitan — Leader of the House) [6.00 pm]: I am conscious of the time and that the Deputy President might take another action in a moment or two, but I will just put the government's position on the record. We will not be supporting the referral of the bill to the Standing Committee on Legislation. This bill has certainly attracted some controversy in the debate, but it is actually not a complicated piece of legislation. The

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legislation committee normally considers complex pieces of legislation. The debate has been about, from what I have heard, the suitability of the candidate—or not, in members' opinions—and the conduct of various players in the application of the existing act, not the proposed bill. The committee is not going to resolve those matters for anyone. Opposition members have to make their own judgement about those matters, and I do not think the committee can assist them with that. The debate so far that I have listened to has been about whether the person proposed is suitable—the committee is not going to be able to resolve that for opposition members—and the application of the provisions of the existing act. That is not the role of the legislation committee; its role is to look at the proposals in the bill. The government will not be supporting the referral.

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

Sitting suspended from 6.01 to 7.00 pm

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

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

This motion moved by the Leader of the Opposition has some precedent. I draw to members' attention that in 2003, when the very legislation that we are currently looking to amend first made its passage through the Parliament via the Corruption and Crime Commission Bill 2003, it was, indeed, referred to the Standing Committee on Legislation. In 2003, Australian Labor Party members were in government in Western Australia and they saw fit to refer the bill to the Standing Committee on Legislation. That referral resulted in a report tabled in December of that year, being the twenty-first report, *Report of the Standing Committee on Legislation in relation to the Corruption and Crime Commission Act 2003 and the Corruption and Commission Amendment Bill 2003*. At the start of that report the committee informed the house that on 26 June 2003, the Corruption and Crime Commission Bill 2003 and the Corruption and Crime Commission Amendment Bill 2003 were referred to the Standing Committee on Legislation. A reporting date was not set, and I will come back to that point a little later. The report continues —

The Bills initially formed one bill known as the Corruption and Crime Commission Bill 2003 ... The original Bill was split in the Legislative Council, in order to enable the provisions dealing with the establishment of the Corruption and Crime Commission ... to be promptly enacted.

The provisions relating to the establishment of the CCC formed the Corruption and Crime Commission Bill 2003 which was passed on June 26 2003 and received Royal Assent on July 3 2003. As the Corruption and Crime Commission Bill 2003 has been assented to, it is referred to in this Report as the *Corruption and Crime Commission Act 2003* ... At the time of the presentation of this Report, the *CCC Act* has not yet come into operation.

The remaining provisions of the original Bill became the Corruption and Crime Commission Amendment Bill 2003 ...

The terms of the referral has enabled the Committee to conduct its inquiry on both the *CCC Act* and the CCC Amendment Bill.

Pursuant to an order from the Legislative Council, the Committee may consider the policy of the *CCC Act* and the CCC Amendment Bill.

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

I re-emphasise to members that a referral of this sort is not without precedent. I ask members to contemplate and perhaps respond during the course of the debate on this referral motion to answer the questions: Why was it okay to make the referral in 2003 to a standing committee chaired by Hon Jon Ford, but not okay to make a referral to a standing committee in 2021 chaired by Hon Dr Sally Talbot? What has changed in the 18 years that have transpired in the meantime that would make this chamber say no to a referral motion? Some members may rise and provide an explanation about what has indeed changed over that 18-year period, but it is not apparent to me why the referral

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would not be appropriate today as it was in 2003. If a member is inclined to articulate a reason, might they also consider the words of the Leader of the House as recently as 3 June 2021, some three weeks ago today. These comments from the Leader of the House three weeks ago, which I will read out in a moment, stand in some contrast to the contribution she made prior to the adjournment, when she indicated that the government would not be supporting the referral motion moved by the Leader of the Opposition. Her rationale for that was that the bill before us is not, in the view of the Leader of the House, complicated. I agree with the Leader of the House that the bill before us is not complicated. If the Leader of the House is referring to the manner and form, and the structure and content of the bill, it is not a complicated bill; it is a relatively simple four-clause bill. The purpose of the referral is not to have the Standing Committee on Legislation consider the technical drafting and formatting of the bill or matters of that sort. I agree with the Leader of the House that in that respect, the bill before us is not complicated. However, I ask members to consider the remarks made by the Leader of the House a mere three weeks ago when *Hansard* records the honourable member saying this —

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

Those are the words of the Leader of the House, Hon Sue Ellery, a mere three weeks ago, saying that these types of referrals are, according to the honourable member, how this house creates better legislation. It is one of the things that the honourable member says this house does—apparently not on 24 June 2021. Something significant has changed—a seismic shift has occurred—that has resulted in the Leader of the House rapidly rising to her feet after hearing Hon Dr Steve Thomas, the Leader of the Opposition, move the referral motion and proceed to tell the house that the government will not be supporting it because, according to her, the bill is not complicated. In fact, according to my notes, the Leader of the House indicated that the committee cannot help the chamber because the question is whether or not the person is suitable. In my view, the committee could absolutely help the house to answer a number of very important questions about this very important and unprecedented piece of legislation. The first thing the committee would be able to do is to answer the eligibility question. Members may or may not be aware that there is a serious question mark about the eligibility of John Roderick McKechnie to be appointed at this time. The reason these questions have emerged about the eligibility of the individual is that section 10 of the Corruption, Crime and Misconduct Act sets out the qualifications for the appointment of a person as a Corruption and Crime Commissioner. In subsection (1) it states —

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

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

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

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

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

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

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

Clauses 4(2) goes on to say —

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

Clause 4(3) then says —

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

Why that is particularly relevant is because John Roderick McKechnie is a former judge of the Supreme Court of the state, and his service as Corruption and Crime Commissioner is, according to Western Australian law, to be treated

Extract from Hansard

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

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

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

Sadly, I have observed today that once again the members of the Australian Labor Party have been muzzled by their leader. They are clearly under a directive not to speak on this matter. I have said to them previously that I understand the dilemma for those members. Should they ever show an ounce of courage with respect to the Leader of the House, they will be out on their ear. I understand their dilemma. In those circumstances, only one person can be held to account with regard to that matter—that is, the Leader of the House. If the Leader of the House is the only person who will be allowed to contribute to this matter, she needs to be in a position to tell us why it was lawful for that to occur.

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

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

The other thing that the Standing Committee on Legislation could do is hear from the Parliamentary Inspector of the Corruption and Crime Commission. The committee might even be inclined to call in as witnesses the past two chairs of the Joint Standing Committee on the Corruption and Crime Commission to ascertain their views on the

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

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

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

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

I always treat your recommendations with the seriousness they deserve.

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

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

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

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

I turn to the time frame that has been proposed by Hon Dr Steve Thomas, the Leader of the Opposition. He has sought our support for a motion to refer this bill to the Standing Committee on Legislation, and for the committee to consider and report by no later than 12 August 2021. I indicate that I will be supporting the motion moved by

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

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

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

If this process were embarked upon and the legislation committee did its work and found that the concerns that have been raised are unfounded, all members of this chamber would be able to have confidence in supporting the government, because the committee would have been able to interrogate all those issues. We would then find that for the next five years, when Mr McKechnie is holding that position, the work that is done by the Corruption and Crime Commission will not then be tainted by this political appointment process. Members of this place and the other place, and the people of Western Australia, will then be able to have confidence in the work that is being done by the Corruption and Crime Commission. As things stand at the moment, we have a government that is being dictated to by the member for Rockingham, who is saying that this is the way it is going to be. The Parliament is now being told to also fall into line. No scrutiny has been allowed. There has been no opportunity to interview the applicant and assess him on his performance and to test the veracity of the concerns that have been raised by members and by the Standing Committee on Procedure and Privileges. The government is saying that under no circumstances can that happen. That will result in a situation in which each and every one of the reports that is tabled by the Corruption and Crime Commission over the next five years, under the stewardship of Mr McKechnie, will stand for nothing. What kind of weight will we be able to give those reports? I have got a rubbish bin here, and that is probably the place where those reports will go, because the process will have been so politicised, at the insistence of the Labor government.

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

Division

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

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Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

Ayes (11)

Hon Martin Aldridge
Hon Peter Collier
Hon Donna Faragher

Hon Nick Goiran
Hon James Hayward
Hon Sophia Moermond

Hon Tjorn Sibma
Hon Neil Thomson
Hon Wilson Tucker

Hon Dr Brian Walker
Hon Colin de Grussa (*Teller*)

Noes (17)

Hon Klara Andric
Hon Dan Caddy
Hon Sandra Carr
Hon Stephen Dawson
Hon Sue Ellery

Hon Peter Foster
Hon Lorna Harper
Hon Jackie Jarvis
Hon Alannah MacTiernan
Hon Kyle McGinn

Hon Shelley Payne
Hon Stephen Pratt
Hon Martin Pritchard
Hon Matthew Swinbourn
Hon Dr Sally Talbot

Hon Darren West
Hon Pierre Yang (*Teller*)

Pairs

Hon Dr Steve Thomas
Hon Dr Brad Pettitt
Hon Steve Martin

Hon Kate Doust
Hon Rosie Sahanna
Hon Ayor Makur Chuot

Question thus negated.

Second Reading Resumed

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

An opposition member interjected.

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

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

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

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

The *CCC Act* and the CCC Amendment Bill replace the Anti-Corruption Commission with a new agency, the CCC. The CCC is to have the following functions:

- a **misconduct function** which involves investigation and action against police and general public sector misconduct;
- a function called an **organised crime function** which despite its name actually leaves this function to the police and assigns to the CCC the exercise of powers previously to be exercised by a special

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commissioner under the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*;

- a **prevention and education function**; and
- a **function of completing Police Royal Commission matters**.

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

This Report is wide ranging, however the Committee’s main concern has been the proper balance between power and accountability. This has led the Committee to look at such matters as the structure, composition and model of the CCC, and its functions and powers. Given the breadth of this Report, the Committee highlights the following amendments which it considers will be fundamental to ensuring the success of the new agency:

- The amendments in relation to the misconduct function which are intended to enable the CCC to direct its resources to allegations of serious misconduct rather than less serious allegations thereby enabling the agency to properly perform its functions.
- The amendments to involve the parliamentary committee with oversight of the new agency in the appointment process for the Commissioner of the CCC and the Parliamentary Inspector. These amendments make both these roles accountable to the Parliament and the people of Western Australia through a parliamentary joint committee.
- The amendments directed to creating the office of the Parliamentary Inspector as an agent of the parliamentary committee with oversight of the CCC. The Committee considers that this is the most comprehensive and effective model of accountability.
- Given the CCC’s extensive coercive powers, the Committee recommends an amendment which provides that the Parliamentary Inspector is to have the ability to directly audit any operation carried out pursuant to the powers conferred or made available by the *CCC Act*. This will include operations conducted by the Police Service using exceptional powers granted by the CCC pursuant to the organised crime function.
- The amendments in relation to the prevention and education function of the CCC which are directed to creating a clear link between the intelligence gathering role of the agency and its prevention and education function.

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

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

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

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

Paragraph 6.77 states —

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

Paragraph 6.78 states —

The Anti-Corruption Commission submitted —

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

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

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

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

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

Paragraph 6.81 states —

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

Then paragraph 6.82 states —

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

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

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

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

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

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

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

Paragraph 6.85 states —

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

Paragraph 6.86 states —

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

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

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

Recommendation 25 was —

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

Those are the statutory recommendations; I am not going to read those. The point is that the Standing Committee on Legislation in its inquiry—not time limited and given the opportunity to properly scrutinise the legislation as it was at that point—after considering the mechanisms used in other jurisdictions and the submission of various interested parties, including the Crown Solicitor's Office and the Anti-Corruption Commission at the time, came back in its comprehensive report of some 280-odd pages with a recommendation that considered that the process

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must be both apolitical and bipartisan. That is the process we had up to this point—apolitical and bipartisan. That is the most critical point that we must understand in this debate on this bill. Should it pass Parliament, it will change that process fundamentally to bypass what has been a key plank of the appointment of the Corruption and Crime Commissioner from 2003 when the committee made a recommendation and the legislation was amended. This bill attempts to amend that to a point whereby it becomes a captain's pick and the government is moving the goalposts, changing the appointment to suit its own end.

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

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

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

Hon Matthew Swinbourn interjected.

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

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

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

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

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CCC on all issues in all circumstances is fanciful. Competitive tension between those bodies is built into the Corruption, Crime and Misconduct Act 2003.

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

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

... I have always received appropriate consideration from the Hon McKechnie ...

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

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

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

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

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

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

I now move to the contribution of Hon Wilson Tucker, who is out on urgent parliamentary business. I think he would suggest that his contribution could be summarised as saying that it should be about the process and not the person. We say that the process is deadlocked—not broken, deadlocked. The joint standing committee is the child of the

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

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

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

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

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

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

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

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

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

It was also pointed out in the transcript that Mr Collier read out—Hon Peter Collier. Members will notice my notes state “Mr Collier” all the way through, so I have to keep correcting myself, so I apologise if I miss that. Hon Peter Collier read out the CCC transcript of chief executive Ray Warnes. When he was asked about the list by the Joint Standing Committee on the Corruption and Crime Commission during the last parliamentary term, Mr Warnes said that it was so the AG could understand administratively the impact of what a break in continuity of commissioners would mean for the commission. I do not think there is anything unusual about that in those circumstances.

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

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

He continued —

... I view the decision not as a personal attack ...

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

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

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

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

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

Hon Tjorn Sibma: It was not sophisticated.

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

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

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

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

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

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

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

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

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

Hon Neil Thomson: Not now.

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

The article continues —

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

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

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

Yesterday marked the last official day of John McKechnie's term as the first and only Corruption and Crime Commission commissioner to serve out a full term. There is a reason why nobody else has lasted the full five years; it is an incredibly demanding role. Very few can do it and far fewer can do it well.

I am a former commission officer who wishes to pay tribute to Mr McKechnie because of the impact he has had on my life and the WA community. Having worked with 11 (substantive and acting) commissioners, I can easily say that Mr McKechnie was the best. His tremendous record in public service speaks for itself. I will always be grateful to him for his wise counsel and continuous encouragement. He is genuinely the diamond standard in integrity.

Whoever replaces Mr McKechnie has huge shoes to fill but they will be inheriting the best and most capable team.

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
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The author of this was Tracey Chung, and she was writing from Victoria. I think that is a pretty good basis on which to have confidence that we are making the right decision here.

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

Right man for the job

I was very pleased to see that John McKechnie is to apply for his old job as Corruption and Crime Commissioner (*Sunday Times*, 28/3).

I hope that this time around whoever had the power to prevent his reappointment a year or so ago has no influence in this process.

That was one of the silliest bureaucratic processes known, and kept a very able man away from protecting this State, especially as there was so much secrecy as to why the appointment was blocked.

Without, of course, knowing who else may apply or what their character and/or skills are, I have to say that they would need to be very, very special indeed to be preferred to Mr McKechnie.

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

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

We also had a contribution from Hon Donna Faragher.

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

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

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

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

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

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

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

Several members interjected.

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

THE Right Reverend Father in God Henry Hutton Parry, Doctor of Divinity, Lord Bishop of Perth; the Very Reverend Frederick Goldsmith, Dean of Perth; the Venerable James Brown, Archdeacon of Perth; Mr. Justice Edward Albert Stone; the Honourable Anthony O'Grady Lefroy, Esquire; and William Thorley Loton, Esquire, and their successors as appointed by Statute of the Synod, or to be appointed in accordance

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with the provisions of any Statute of Synod to be made and enacted hereafter, shall be and are hereby constituted a Corporation, by the name and style of “The Perth Diocesan Trustees”...

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

Several members interjected.

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

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

So there are examples of this happening. It is conceded that it is unusual, but it has happened.

Hon Dr Steve Thomas interjected.

Hon MATTHEW SWINBOURN: You asked, member, and we answered.

Several members interjected.

The PRESIDENT: Order! I think your interjections have been made, honourable members. The parliamentary secretary has the call.

Hon MATTHEW SWINBOURN: Thank you, President.

Members asserted that the process has been politicised. Nothing could be less political than the independent nominating committee that I have already referred to. Mr McKechnie is the outstanding nominee that we are appointing, not someone plucked by the executive. On the other hand, the joint standing committee process is political; it is made up of politicians with party affiliations, unsurprisingly, and they have been specifically included in the act, so there is reference to the party political affiliations of the members of the joint standing committee. For example, there is reference to members of the Premier’s party and members of the Leader of the Opposition’s party. The Joint Standing Committee on the Corruption and Crime Commission is a party political process. The nominating committee that put Mr McKechnie’s name forward is not political.

Look back through history and what was intended by Parliament; it was never the intention of Parliament for one member of the joint standing committee to hold up appointments. During the debate back on 11 December 2003, former Attorney General Peter Foss, although he would not have been Attorney General at that time, said, in relation to bipartisanship —

The ideal situation is that everybody on each side should agree, but I do not want one person to have the power to say that he or she disagrees and muck everything up ...

So how can this be a captain’s pick, as members opposite have accused us of, if the outstanding nominee of the nominating committee, which is responsible for overseeing the recruitment process, is the person who has been put forward in this bill?

On that basis, I will conclude my comments.

Hon Dr Steve Thomas: I did ask a second serious question, which was: if you can install a commissioner by legislation, can you remove a commissioner by legislation? I am wondering whether you might have an answer to that.

Hon MATTHEW SWINBOURN: The answer to that, member, is that is already possible. I am reliably informed that section 12 of the current act allows Parliament to remove a Corruption and Crime Commissioner. I know the member did raise that, and I have a note of that somewhere, but I have a lot of paper on my desk and it is a bit all over the place. The answer is that under the current act, Parliament has the power to remove a commissioner.

Those are my concluding remarks, and I commend the bill to the house.

Division

Question put and division taken with the following result —

Extract from *Hansard*
[COUNCIL — Thursday, 24 June 2021]
p2020a-2073a

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

Ayes (17)

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

Noes (11)

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

Pairs

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

Question thus passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Peter Foster) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

The DEPUTY CHAIR: Members, we are dealing with the bill. Before we do so, I draw members' attention to supplementary notice paper 30, issue 2.

Hon NICK GOIRAN: As we get started, in the parliamentary secretary's reply to the second reading debate, he indicated in response to Hon Martin Aldridge's requests that Mr McKechnie will not be available. Does that mean he will be unable to provide the parliamentary secretary with any advice during our consideration of this bill this evening?

Hon MATTHEW SWINBOURN: Yes, member; Mr McKechnie is a private citizen. If the member's question is whether Mr McKechnie will be providing me with advice at the table, the answer is no; he will not be providing me with advice.

Hon NICK GOIRAN: Will either the parliamentary secretary or any of his advisers be able to obtain information from the applicant?

Hon MATTHEW SWINBOURN: I am sorry, I do not quite understand what the member is getting at here. What does he mean "provide advice from him"?

Hon NICK GOIRAN: The question is whether the parliamentary secretary or one of the advisers will be able to communicate with Mr McKechnie to provide information to the chamber.

Hon MATTHEW SWINBOURN: No, member.

Hon NICK GOIRAN: The parliamentary secretary indicated in his response in reply that that will not happen. In accordance with my notes, his justification was because we are not a selection committee, and, if I understand him correctly, it is because he said that that process has already been done by the nominating committee. Is that right?

Hon MATTHEW SWINBOURN: Yes, the nominating committee puts out advertisements for people who are interested. They then obviously go through whatever process the nominating committee follows and makes suggestions to the Premier.

Hon NICK GOIRAN: Consequently, the view of the government is that the chamber, the Legislative Council and the Parliament of Western Australia are not a selection committee, according to his words in his reply, because that process has been undertaken by the nominating committee. Parliament has a different role to play and the role we are playing is not of a selection committee, is that right?

Hon MATTHEW SWINBOURN: Our role here is to deal with the bill before us and to pass that bill or not pass that bill. That is our role.

Hon NICK GOIRAN: The member was asked by Hon Martin Aldridge whether the government would provide Mr McKechnie to the chamber, and he indicated that that will not happen. In his second reading reply, and I do

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not have the *Hansard* but I have my handwritten notes, he said that the reason for that is because we—I take it when he referred to “we”, he was talking about the chamber, being the Legislative Council, not the government of Western Australia—are not a selection committee. The “we” would be this chamber?

Hon MATTHEW SWINBOURN: I do not have my *Hansard* before me, but we, the chamber, are not a selection committee in the selection process as we would ordinarily understand it.

Hon NICK GOIRAN: That is because, according to my notes—perhaps the parliamentary secretary still has his notes on the response he gave to Hon Martin Aldridge handy—the parliamentary secretary indicated that the role of the selection committee had already been undertaken by the nominating committee. I am happy for the parliamentary secretary to refer back to his notes and correct the record if I have misquoted him in any way with respect to his reply.

I do not want to dispute with the parliamentary secretary whether the Parliament and this chamber are a selection committee. I also do not want to dispute with the parliamentary secretary whether it is the case that the nominating committee has already performed that role. For the purposes of making progress, let us just say that that is correct—the Legislative Council at this time is not a selection committee and that is because the role has already been undertaken by the nominating committee. How will the role receive bipartisan support at this time?

Hon MATTHEW SWINBOURN: Whether it receives bipartisan support is entirely up to the Liberal Party and the Nationals WA, if the member wants to put it in those terms. The bill before the house is open for members to vote to support. The member already voted against it at the second reading stage and we divided on it. The member has indicated that he does not support it. Patently, the bill will not receive bipartisan support on that basis.

Hon NICK GOIRAN: In the parliamentary secretary’s reply, he indicated that this process was not subverting the process and was not political—he emphasised that on a couple of occasions—because the government will rely on the nominating committee. According to the parliamentary secretary in his reply, the existence and composition of the nominating committee and its recommendation to government makes this process not political. My question to the parliamentary secretary is simply: if that is correct—as I say, I do not want to dispute that point because the government has a very strong view on that—where does the bipartisan requirement come in?

The parliamentary secretary indicated in his response to my question moments ago that that is a matter for the Liberal Party. With respect, I do not know whether that is correct. I think the parliamentary secretary will find that a different process is set out in the act. But, again, rather than disputing with the parliamentary secretary about that, the government knows, at this time, that not only does the Liberal Party and National Party not support the appointment; but there is no party in the Parliament that will provide support other than the Labor Party. So if the parliamentary secretary’s contention is that we do not need to worry about anything here because the nominating committee is already taking care of the selection process, would the parliamentary secretary agree that at the moment the process outlined in the act that we are about to amend has two stages? The first stage is the nominating committee stage. The second stage brings in bipartisan majority support. Does the government agree that there is currently a two-stage process?

Hon MATTHEW SWINBOURN: I think there are a couple more than two stages. I think the stages are the nominating committee, then the transmitting of that view to the Premier, the Premier then putting forward a candidate and that going to the joint standing committee, and then that coming back in that regard. That is the process.

Hon NICK GOIRAN: Does the final part of the process require bipartisan support?

Hon MATTHEW SWINBOURN: In terms of what the joint standing committee is required to do, the requirement is for both majority and bipartisan support at the joint standing committee stage.

Hon NICK GOIRAN: What is the process if there is no joint standing committee?

Hon MATTHEW SWINBOURN: Section 9(4) of the Corruption, Crime and Misconduct Act 2003 specifically states —

Except in the case of the first appointment, before an appointment is made under subsection (3), the Premier must consult with —

(a) the Standing Committee; or

This goes to the member’s question —

(b) if there is no Standing Committee, the Leader of the Opposition, and the leader of any other political party with at least 5 members in either House.

Hon NICK GOIRAN: Does John Roderick McKechnie currently enjoy the support of any of those individuals?

Hon MATTHEW SWINBOURN: The candidate has not been submitted to any such process so I cannot answer that.

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Hon Nick Goiran: Sorry, has not?

Hon MATTHEW SWINBOURN: He has not been submitted to any such process that I have just described under section 9(4)(b), so it would be speculation.

Hon NICK GOIRAN: Is the parliamentary secretary saying to the chamber that the Premier has not exercised the option available to him under section 9(4)(b)?

Hon MATTHEW SWINBOURN: That is correct; he has not. The thing is that section 9(4)(b) says “if there is no Standing Committee”. There is a standing committee so that would not be available to the Premier in the current circumstances.

Hon NICK GOIRAN: When did the standing committee first come into existence?

Hon Matthew Swinbourn: Do you mean like when it first came in 2000 and whenever?

Hon NICK GOIRAN: There is only one joint standing committee at the moment and it started on a particular date.

Hon MATTHEW SWINBOURN: My understanding is that the current committee was formed on 26 May 2021. As to when it was originally formed, I cannot answer that.

Hon NICK GOIRAN: It was 26 May, so prior to 26 May 2021 there was no standing committee. I assume that we are of one mind in that regard. I ask the parliamentary secretary to take as much advice and as much time as he needs about this. Is the parliamentary secretary informing the chamber now that the Premier of Western Australia—there is only one, the member for Rockingham—at no time since the state election in March until 26 May when the standing committee was formed, embarked upon the process set out in section 9 (4)(b) of the act?

Hon MATTHEW SWINBOURN: The advisers with me are from the Attorney General’s office. The advice that I can give is based only on the advice available to me right now. As far as we know, the Premier did not follow that process in potentially filling the position of commissioner of the CCC.

Hon NICK GOIRAN: What process do we need to implement now so that the parliamentary secretary is able to get the advice that we need?

Hon MATTHEW SWINBOURN: I think I have been quite generous to date on this particular point. The bill has four clauses. The member is proposing a process that is not the subject of this particular bill. I am happy to answer the questions that I can, but I will not delay the progress of this bill by seeking alternative advice. I will, though, make a further note about what the member is saying about the formation of the committee. The process would have still required the nominating committee to forward to the Premier the names of the particular people for him to put before that group. That did not happen until 7 May, which was after this. He did not have the names before him. The process was started again, as the member was aware. The positions were advertised and the nominating committee wrote to the Premier, describing him in early May as the outstanding nominee, after the committee had formed.

Hon NICK GOIRAN: The parliamentary secretary just said to us that the committee was formed on 26 May, now he is talking about a date prior.

Hon MATTHEW SWINBOURN: Sorry, I take the member’s point. He raised a good point; I was incorrect. I am getting my Marches and Mays mixed up. There was a lot going on at that particular time all around the place. I understand that on 7 May the nominating committee described to the Premier in its letter the outstanding nominee, and the member is correct that on 26 May 2021, the Joint Standing Committee on the CCC was formed in the current Parliament.

Hon NICK GOIRAN: There is a time between 9 May and 26 May 2021 when the Premier may have embarked upon the process set out in section 9(4)(b) and that is the question that I am asking. What do we need to do for the parliamentary secretary to get accurate advice about whether that process was embarked upon during that time?

Hon MATTHEW SWINBOURN: I cannot give the member anything more definite than what I previously gave him. I can seek at a later time to confirm that with him, but as I already indicated, I do not think it will have any bearing on whether or not the member supports the bill, because he has already indicated that he does not support it.

Hon NICK GOIRAN: That is the point, parliamentary secretary; the government is subverting the current process. In the parliamentary secretary’s reply to the valid concerns raised by several members, he repeatedly dismissed the concerns of my colleagues by saying that the government is not subverting the process. The justification that the parliamentary secretary provided is that the nominating committee had performed a role. He said that the nominating committee is not political. I agree; as I said, I will not dispute that, but there are multiple parts to the process.

When my colleagues say to the parliamentary secretary and the government that they are subverting the process, they are talking about not only the nominating committee process, but also the entire process. Most importantly, that process includes, at the end, a requirement that there be bipartisan support. I have asked the parliamentary secretary

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to indicate which party, other than the Labor Party, agrees with the appointment. He has been unable to name a party, either in the fortieth Parliament or the forty-first Parliament. That is called subverting the process. The Premier of Western Australia cannot get his way, so he is subverting the process and avoiding bipartisan support. The parliamentary secretary says it is up to the Liberal Party to provide that support. That is contrary to the act. In any event, the parliamentary secretary took me to section 9(4)(b) and the process that occurs if there is no standing committee.

We will be here for a while, so I hope that somebody in government is talking to someone in the Premier's office right now to find out whether he embarked on that process. It is not difficult. According to my notes—I am happy for the parliamentary secretary to correct me if I recorded this incorrectly—the Premier received the three names from the nominating committee on 7 May 2021. It may be useful for the parliamentary secretary to table the document that provides that information if he can.

Hon MATTHEW SWINBOURN: I am not able to table that document.

Hon NICK GOIRAN: Why is that, parliamentary secretary?

Hon MATTHEW SWINBOURN: The document is confidential between the Chief Justice and the Premier.

Hon NICK GOIRAN: Let us get this right. The parliamentary secretary should remember that he is on the record as saying that the process has not been subverted. I take it that the government realises that that process involves the letter that he referred to being provided to the Joint Standing Committee on the Corruption and Crime Commission for its consideration. The government decided that it is not happy with that process, so it introduced this bill. As part of this alternative process, the parliamentary secretary will not provide us with the same information that would be provided to the Joint Standing Committee on the Corruption and Crime Commission. That is called subverting the process. He can dress it up any way he wants but let us remember that is the same government that promised gold-standard transparency.

We have a situation in which the government is hiding documents from the Parliament yet again, as if it learnt nothing in the fortieth Parliament. First, it hides documents from the Parliament when we are making this important decision. Second, the parliamentary secretary tells us that Mr McKechnie is playing hide and seek; he is nowhere to be seen, and he will not be available to us. We suggested to the Leader of the Opposition that this matter be referred to the Standing Committee on Legislation. The parliamentary secretary said no. Well, he did not, but the Leader of the House did. She made sure that no-one else spoke on it. This is the gold-standard transparency of the McGowan government. The government is asking us to agree to the appointment of Mr McKechnie. It says it is up to the Liberal Party to provide bipartisan support. It should give us the documents. In his reply, the parliamentary secretary made a big deal about the fact that the process is not political because the nominating committee consists of these eminent individuals. I agree with him. I said that I agree. Those particular individuals who are on the nominating committee have my deepest respect. They have provided a letter as part of this process that the government is placing great weight on. I am asking the parliamentary secretary to release the document. Why would he hide it? Apparently, it is a secret document between the Chief Justice and the Premier. In fairness, the parliamentary secretary did not say "secret". That is me paraphrasing him; he said it was confidential. A confidential document between the Chief Justice of Western Australia and the Premier includes the chief point raised by the McGowan government about why the appointment needs to go ahead. That particular committee said so in the letter but we cannot see the letter. Yet the government expects us to provide bipartisan support. What garbage this is! Then McGowan government members and ministers told us that they are not subverting the process. Parliamentary secretary, who are the current members of this nominating committee who provided the letter to the Premier on 7 May?

Hon MATTHEW SWINBOURN: Who the members are is not a mystery; I just had to make sure that I had the names right. The members of the nominating committee are the Chief Justice of Western Australia, Hon Peter Quinlan, SC; the Chief Judge of the District Court, Hon Julie Wager; and the community representative is Ms Audrey Jackson, who is a former senior bureaucrat from the Department of Education. Member, just to clarify —

Hon Peter Collier: She was from AISWA, not the education department.

Hon MATTHEW SWINBOURN: If the member knows better than me, he knows better than me.

In relation to the correspondence I referred to that Hon Nick Goiran made a point about, that correspondence was not transmitted to the Joint Standing Committee on the Corruption and Crime Commission either.

Hon NICK GOIRAN: Has that information ever been provided by the Premier to the joint standing committee? Let us be very clear what we are saying here, because I am probably going to have a short fuse with this matter if we are not provided with accurate information during the course of this deliberation. That is not a criticism of the parliamentary secretary because, as per usual, he is doing his best with the advice he has been given. But I want to make sure that the advice is considered and accurate. If people are not sure, they should say that they are not sure and they should check. Do not expect the Parliament of Western Australia to tolerate half-baked information. To the best

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of my understanding, on three occasions the current Premier of Western Australia transmitted to the Joint Standing Committee on the Corruption and Crime Commission the name of his preferred applicant, preferred nominee, preferred recommendation for the appointment of commissioner to the Corruption and Crime Commission. It is a matter of public record that the name that the Premier put forward on each occasion was Mr McKechnie. My question to the parliamentary secretary is: on any of those three occasions did the Premier provide to the Joint Standing Committee on the Corruption and Crime Commission a copy of the letter that he received from Chief Justice Quinlan? I again ask the parliamentary secretary to take as much advice and time as is necessary.

Hon MATTHEW SWINBOURN: The member referred to three occasions. On the first occasion, the Premier just passed the correspondence containing the three names on to the committee. On the second occasion, he did not because those names had already been passed on the first time. On the third occasion, he did not either.

Hon NICK GOIRAN: Can the parliamentary secretary provide us with the dates of those three occasions—that is, the three dates that the Premier transmitted a request or a letter to the Joint Standing Committee on the Corruption and Crime Commission providing his recommendation in seeking that committee’s bipartisan and majority support? What were the three dates?

Hon MATTHEW SWINBOURN: The first date was 5 March 2020, the second one was 16 April 2020 and the third one was 26 May 2021.

Hon NICK GOIRAN: With regard to the letter that was sent by the Premier on 5 March 2020, is the parliamentary secretary in a position to table that letter?

Hon MATTHEW SWINBOURN: I am not in a position to table that, member.

Hon NICK GOIRAN: Am I to assume, for the same reason that the parliamentary secretary indicated earlier, that it is a confidential document?

Hon MATTHEW SWINBOURN: I think the issue we have with the particular correspondence is that there is a note, as the member may be familiar with, that is presented on correspondence with the joint standing committee about there being confidentiality relating to correspondence to and from the committee. That is the position we are in in relation to that correspondence.

Hon NICK GOIRAN: I have some sympathy for that position. The position that the parliamentary secretary has just described, and which I share with the parliamentary secretary, is clearly not shared by the member for Kalamunda; nevertheless, I understand the problem that the parliamentary secretary has. I think it is very interesting that the government is utilising parliamentary privilege as a reason not to provide information to the Parliament of Western Australia. Nevertheless, I think it is ironic that the person at the centre of the bill here, Mr McKechnie, has already been reprimanded once by the Parliament on matters of parliamentary privilege and his actions are currently at the centre of a very expensive court case in Western Australia also pertaining to parliamentary privilege, yet his appointment this evening is being clouded by a defence of parliamentary privilege. Nevertheless, that is what the record is. Whether I agree with it or not, I will say that it is certainly a higher standard than was demonstrated by the current Chair of the Joint Standing Committee on the Corruption and Crime Commission in his behaviour in the last Parliament.

That said, the parliamentary secretary indicated earlier that there are three members of the nominating committee: Chief Justice Quinlan, Chief Judge Wager and Audrey Jackson. How long have those individuals been members of the committee? What I particularly want to know is whether all three of those individuals were involved in the process on both occasions. As I understand it, they were involved on two occasions, albeit that the Premier was involved with the joint standing committee on three occasions.

Hon MATTHEW SWINBOURN: In the first events last year, the Chief Judge of the District Court was Kevin Sleight, and that has since changed to Julie Wager. That is the only change between now and then. I cannot give the member the dates of their terms on the nominating committee. It obviously coincides with when the committee needs to perform its functions.

Hon NICK GOIRAN: The parliamentary secretary has kindly provided to us the dates of the correspondence from the Premier to the joint standing committee. They are 5 March 2020, 16 April 2020 and 26 May 2021. As I understand it, the parliamentary secretary is not in a position to provide us with copies of any of that correspondence tonight.

Hon Matthew Swinbourn: By way of interjection, no.

Hon NICK GOIRAN: On what dates did the nominating committee transmit the three names to the Premier on the two occasions?

Hon MATTHEW SWINBOURN: The advice is that the first one was 23 February 2020 and the most recent one was 4 May 2021.

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Hon NICK GOIRAN: For the record, parliamentary secretary, the government has asked us to consider providing support for the appointment of Mr McKechnie, but it will not this evening provide him to the chamber to provide any answers to questions that members might have as to his suitability or otherwise. I note in passing that earlier—the parliamentary secretary may have been away on urgent parliamentary business—one of the reasons the Leader of the House gave for why the matter should not be sent to the Standing Committee on Legislation was that, as far as she was concerned, the question was whether the person is suitable. The parliamentary secretary is indicating to the house that the government will not provide Mr McKechnie so that we can ask him questions as to his suitability. He is also indicating to the chamber that the government will not provide to the Parliament the letter from the nominating committee that the government places great weight on, and the government will not provide a copy of the letters that the Premier has sent to the Joint Standing Committee on the Corruption and Crime Commission. On what dates did the Premier receive information that the Joint Standing Committee on the Corruption and Crime Commission was not able to provide majority and bipartisan support on those three occasions?

Hon MATTHEW SWINBOURN: The date of the correspondence was 2 June 2021. I presume that the Premier received it immediately following that.

Hon NICK GOIRAN: That is with regard to the last occasion; I am keen to know the dates for all three occasions.

Hon MATTHEW SWINBOURN: The first one was on 25 March 2020, and after it had been resubmitted, it was 23 April 2020.

Hon NICK GOIRAN: The three members of the nominating committee at the moment have the surnames Quinlan, Wager and Jackson, and the parliamentary secretary has indicated that obviously there was a change in the Chief Judge between the first-round process and the second-round process. Is the nominating committee aided in any way by a secretariat or other public office that is involved in that process?

Hon MATTHEW SWINBOURN: We do not know what the secretariat arrangements are for the nominating committee. It is apart from, and independent of, government.

Hon Nick Goiran: Sorry?

Hon MATTHEW SWINBOURN: The processes of the nominating committee are not managed by government in that regard. It is apart from government. It is not a part of government, so we do not know what support it gets.

Hon NICK GOIRAN: That makes sense. I think what the parliamentary secretary is saying to us is that it is a quite separate, independent process, presumably run under the auspices of the Chief Justice, and if it has any secretarial support, it is really a matter for those three individuals. Is it the case that no-one in government was involved in the nominating committee process?

Hon MATTHEW SWINBOURN: That is my advice, yes.

Hon NICK GOIRAN: Parliamentary secretary, to be clear, would that include the Solicitor-General?

Hon MATTHEW SWINBOURN: My advice is that, to be frank, we do not know in this particular instance whether the Solicitor-General has done that. As the member knows, the Solicitor-General is an independent statutory office, so whether he may or may not have done that is not something that we would be aware of, and we are not able to confirm that with him. We do understand that in the past, Colin Barnett has referred to the Solicitor-General having provided informal assistance to previous nominating committees. It is conceivable that it may have happened, but we have no knowledge of it if it has happened, because, again, it would have happened independently of government.

Hon NICK GOIRAN: The parliamentary secretary is in a position at least to confirm to the chamber that members of government were not involved in the nominating committee process. I respect what the parliamentary secretary had to say with regard to the Solicitor-General, and obviously he is not available at this time to confirm that or otherwise, but in terms of the people the parliamentary secretary can confirm, he can confirm that other members of government were not involved in that independent process.

Hon MATTHEW SWINBOURN: My advice is that they were not involved in the process.

Hon NICK GOIRAN: Did the Premier discuss the matter with any member of the nominating committee before he received the most recent letter from it on 4 May 2021?

Hon MATTHEW SWINBOURN: To be frank, member, outside of the correspondence, we do not know whether the Premier has had contact with the members of the nominating committee. As the member can imagine, given the offices that they hold, and the office of Premier, it would not be out of the realms of possibility that they have come across each other in certain ways, but, to be perfectly frank, we do not know whether that has happened or not happened. As I say, we are aware of the correspondence between them, but that is the extent of it.

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Hon NICK GOIRAN: A moment ago, I asked the parliamentary secretary whether anyone in government had been involved in this process, and the parliamentary secretary said no. I asked the parliamentary secretary about the Solicitor-General, and he indicated that is an independent statutory office and he is not able to confirm that; and, in any event, that is independent of government. I asked the parliamentary secretary again whether any members of the government had been involved in the process, and he indicated no. I have now asked the parliamentary secretary whether the Premier has had any discussions with any member of the nominating committee with respect to this matter, and now we are told that he does not know. It makes it very, very difficult if we are not getting straight answers on this matter. I want to be very clear whether anyone in government, particularly the Premier and the Attorney General, have had any conversations with members of the nominating committee.

The parliamentary secretary has indicated to us that the current members of the nominating committee are Chief Justice Quinlan, Chief Judge Wager and Audrey Jackson; they are the three people on that committee. We need to know whether the Premier and the Attorney General have interfered with that process. Have they colluded with any of those people? The Premier should be able to tell us, the Legislative Council, whether or not this has happened. The Attorney General should be able to do that as well. Remember, in one of the parliamentary secretary's rebuttals to the honourable member who asked about the priorities of this matter and was expressing concern that this was the top priority of the government, the Attorney General said, "Yes, this is the top priority of the McGowan government." If it is the top priority, the chiefs, including the Premier and the chief law officer, need to be held to account. Were they involved in this process or was it authentically independent? Did the Premier have a chat to the Chief Justice and say, "I want McKechnie to be included"? Did the Attorney General do it? This is no trivial matter, parliamentary secretary, because as we know, if I park the Premier to one side for a moment, the Attorney General is quite happy to intervene in processes that are otherwise considered to be independent.

I draw to the parliamentary secretary's attention the tabling statement made by the previous President of the Legislative Council, which indicated that facts had come to light that certain things have been the result of the direct intervention of the Attorney General in the CCC's investigation. There is form regarding certainly the Attorney General intervening in processes that are otherwise ordinarily independent. I want to get confirmation and clarification about whether the Premier or the Attorney General ever had a conversation with Chief Justice Quinlan, Chief Judge Wager or Audrey Jackson on this issue prior to them providing their information on 4 May this year.

Hon MATTHEW SWINBOURN: The member asked me, to begin with, whether any member of the government was involved in the process and I said no. And that is correct. He then asked me about discussions, which is a different thing from involvement. I put to the member what I thought was a reasonable point that within the realms of possibility, it is possible that the Premier may have had a discussion on any matter—not this matter—with the Chief Justice or the Chief Judge through the course of his work. I was not suggesting that he had actually had a discussion with them about this particular matter. The Premier was not involved in the nominating process. The member suggested, for example, that there was some sort of interference or collusion. Any such suggestion would suggest that both the Chief Judge of the District Court and the Chief Justice of the Supreme Court were involved in colluding for an outcome. I think such a suggestion would be outrageous and I am sure the member is not suggesting either the Chief Judge or the Chief Justice were involved in collusion with the government over the nominating process. I am absolutely certain that is not what he is suggesting.

Hon NICK GOIRAN: To be clear, it is the government and the parliamentary secretary who are indicating that this process needs to be independent. I have never said that there is something wrong with the Solicitor-General, the Premier or the Attorney General having discussions with the nominating committee. That is not the position I have put; that is the position the McGowan government has put. It is trying to dress up this process and place all the weight on the independence of the nominating committee. That is the government's position. I am just testing the veracity of that. If so much weight is to be given to this recommendation from the nominating committee, there should be no problem whatsoever confirming that it is authentically independent and that the Attorney General has not decided to intervene in that process, as is his want from time to time. That is what I am trying to test. I would not necessarily have said that there was anything wrong if the parliamentary secretary had come in here and said, "It's actually part of the normal process. The Solicitor-General and the Attorney General have a bit of a discussion with the Chief Justice from time to time. They throw around a few names and say, "We need to get this process moving for the Premier, have you got any idea of people's suitability and so forth?" I am not necessarily saying that there is anything wrong with that. My position regarding this is not relevant; it is the position of the McGowan government that is relevant. It is dressing up this process as authentically independent, so let us test how authentically independent it is. The problem is that, once again—this is becoming a pattern in this forty-first Parliament—the McGowan government is unable or unwilling to provide information to the chamber. If I have said it once, I have said it a thousand times. I am not too sure when government members and ministers think that the information can be provided, because now is the time to provide it. The government wants our support with regard to this information,

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but it wants us to do it without being able to ask any questions of Mr McKechnie and without having any information provided to us, including the letter from the nominating committee, which is now being dressed up as confidential.

Regarding the letter from the Premier to the Joint Standing Committee on the Corruption and Crime Commission, I can concede that there is an issue there that needs to be tested with regard to parliamentary privilege. But the letter from the Chief Justice to the Premier—we know that there are two such letters, one on 23 February 2020 and the other one on 4 May 2021—is now being dressed up as confidential. On what basis, parliamentary secretary, is that information not provided to the Parliament? I suspect that the Auditor General might have a view on this matter. The parliamentary secretary is not saying that the letter is cabinet-in-confidence and he is not saying that it is commercial-in-confidence, which is an issue that the Auditor General has, from time to time, said gets used far too often. The parliamentary secretary is not saying that it is covered by parliamentary privilege; he is just saying that it is confidential. Yet it is the key evidence, the key exhibit and the key piece of information that the McGowan government expects us to rely upon.

The parliamentary secretary will recall that during the course of the debate, he mentioned that the appointment of Mr McKechnie was recommended by that committee, and he indicated, I think, that it included words to the effect of “the person was outstanding” and “the outstanding candidate”, but we do not get to see that. That recommendation is being kept behind lock and key under the guise of confidentiality, yet we are still expected to make a decision on these matters.

Earlier I asked the parliamentary secretary whether the Premier had invoked the process set out in section 9(4)(b). The parliamentary secretary has helpfully provided us dates for, as far as I can see, all the rest of the process that is set out in section 9, which will be amended by virtue of this bill. The parliamentary secretary indicated earlier that he is not able to provide us with any further information—or he was not at the time—on whether the Premier had invoked section 9(4)(b). I wonder whether any further information has become available to the parliamentary secretary, because in the time since I asked the question, I have had information provided to me and I think that the record needs to be corrected.

Hon MATTHEW SWINBOURN: I am advised that the Premier did not invoke that process.

Hon TJORN SIBMA: On a similar thread, albeit maybe slightly differently, the focus has been on the actions or potential interactions of the nominating committee with the government, but I am more interested of the actions of the nominating committee itself. I make brief reference to a question without notice that I asked today to which the parliamentary secretary provided an answer from the Attorney General. To encapsulate the question, it was seeking an explanation of the process that the independent nominating committee chaired by the Chief Justice undertakes. I will read in part of the answer that I received, which is pertinent to this. It states —

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

Regarding the actions that occurred in 2021, when did the nominating committee advertise for the position throughout Australia?

Hon MATTHEW SWINBOURN: I am advised that an ad was placed in *The West Australian* on 27 March 2021 and in *The Weekend Australian* also on 27 March 2021. The closing date for applications was 23 April 2021.

Hon TJORN SIBMA: Were advertisements promulgated through other means, through online search agencies or the like, or was advertising constrained to, or through, those two papers in that one instance?

Hon MATTHEW SWINBOURN: The member will note that advertising is a matter for the nominating committee; that is something that it takes on. The only advice we have is in relation to the one ad in *The West Australian* and the one ad in *The Weekend Australian*.

Hon TJORN SIBMA: Can I ask whether that was effectively the same process that the nominating committee undertook in 2020?

Hon MATTHEW SWINBOURN: We do not know. That would be something we would have to seek advice from the Chief Justice on.

Hon TJORN SIBMA: Nevertheless, the answer provided today is that the nominating committee is obliged to do that apparently under section 9(3)(b). Applying a principle of charity and appreciating the eminence of the three people involved, I make the assumption that indeed they did. That is going to be my operating assumption. Can I ascertain with regard to the advertisements in *The West Australian* of 27 March and *The Weekend Australian* of the same date, with the closing date of 23 April, which I believe the parliamentary secretary mentioned, how many expressions or applications were received as a consequence?

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Hon MATTHEW SWINBOURN: The member may know this already, but during the briefings that were undertaken for opposition members earlier this month, a request was made by the advisers to the Chief Justice about how many applicants there were for the position. I can advise that the Chief Justice's response to that request was that it would not be appropriate for the nominating committee to otherwise report or disclose any further information regarding its functions under the act, which are confidential. That was the response we got from the nominating committee in furtherance of the request that came out of the briefing provided to the Liberal Party.

Hon TJORN SIBMA: That is not helpful. I make no reflection on the parliamentary secretary, but I think that is wholly unhelpful to this process, and, frankly, it is not particularly helpful to the nominating committee. I will make a point; it need not be laboured. I think a consistent point has been made by the government prior to this bill being debated today, but also absolutely throughout the course of the debate on this bill today and, indeed, quite clearly stated in an answer that the Attorney General provided me via the parliamentary secretary, that Mr McKechnie, QC, is the outstanding nominee for the position. That, of course, is a relative value judgement. I am not saying that that is inappropriate to make because, of course, we make them all the time. I cannot satisfy myself that he was the outstanding nominee for the position. That could be the case if he was the only nominee, because if he was not the outstanding nominee something would be quite catastrophically wrong with that nomination. If there were two applications, one from him and one from some other eminent person, that would still be a very big stretch because I would hate to see the quality of the application. This is fundamentally problematic. It is a simple question. I am not seeking the details of the individuals, I am not seeking their qualifications, names or employment histories, but the parliamentary secretary is compelled, obliged again, unfortunately, to defend the indefensible and say that he cannot provide even the barest details concerning the number of applications received as a consequence of advertising that expression of interest. Is there no other way, perhaps relying on somebody else's good offices, to seek at least a partial answer, just a number, in the course of this evening's consideration?

Hon MATTHEW SWINBOURN: The request was put directly to the Chief Justice. He holds that information. We do not hold that information, a government officer does not hold that information, a judicial officer holds that information. He said that in his view it is inappropriate to release it. I am not going to argue with the Chief Justice of the Supreme Court. The member has made his points about that. We do know that there were at least three applications, because three names were transmitted.

Hon Nick Goiran: How do we know that?

Hon MATTHEW SWINBOURN: That is the practice that is contained in the act.

Hon Nick Goiran: It doesn't mean it was done though.

Hon MATTHEW SWINBOURN: My advice is that three names were transmitted. All three were eligible and John McKechnie was identified as the outstanding nominee amongst those.

Hon TJORN SIBMA: Thank you, parliamentary secretary. Not to be unnecessarily obtuse at this hour, but effectively, the chamber's understanding is that on the previous occasion, presumably, the nominating committee complied to follow the act and advertise. At least three names were proffered. It is partially useful as a guide, but on this occasion we have absolutely no way of ascertaining whether that process of advertising elicited any interest. I suppose it would be a fool's errand to inquire whether the previous two nominees sought to reapply for this position. I am sure that I will get absolutely no satisfaction. The parliamentary secretary mentioned a keyword, which I think has not been used that frequently in the course of today, and that is the eligibility of the person nominated not only by way of a nominating committee, but by the Premier and named in this act. In what way is Mr McKechnie eligible for appointment to this position, and, as a counterpoint to that, in what ways might he be construed as being ineligible for appointment?

Hon MATTHEW SWINBOURN: Section 10 of the act deals with the qualifications for appointment as commissioner and outlines who is and who is not eligible. It states —

- (1) A person is qualified for appointment as the Commissioner if the person has served as, or is qualified for appointment as, a judge of the Supreme Court of Western Australia or another State or Territory, the High Court of Australia or the Federal Court of Australia.
- ...
- (3) A person who is or has been a police officer is not eligible to be appointed as Commissioner.
- (4) A person holding a judicial office shall retire upon appointment as Commissioner.

Somebody who does not retire, would not be eligible. I mentioned in my second reading speech about eligibility and indicated that an opinion has been obtained from the Western Australia Solicitor-General, Joshua Thomson, on the eligibility of Mr McKechnie, QC. The Solicitor-General advised that Mr McKechnie is eligible to be appointed for

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a full five-year term under the act. In addition, under section 9(3a), the nominated committee can only submit candidates to the Premier who are eligible for appointment. Ergo, Mr McKechnie is eligible because the nominating committee formed the opinion that he was eligible. Mr McKechnie was then submitted to the Premier by the nominating committee. I will not repeat that process but that is the thing.

I think it is a reasonable conclusion to draw that when people make their application or nominate for the position to the nominating committee, that they would have to satisfy the eligibility requirements that we have just mentioned under section 10 of the act, and that the Chief Justice, the Chief Judge and the community member would then make that assessment on the information available to them.

Hon TJORN SIBMA: I will just go back briefly to the advertisement from 27 March that we were talking about earlier on. Did that expression of interest in any way encapsulate the eligibility criteria that someone should fulfil, to basically save everybody's time; and, if so, could the minister table a copy of that advertisement? That would be particularly helpful.

Hon MATTHEW SWINBOURN: That is something that I can table. It is a public document and it contains the details, but before I table it, I shall go through it. It states —

CALL FOR EXPRESSIONS OF INTEREST IN APPOINTMENT

Pursuant to section 9 of the Corruption, Crime and Misconduct Act 2003 ... a nominating committee comprising ... has been requested to submit to the Premier a list of 3 persons eligible for appointment as the Commissioner of the Corruption and Crime Commission.

The nominating committee is advertising throughout Australia for expressions of interest ...

To be qualified for this appointment a person must have served as, or be qualified for appointment as a judge of the Supreme Court ...

It then lists the other courts. It continues —

... a police officer is not eligible for appointment. A person holding judicial office must retire ...

The Commissioner is to be appointed on a full-time basis ...

The nominating committee may nominate a person for this appointment who has not lodged an expression of interest.

Expressions of interest should be addressed in writing ...

...

Expressions of interest should set out the applicant's personal particulars, qualifications and relevant experience and nominate at least 2 referees.

The date on this advertisement is 31 March, but I think that this is a copy of an online version of the ad. It is possible that the position was advertised more than once.

Hon Tjorn Sibma: Previously.

Hon MATTHEW SWINBOURN: Yes. I think the answer I gave before was about the first time it was advertised on 27 March. As is often the case with online publications, they may be repeatedly advertised. I seek to table that document.

[See paper [351](#).]

Hon TJORN SIBMA: I will focus a little bit more on the substance of the recommendation, particularly the nominating committee's view that Justice McKechnie is, I suppose, eligible. I want to clarify one point. Presently, is Mr McKechnie qualified for appointment as a judge of the Supreme Court of Western Australia; and, if not, why not?

Hon MATTHEW SWINBOURN: The answer to that is no, because he has attained the age of 70, which disqualifies him from being a judge in the Western Australian Supreme Court.

Hon TJORN SIBMA: Frankly, that is an ageist vestige that should probably be dispensed with, but, nevertheless, that is how I read the black letter law. That disqualification notwithstanding, I am interested to know as much as the parliamentary secretary can divulge—I do not think that is unproblematic as far as the black letter law. On what argument does the nominating committee rely on to satisfy itself that not only is Justice McKechnie eligible when that would appear on a layperson's reading to potentially knock him out, but not only that, it puts him in the position of being the outstanding nominee for the position?

Hon MATTHEW SWINBOURN: I cannot speak on what the nominating committee did because we are not privy to what happens within its four walls. But what we can do is look to the act and to the understanding of the act. Section 10(1) states —

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A person is qualified for appointment as the Commissioner if the person has served as, or is qualified for appointment as, a judge of the Supreme Court of Western Australia —

We accept that he is not eligible to be that anymore. It then states —

or another State or Territory, the High Court of Australia or the Federal Court of Australia.

It is my understanding that in New South Wales, people can be judges up to the age of 75 years. An applicant who comes from New South Wales or somewhere else would be qualified to be appointed on the basis that they have not yet attained the age of 75, and that would apply to all applicants. He is eligible to be a Supreme Court judge in New South Wales. That is the answer to that part of the question.

Hon TJORN SIBMA: I will not quibble with the parliamentary secretary. I think that is probably a fair supposition considering the circumstances; nevertheless, presumably the government has relied upon legal advice to that effect. The parliamentary secretary is appropriate, trained and educated well enough not to divulge documents that arise from legal professional privilege, but, nevertheless, it is pretty clear that the government at some stage has relied upon legal advice of some form that attests to Mr McKechnie's bona fides as an appointee or prospective appointee to this position. If so, when was it made, by whom, and can the parliamentary secretary table it?

Hon MATTHEW SWINBOURN: I cannot and will not table it, but I can say that the advice was given—I think this is already a matter on the public record because I just mentioned it again in terms of the Solicitor-General, Joshua Thomson—on 6 May 2021. I clarify the point that he is also qualified because if we look at section 10(1), it states that a person is qualified for appointment as the commissioner if the person has served as a Supreme Court judge, which he has done. Separately, he is qualified for appointment as a judge of the Supreme Court of Western Australia. He is qualified on that first limb and he is also qualified on the third limb, which is that he is eligible to be a Supreme Court judge in New South Wales.

Hon TJORN SIBMA: Just to clarify the advice from Joshua Thomson, was that on 6 May 2021 or 6 May 2020?

Hon MATTHEW SWINBOURN: It was in 2021.

Hon TJORN SIBMA: In these unusual circumstances I would argue for the need for a committee, so composed—potentially just a select committee or a broader committee of this chamber—to effectively interrogate this issue or at least the fundamentals at issue here, which are Mr McKechnie's eligibility for this position. I will not quote extensively from this transcript, but I note that on 3 June, the Leader of the House talked about the operation of the chamber. This is not a cheap shot at all, but I think it highlights a fundamental principle of how this chamber operates. The Leader of the House said —

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

We have four clauses here and the interrogation is not going to be that extensive, but the issue is that there are some fundamental problems, which we would ask about, of how many nominations the government received. The answer is, "I cannot tell you that." I find that wholly unsatisfactory. I will leave that where it is for now, and I might go to another process.

I want to confirm that Mr McKechnie put in an application as a consequence of the advertisement made on 27 March. Is that a fair assumption?

Hon MATTHEW SWINBOURN: My advice is that he did apply for the position. I think there might be some information about that on the public record as well.

Hon Nick Goiran: But how do we know that? We were just told that the nominating committee process was confidential and we cannot find out that information. How come the Chief Justice has now just opened the vault?

Hon TJORN SIBMA: I think that was done as a helpful interjection; it certainly was not unruly. That is a fair point, is it not, parliamentary secretary? On the one hand, the parliamentary secretary can confirm that this individual applied for this position, but he cannot say—he is effectively forbidden and thwarted from telling us—how many other applicants applied. I suppose the question I have is: how is that inconsistency reconciled?

Hon MATTHEW SWINBOURN: Member, the best we can do at the moment is make reference to an article on 27 March by Peter Law in which he confirmed that John McKechnie would reapply for his position. It states —

John McKechnie is set to reapply for his old job as the Corruption and Crime Commission boss, one year after his reappointment was blocked.

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Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
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...

Mr McKechnie said he remained keen to continue his work as CCC commissioner and would submit an application for consideration in due course ...

By inference, he put in an application, but I do not have a document that says he absolutely did put in an application. He clearly indicated on 27 March that he would be doing so.

Hon TJORN SIBMA: Parliamentary secretary—I mean, really! I am not using this occasion to make a speech, but I have asked a question of the parliamentary secretary as the Attorney’s representative at that table. It is a pretty basic question about how he could reconcile the cone of silence around the number of applications for this position, which was a consequence of the advertisement placed in two broadsheets on 27 March, and the parliamentary secretary’s concession previously that Mr McKechnie did apply. I have been referred to Peter Law from *The West Australian*. I have a bit of respect for Peter Law. I do not always agree with what he writes; Peter knows that. But, frankly, should I put a call through to Peter Law now—DM him on Twitter and say, “Mate, get to the chamber now because I’ve got a question to ask the government. The parliamentary secretary cannot provide an answer from the government; instead he has referred me to you.” This has been a long day and the parliamentary secretary has been put under duress, and he is here to defend the indefensible, but that is the very, very worst response I have ever heard.

Hon Matthew Swinbourn interjected.

Hon TJORN SIBMA: No, I ask again—this is a serious matter. Is it not possible to provide this chamber with an indication of how many people applied for this as a consequence—it is not even as a consequence—after 27 March, with their details redacted? From whom would the parliamentary secretary seek that advice?

Hon MATTHEW SWINBOURN: I cannot take the member any further than what I said earlier. The Chief Justice holds that information. We have asked the Chief Justice to give us that information and the Chief Justice has said that he will not be providing it. I cannot be any clearer than that. We cannot compel the Chief Justice to provide the information to us.

Hon TJORN SIBMA: Does the parliamentary secretary or either of his advisers at the table have the number of the Chief Justice?

Hon Sue Ellery: Are you serious?

Hon TJORN SIBMA: Yes, I am serious.

Several members interjected.

Hon TJORN SIBMA: Frankly, this is an outrage. This is why this side of the chamber has condemned the government all day long.

The DEPUTY CHAIR (Hon Jackie Jarvis): Member!

Hon STEPHEN DAWSON: With the greatest respect, if the member wants to speak, he should seek the call. He did not have the call. The rules are the rules, mate.

Hon TJORN SIBMA: That is perhaps not the best argument for the minister’s side to make today.

Hon Stephen Dawson: Respect the chair!

Hon TJORN SIBMA: I do respect the chair, and I only wish the government would respect the process of this chamber. I would ask the parliamentary secretary —

The DEPUTY CHAIR: Members! Direct your comments through the chair, please.

Hon TJORN SIBMA: Absolutely.

Hon Nick Goiran: Let us remember that the member voted against the respect and the adherence of the standing orders yesterday. His name is permanently on the record.

The DEPUTY CHAIR: Members, who is seeking the call?

Hon TJORN SIBMA: Thank you very much. I was not intending to go down this route, but I think I just need to establish the lines of communication upon which the parliamentary secretary is relying this evening. This is not a cheap point because it actually gets to his capacity to furnish this chamber with information that is being sought. One of the reasons I am seeking this kind of clarification is that he was put in an invidious position last week: he was forced to misrepresent the availability of police officers to answer questions about the bill concerning the security

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data leak, which came by way of utilisation of the SafeWA app. Can I confirm please from which agencies the parliamentary secretary's advisers at the table are drawn?

Hon MATTHEW SWINBOURN: I am not sure how it is relevant to the bill, but they are from the Attorney General's office. They are ministerial officers.

Hon TJORN SIBMA: Thank you very much. That is important. They are not departmental officials. That is what I wanted to clarify. Neither are they public servants in the employ of the CCC.

Hon Matthew Swinbourn: That is correct.

Hon TJORN SIBMA: Are they directly or indirectly, via the parliamentary secretary, in communication with the Attorney General this evening?

Hon MATTHEW SWINBOURN: Yes, I think the answer would be that we do have contact with the Attorney General this evening.

Hon TJORN SIBMA: No doubt he is apprised of the importance of this bill. Is he likely to be awake for the entirety of this evening's proceedings? That is not a cheap shot.

Several members interjected.

Hon TJORN SIBMA: No, it is not. Members do not need to interject.

The DEPUTY CHAIR: Members, I remind everyone that we do not have Hansard. They will be relying on a recording and it would be nice if they could hear what is being said.

Hon COLIN de GRUSSA: On a point of order: first, it is very difficult to hear what is going on; and, second, if the member was allowed to conclude his remarks, we might hear that he has a very genuine and sensible question. Before everyone gets a little bit upset and tired, we should give him the courtesy of allowing him to finish his question.

The DEPUTY CHAIR: Hon Tjorn Sibma, if you could get to the question.

Hon TJORN SIBMA: Thank you very much, chair. My point was to establish whether the Attorney General is in direct communication with the parliamentary secretary or the advisers at the table for the duration of this bill. I ask that question because we are at a late hour. I just want to know to what degree are answers provided by the parliamentary secretary subject to some form of intermediation. What level of trust and reliability can I ascribe to the answers that he is providing this evening?

Point of Order

Hon SUE ELLERY: The honourable member can see with his own eyes how the parliamentary secretary is answering the questions. He can see him speaking to the two people who are sitting at the table with him. He can see that they are not texting madly every time they provide an answer to the question. We will be here as long as we need to be here, but it belittles the honourable member, who is one of the smartest people on the other side, when he does not ask serious questions.

Hon TJORN SIBMA: Thank you, chair.

The CHAIR: Hon Tjorn Sibma, do you want to be heard on the point of order?

Hon TJORN SIBMA: I do have a serious point.

The CHAIR: Hon Tjorn Sibma, there is a point of order I need to rule on first. I think the Leader of the House has made a point. I have just taken the chair. I will closely observe the clause 1 debate, but there is no point of order.

Committee Resumed

Hon TJORN SIBMA: Thank you, chair. There is a serious point. It is not a flippant or trivial one, nor is it a cheap shot. The reason I ask it is that, indeed, it is quite to the contrary. The Leader of the House would not be able to ascertain this from the position in which she sits, but I have indeed observed during the course of this debate the contrary of the point the member asserted; there is mad texting going on. I am attempting to establish with whom the advisers at the table are corresponding. I can only guess that it is the Attorney General, and I have sought to establish whether that is the case. That is all I have attempted to do, because I have another series of questions that relate to the Attorney General's interaction with the proposed appointee that I would like to get to, but I will not do so if I am not satisfied that the Attorney General is in a position to provide his answers via the parliamentary secretary this evening.

Point of Order

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Hon ALANNAH MacTIERNAN: I am sorry, but we have a system here of people who represent ministers in another place. The member opposite has absolutely no right to demand that the minister in the other place be available to take his questions by text. That is the role of the parliamentary secretary here, who is representing the Attorney General in this place. The member cannot seek to engage in a direct dialogue. If that is what he wants to do, he should go and stand for the lower house and get into the lower house!

Several members interjected.

The CHAIR: Order!

Hon Peter Collier: That's not a point of order.

Hon ALANNAH MacTIERNAN: It is a point. He is the representative —

Hon Nick Goiran: Why don't we refer it to a committee and then we might actually make some progress?

Hon ALANNAH MacTIERNAN: You have no right to demand that the Attorney be online for you.

The CHAIR: Minister, resume your seat.

Several members interjected.

The CHAIR: Order, members! Nobody has the call. I am not quite sure what the point of order is, but I agree with the sentiment expressed by the Minister for Regional Development that the parliamentary secretary at the table is representing the Attorney General. Whether the parliamentary secretary is seeking advice from others is a matter for the parliamentary secretary and the advisers whom he has at the table. I ask members to focus their questions on clause 1 of the bill.

Committee Resumed

Hon TJORN SIBMA: In the parliamentary secretary's second reading reply, and I think subsequently, he referred on a number of occasions to Mr John McKechnie being a private citizen. There is no disputation that that is the case. Could the parliamentary secretary clarify at what point, please, he became a private citizen in the way that I think the parliamentary secretary is attempting to convey to the rest of the chamber?

Hon MATTHEW SWINBOURN: It was in reference to Hon John McKechnie ending his tenure as the Corruption and Crime Commissioner at midnight, 27 April 2020, and from that point on, as far as I am aware, was no longer holding a public office.

Hon TJORN SIBMA: Am I right in construing the proposition I am about to give to the parliamentary secretary this way: that in the five years leading up to 27 April 2020 when Justice McKechnie was the Corruption and Crime Commissioner, in the conduct of his public office he was immune from freedom of information requests? Am I construing things correctly?

Hon MATTHEW SWINBOURN: I am struggling to understand how it has anything to do with this particular legislation before us, but we are seeking an answer because people have to check to see whether it is an exempt agency—it is. The answer is that it is an exempt agency.

Hon TJORN SIBMA: I thought that was the case; I just wanted to clarify that indeed my understanding was correct. It is not the place for hypotheticals, but I will chance my arm: hypothetically, prior to 27 April 2020, if I wanted to submit a freedom of information request that, for example, captured communications between the Corruption and Crime Commissioner and a minister, I would effectively be thwarted from doing that because the agency is exempt; would that be a fair categorisation?

Hon MATTHEW SWINBOURN: As the member said, it is a hypothetical. My advisers and I are not prepared to speculate on what might or might not be in a hypothetical sense. It is difficult to do that because it is very broad.

Hon TJORN SIBMA: Upon the passage of this bill and royal assent, what approximate date would Mr McKechnie cease being a private citizen and again become a public office holder?

Hon MATTHEW SWINBOURN: It will be the day after royal assent is given, which I think is in clause 2, that he will become the Corruption and Crime Commissioner.

Hon TJORN SIBMA: I presume either potentially tomorrow, or Monday or Tuesday, there is normally an Exco meeting; I think that is the way these things are managed. This is not a cheap shot in any way; I actually have a bit of respect for the Attorney General, I find him a compelling character in many respects. The reason I asked about his availability is that I want to ascertain whether there has been any communication between the Attorney General and Mr McKechnie as a private citizen in the 15 or 16 months that he has been a private citizen. I am particularly interested in whether Mr McKechnie has in any way been encouraged to reapply for his old position. Would the

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parliamentary secretary be in a position to clarify whether there has been any communication, either through text, phone call, chance meeting in the street or encrypted app on the phone? I think that would be particularly useful.

Hon MATTHEW SWINBOURN: I have here *Hansard* from 28 May 2020, in which Hon John Quigley states —

I want to disclose to the Parliament that I recently contacted Mr McKechnie on official business. I rang him and said, “Mr McKechnie, it is my intention to inform the Parliament that we will not be backing away from your nomination, and if you are not reappointed before the election in 40 weeks’ time, it will be our policy we are taking to the people that you will be reappointed in the next Parliament.”

There are some interjections, and then Mr Quigley says —

Mr McKechnie indicated to me —

Some more interjections —

— that he would stand by for 40 weeks. He would not walk away and he would await the judgement of the people of Western Australia on whether they want him back as the head of the CCC ...

I will leave it at that because the rest of it is commentary. The answer to the member’s question is yes, there has been contact between them, and that is the example of the contact.

Hon Dr BRIAN WALKER: Just for the record and for my certain knowledge, can the parliamentary secretary confirm that the procedure for appointing a commissioner has not been followed, in that section 9(4)(a) has been rejected three times and section 9(4)(b) has not been availed of?

Hon MATTHEW SWINBOURN: I would not agree with the member that the procedure has not been followed. The procedure has been followed, and then, at the end of that procedure, the Joint Standing Committee on the Corruption and Crime Commission has not accepted the nominee that was put forward by the Premier. The member may have been out on urgent parliamentary business, but we have already explored whether section 9(4)(b) had been followed by the Premier, and I can confirm that the Premier did not follow that process in the short period he may have been able to.

Hon Dr BRIAN WALKER: The point I am also making about section 9(4) is that this had been put before the committee three times and it could not come to a decision three times, and the candidate was therefore rejected. It is my understanding that there are a number of options for managing this. One, of course, is to choose another candidate to put before the committee; another option would be to have another search altogether. But the choice that has been made here is that the Premier has rejected that opinion and is apparently quite comfortable in saying to the committee, “I know more than you; I have more information than you; your decision is not appropriate; I find myself in a position to overrule your considered decision”, bearing in mind we have four honourable members on that committee. The split decision has been seen by the Premier to mean that he must stand in and take the decision as someone who has more power, more knowledge and is in charge. Is that correct?

Hon MATTHEW SWINBOURN: The member put a couple of things in there, but he suggested that the process could be started again and a new person put forward. What I will say is that if such a process were started again, it is not certain that the nominating committee would not put forward the name of John McKechnie again. They put him forward as the nominee the first and second time. The parliamentary committee has been deadlocked three times, and it is true to say that the Premier, as the Leader of the Labor Party, has put forward the proposal that we are dealing with in this bill as a resolution of that deadlock. It is clear that that is not acceptable to members on that side of the chamber, but that is the position that the government is putting forward.

Hon Dr BRIAN WALKER: It is my understanding that it is the Premier who decides which of the three candidates should be put forward to the committee—is that correct?

Hon MATTHEW SWINBOURN: That is correct, but in the past the Premier has forwarded the letter—I think that was established in an earlier part of the debate—with all three names on it. In the current situation, the Premier transmitted only the name of Mr McKechnie to the committee.

Hon Dr BRIAN WALKER: We are establishing that the Premier has made the decision that his opinion is that this is the best candidate, come hell or high water, and that the committee has to take it or leave it. I could accept that, but sections 9(4)(a) and 9(4)(b) have been neither availed of nor abided by. The intent, I think, is to present the most suitable candidate. What we now have is an amendment being introduced because the Premier fails to feel that the Joint Standing Committee on the Corruption and Crime Commission has performed as required. This amendment, in that case, as I understand it, must be a temporary one. We have an amendment to an act that will have to be amended later—am I correct in that?

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Hon MATTHEW SWINBOURN: I think the amendment to the act that is currently before us will go into the act and become part of the act until the act is either amended or repealed, but it will take effect for only the five years that Mr McKechnie is the commissioner. In fact, the effective part of it will be the day that he is appointed for a five-year term, and then that will carry on. All the other provisions of the act will continue to apply to Mr McKechnie; it is not that he is put in for five years, and then nothing further happens. He will be the candidate for a five-year term, subject to all the rights, responsibilities and privileges that the act bestows on the commissioner.

Hon Dr BRIAN WALKER: I believe this actually sets a precedent, does it not, in that the Premier has decided that the act is unfit for purpose and a temporary amendment is being introduced to make it suit his needs. As a precedent, it can be repeated, and that therefore means—according to my understanding, and bearing in mind that I am a beginner here—that the door has been opened to drive a horse and carriage through any act of Parliament at any time, should the Premier choose. That would be the logical conclusion. Am I incorrect in that?

Hon MATTHEW SWINBOURN: It is up to Parliament to decide what it wishes to do, every time the Parliament has a matter before it. The outcome of tonight will be the will of Parliament. There will be members who do not support it and members who do support it, but that is the case for any ordinary bill that comes before this Parliament. In fact, all acts of Parliament are products of this Parliament, and this Parliament reserves the privilege and the right to change those acts at a later date. We are not locked in to them. There are some acts, such as the Constitution Act, which require special majorities to make changes, and in some parts of that act we even need to seek a referendum of the people. For example, if we were to reduce the size of the Legislative Council, we would need to go to a referendum before that could happen. But in all instances, Parliament is sovereign—I am sure I am going to get told off for that somewhere along the line by some members—and it has the right to amend, repeal or make new enactments. That is what future Parliaments will do, it is what past Parliaments have done, and it is what we are doing today.

Hon NICK GOIRAN: I think the explanation provided by the parliamentary secretary was spot on. It was a correct summation of the situation. To be clear, we do not dispute that the Parliament has the power to change the law. The problem here is that the executive—that is, the McGowan government—is using Parliament to subvert the existing process. Multiple members have raised that in their contribution, and the government’s response, through the parliamentary secretary representing the Attorney General, has been to rebuff that and say, “No, no; we are not subverting the process.” Clearly, that is exactly what has been happening because, as has been identified by Hon Dr Brian Walker, this particular process that is set out in section 9 has been followed. It does not suit the current Premier, so now he is utilising the Parliament to change the law. Can the Parliament do that? Yes, that is right; it can do that. But is it because the executive is subverting the existing process? Absolutely.

Earlier, in response to Hon Tjorn Sibma, the parliamentary secretary indicated that the Solicitor-General, Josh Thomson, provided advice. The date of that advice was, very interestingly, 6 May 2021. I say “very interestingly” because in earlier advice to the chamber, the parliamentary secretary indicated that the Premier received three names from the nominating committee the following day, 7 May. The parliamentary secretary has indicated that he is not in a position to table either of those documents—that is, the advice from the Solicitor-General, Josh Thomson, dated 6 May 2021, or the letter from the nominating committee to the Premier dated 7 May. With respect to the second document, the parliamentary secretary is claiming that it is confidential, so he cannot provide that. I suspect that it triggers obligations under the Financial Management Act and that the Auditor General is going to have to investigate that. That is a matter for the parliamentary secretary and the Attorney General to work through after today. My question, parliamentary secretary, is: why will the government not provide the advice of Josh Thomson dated 6 May 2021? The explanation that it is subject to legal professional privilege is not a sufficient explanation in and of itself, unless it is the case that the government is concerned that this issue of eligibility might be litigated. I cannot imagine that. In any event, the government is asking us as a chamber to agree with its position, including on eligibility. I think that this chamber is entitled to that information. My question is: has anyone asked the Attorney General whether he will agree to waive privilege in this instance, given that it is hardly a matter that is going to be litigated; and will the information then be made available to the chamber in those circumstances?

Hon MATTHEW SWINBOURN: Hello! How are you, chair? It is nice to meet you.

Several members interjected.

Hon MATTHEW SWINBOURN: Where did that come from! I want to see Hansard sort that one out! Chair, I seek the call, thank you.

Member, we will not be waiving our entitlement to privilege over that document.

Hon NICK GOIRAN: Part of my question, parliamentary secretary, was: has anyone asked the Attorney General whether he will agree to that? There is a context in this, because privilege has been waived in the past, including by this particular Attorney General. Certainly, my recollection of circumstances where that has been done is where advice has been provided to the government that is not on a litigious matter. If I were to ask the parliamentary

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secretary to table any advice that the government has received in its dispute with the Legislative Council, clearly, the government would not provide that advice. As a legal practitioner, I think that is absolutely the right course of action for the government, whatever I might think about the course of action that it is taking now. But this particular instance is entirely different. We first have to start with actually asking the Attorney General whether he would agree in this instance to provide the information to the chamber. Why do we want this information? It is so that this chamber can have confidence that the Solicitor-General of Western Australia—who, as the parliamentary secretary has pointed out, is an independent statutory officer—has provided independent advice to the government of Western Australia saying that Mr McKechnie is eligible. It would be beneficial to the 36 members of this chamber to receive that. I am not sure what is so sensitive about the Solicitor-General of Western Australia saying that this man is eligible that would require the government not to provide that information. I simply ask: will we be in a position to request from the Attorney General the provision of this information?

Hon MATTHEW SWINBOURN: My instructions, if we are talking about that, are that we will not waive privilege. They were the instructions we were given earlier in the day. What I will undertake, member, and outside of this, is to approach the Attorney General and ask him to communicate to the member whether he will do that, at a time when it is a little bit more amenable to ask him those sorts of questions. I give the member that undertaking.

Hon NICK GOIRAN: Parliamentary secretary, thank you for that courtesy. The parliamentary secretary indicated that the government had received advice from the Solicitor-General dated 6 May 2021. Did the government obtain any other advice with regard to the eligibility of Mr McKechnie either before or after that day? To be clear about the time frame we are talking about, it is intended to cover the, shall I call it, triple application process in the sense that on three occasions, the Premier provided a recommendation to the joint standing committee. At any time during the course of that triple application process, did the government obtain any legal advice other than from Solicitor-General Josh Thomson, dated 6 May 2021, with regard to the eligibility of Mr McKechnie?

Hon MATTHEW SWINBOURN: As certain as we can be, member, at this time—the chief of staff, who is following the debate, is also in the building—we are saying that we are not aware of any specific advice given in relation to Mr McKechnie’s eligibility, which is the question the member asked. Other legal advice may have been given, but we do not want to lead the member into a position to ask, “Well, can you get that for me today?”, because the advisers here are doing their best to rack their memories for over the last 15 months about whether that had happened. But we are only specifically and definitely aware of the advice that we have already referred the member to.

Hon NICK GOIRAN: That is fair enough and it helps to know that the chief of staff is on hand. I have found the chief of staff to be utterly professional in the undertaking of her duties with respect to the Attorney General, so to know that that information and her reliability is at hand this evening is helpful to the chamber. Can I ask, parliamentary secretary, who requested this advice provided by the Solicitor-General on 6 May 2021?

Hon MATTHEW SWINBOURN: The Attorney General requested it.

Hon NICK GOIRAN: Was the Premier involved in any way with the decision to request advice on the eligibility of Mr McKechnie?

Hon MATTHEW SWINBOURN: We do not know, member, and we are being as frank as we can. We could speculate on the circumstances in which he might be involved, but we could not disclose that to the member anyway—for example, if it were cabinet-in-confidence or something of that kind. So to be frank, we do not know whether the Premier was involved.

Hon JAMES HAYWARD: I have a couple of questions. Earlier the parliamentary secretary said that it was not broken, but it was either a stalemate or a deadlock, and it had gone to the committee three times. Is the committee free to refuse a nomination?

Hon MATTHEW SWINBOURN: Yes. I do not think that we are suggesting that in refusing, it was an illegitimate thing outside of its powers. It was within its powers to refuse one and that is what it has done.

Hon JAMES HAYWARD: The original legislation and other legislation around the country state that bipartisan support is important. I am wondering whether the parliamentary secretary has a view about why it is important.

Hon MATTHEW SWINBOURN: I cannot speculate about why it is important in other jurisdictions—that is a matter for them. I can speak in only the most general terms about why it is generally accepted that bipartisanship is important in matters like this. Obviously, those matters have been referred to in the speeches of other members in this chamber in terms of the process and that the Corruption and Crime Commissioner is a powerful position. The second reading speech that was given for the original bill will probably detail that point in particular. But, generally speaking, something that people think is desirable is to offer legitimacy to the position. To suggest otherwise would be silly.

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Hon JAMES HAYWARD: Thank you very much, parliamentary secretary. I think that is an excellent answer in terms of how the parliamentary secretary responded in talking about legitimacy to the position. Given the passage of this legislation, why is that now not important?

Hon MATTHEW SWINBOURN: It is not that it is not important anymore, member. It is that we have reached an impasse in the progress of this matter. It is worth noting that up until last year, there was bipartisan support on this between the Premier and the then Leader of the Opposition, Liza Harvey. Therefore, it is not the case that we have been apart from each other on this issue forever. We are apart on this issue now; there is no question about that. As I say, bipartisanship is still important, but in this instance the consideration that the government is making for the appointment of the CCC commissioner means that we are following this particular process.

Hon JAMES HAYWARD: Does the parliamentary secretary see it as an impediment for the incoming commissioner that he does not have bipartisan support?

Hon MATTHEW SWINBOURN: No, member, because John McKechnie has been a public servant for 45 years. I think I mentioned in my reply to the second reading debate that he has previously been appointed by Liberal–National governments and Labor governments to these positions. Mr McKechnie will remain an excellent appointee to this position. Other people do not agree with that for different reasons, and I am not going to get into that, but I think once he gets back to work, he will continue to do the work that he has mostly done. Most of his work is not related to political parties—it obviously has been recently—it mostly relates to the public sector, organised crime and other aspects of misconduct. I do not think it is an issue in that regard. I will go through his history. He was appointed as the state’s first Director of Public Prosecutions by a Labor government, he was reappointed as DPP by a Liberal government, he was appointed as a Supreme Court judge by a Liberal government, he was appointed Corruption and Crime Commissioner by a Liberal government and, until recently, had bipartisan support and has carried on.

Hon NICK GOIRAN: The parliamentary secretary indicates that John McKechnie, if appointed pursuant to this bill, will get on with the work that he is required to do. The parliamentary secretary indicates that that does not just relate to misconduct by members of Parliament or perhaps even former MPs. The parliamentary secretary would be aware that under part 4 of the Corruption, Crime and Misconduct Act 2003, the CCC has very important organised crime–fighting powers. The parliamentary secretary is aware that Mr McKechnie was commissioner for five years. During that five-year period, did he ever exercise the powers of examination found under part 4, for organised crime? Did he ever conduct an examination in his five years?

Hon MATTHEW SWINBOURN: We do not know at the table. That question would have to go to the CCC agency to ask whether in that time he exercised those powers.

Hon NICK GOIRAN: To be clear, the McGowan government wants us to agree to Mr McKechnie being put back into a role for five years, and tonight it cannot tell us whether he ever, even once, conducted an examination under the organised crime provisions in part 4 of the act. It cannot tell us. The parliamentary secretary referred to Mr McKechnie in glowing terms in his second reading speech. According to my notes, the parliamentary secretary said that he was the best corruption fighter Western Australia has ever had—the best. But the McGowan government cannot tell the Legislative Council of Western Australia whether this person, who has been branded as the best, has ever examined anyone under the part 4 organised crime provisions. This is an extraordinary power that is provided to the Corruption and Crime Commission. No-one else in Western Australia has the capacity, on application from the police, to summons a witness and compel them to provide evidence.

Deputy chair, this is a significant matter. Members may not be aware that in the history of the Corruption and Crime Commission, those part 4 powers have been used by previous commissioners, but not Mr McKechnie. That included a set of circumstances in which two outlaw motorbike gangs were brought in. One obviously had received more strategic legal advice on how to handle those hearings; the others maybe received no advice whatsoever and proceeded to refuse to answer questions asked by the commissioner and swore at the commissioner. It ended up resulting in individuals being found in contempt of the Supreme Court, and, as memory serves me, it was the then Chief Justice Martin who sent some of those outlaw motorcycle gang individuals to jail for two years, and my recollection is that the one who swore at the commissioner got an extra three months for his trouble. That was for the unsophisticated individuals. The ones who had received some more sophisticated advice responded to the answers that had been provided, but they responded in such a way that they ultimately did not find themselves in contempt. The point is that the powers under part 4 are very powerful and can see individuals, as identified in that example, jailed for up to two years.

That was under a previous commissioner, but the McGowan government cannot advise us whether this commissioner actually did his job. It wants us to agree to this bill on an urgent basis, as it is the top priority of the McGowan government and it wants him to get back to work because he is the best corruption fighter, but it cannot tell us whether

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he has actually ever done his job. We do not know whether he has examined anyone before the commission. How is that possible? If this matter were before the Standing Committee on Legislation, it would be able to get to the bottom of this information, but we cannot get to the bottom of this information because, once again, the government cannot provide us with any information. Is the parliamentary secretary going to be in a position this evening to provide us with any data or information on the performance of Mr McKechnie during his five-year tenure? Is he going to be able to advise us whether any of the powers for entry, search and related matters, assumed identities or controlled operations were used? Is that data going to be available to us so that we can consider whether Mr McKechnie actually does his job and whether he in fact did it during the five-year period that the government is relying on?

Hon MATTHEW SWINBOURN: No, member, I am not going to be able to provide that level of detail. I do note that the media release that was released by the Corruption and Crime Commission on the ending of the commissioner's term states —

Commissioner McKechnie has been instrumental in highlighting publicly or directly to public sector authorities, particular corruption risks in the WA public sector concerning: procurement and financial management; the misuse of data and information; the inappropriate use of force; people at risk; policy, regulation and licensing; and the WA Police Force.

I mentioned in my second reading speech that the Commissioner of Police, Chris Dawson, APM, has praised the crime-fighting credentials of Mr McKechnie, QC, and endorsed him as a person of unquestioned integrity, tenacity and strength to perform the role in leading the CCC. The Law Society of Western Australia, in referring to the end of his term, also said that it was difficult to imagine a candidate more qualified than Mr McKechnie for this important role. I cannot go into the specifics of the agency, but I can bring those matters to the member's attention.

Hon NICK GOIRAN: Those matters that the parliamentary secretary is referring to are the functions and powers found in part 6 of the Corruption, Crime and Misconduct Act. I am not disputing the fact that those particular things have been done, but a major part of the role of the CCC is the fight against organised crime with exceptional powers and the powers to remove fortifications. An entire part of the legislation is devoted to it. I draw to the attention of members and the parliamentary secretary that the Corruption, Crime and Misconduct Act 2003 is an act to provide for "the establishment and operation of a Corruption and Crime Commission with functions with respect to serious misconduct by public officers". I pause there to note that that is effectively what the parliamentary secretary was referring to, yet in the long title it says "and organised crime". So serious is this matter that it has its own entry in the long title, but the McGowan government cannot tell us whether Mr McKechnie has done anything in the fight against organised crime. We know that previous commissioners have; I can attest to that. The public record reflects that, but we do not know whether the so-called best corruption fighter has actually done any of the work that is set out in the act. We will add that to the list. That is precisely why I said earlier that I would like to see Mr McKechnie available to at least provide advice to the hardworking parliamentary secretary. If Mr McKechnie were here providing advice, we would be able to make some progress. The defence put up is that he is a private citizen and will not be available. I seem to recall another eminent legal individual who was a private citizen at the time and who was quite happy to sit here at the table on another contentious debate in the last Parliament. It does not suit the McGowan government at the moment for this individual to make himself available because being cross-examined about his underperformance over the past five years would be the absolute worst nightmare for him. It suits him to hide, but that does not help the Legislative Council come to a decision here this evening.

Is the parliamentary secretary able to advise the house what the remuneration and conditions of service are for the Corruption and Crime Commissioner?

Hon MATTHEW SWINBOURN: The commissioner's entitlements are dealt with in clause 3(1) of schedule 2 of the Corruption, Crime and Misconduct Act, which states —

The Commissioner is entitled to be paid remuneration and to receive allowances or reimbursements at the same rate as a puisne judge of the Supreme Court.

We have pulled from the Salaries and Allowances Tribunal website the salary for that, which is \$441 057. Obviously, there is a travel entitlement and accommodation allowance. I hope the member does not ask me to go through all those. Also, part 3 of the determination deals with motor vehicles that the person is entitled to.

Deputy chair, can I ask that you leave the chair until the ringing of the bells?

The DEPUTY CHAIR (Hon Dr Sally Talbot): For the purposes of the comfort of all members, I will vacate the chair until the ringing of the bells, which will be in about 15 minutes.

Sitting suspended from 11.15 to 11.31 pm

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
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Hon NICK GOIRAN: Just prior to the interval, the parliamentary secretary indicated that the remuneration and conditions of service of the commissioner included \$441 057 by way of base remuneration. The parliamentary secretary referred to travel, accommodation and motor vehicle expenses. Is there also a superannuation component that is applicable?

Hon MATTHEW SWINBOURN: On the question of superannuation, I do not think so, but it is worth noting that the provisions of the Judges' Salaries and Pensions Act 1950 apply to the commissioners, and that is detailed in clause 3(3) of schedule 2 of the CCC act.

Hon NICK GOIRAN: Would that mean that a person who is not a Supreme Court judge would then qualify for the judicial pension that the parliamentary secretary is referring to?

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: The parliamentary secretary should apply for the job. I take it then that the remuneration and conditions of service of the commissioner are identical no matter who is in the position—whether or not that person was previously a Supreme Court judge. At the end of the day, the cost to the taxpayer of Western Australia is identical.

Hon MATTHEW SWINBOURN: Generically, yes, the cost is the same for everyone. Mr McKechnie has other entitlements that are attached to his time as a Supreme Court judge.

Hon NICK GOIRAN: The parliamentary secretary indicated in a response to Hon Tjorn Sibma earlier that his expectation, as I understood it, is that should this bill pass—presumably not today, but let us say tomorrow—Mr McKechnie would be in the role as commissioner the day after assent, and that would presumably take place sometime in the next few days. In any event, it appears reasonable to assume that he would commence his appointment on or before 1 July, given that at the moment we are just shy of 25 June. What will be the total amount appropriated for the coming financial year to cover all payments and benefits to Mr McKechnie if this bill passes?

Hon MATTHEW SWINBOURN: We do not know at the table, but I will give the member an undertaking to establish that information and provide it to him at a later date.

Hon NICK GOIRAN: With regard to the appointment process, the parliamentary secretary indicated earlier that the Premier wrote to the Joint Standing Committee on the Corruption and Crime Commission on the first two occasions on 5 March 2020 and 16 April 2020. He received responses to those two communiqués on 25 March and 23 April respectively. Did those responses that the Premier received from the joint standing committee indicate whether the committee was able to provide majority support? I am asking specifically about majority support. I am not asking about bipartisan support and I am not asking about majority and bipartisan support. I am simply asking whether it indicated majority support.

Hon MATTHEW SWINBOURN: Member, I will answer it in this way: in relation to 25 March, the committee said that it was unable to achieve bipartisan and majority support; and in relation to 23 April, it said that it was unable to reach either a bipartisan or a majority decision in support of the recommendation.

Hon NICK GOIRAN: I take the parliamentary secretary to the second of those two responses. Does that mean that more than one member of the Joint Standing Committee on the Corruption and Crime Commission must have opposed the appointment?

Hon MATTHEW SWINBOURN: Hon Nick Goiran has in front of him the same words that I have. The issue here is whether or not the member said—I do not quite remember the member's words—that it is possible that a member could abstain and that would deny majority support. There is a range of possibilities in relation to that particular thing but, as I have said, I have read to the member the words that are in front of me, so the member has as much understanding of it as I do.

Hon NICK GOIRAN: If a person abstained, that means that they did not support the nomination. The point is—this is an important point for the integrity of the previous process and the members involved—that repeated assertions have been thrown at the Liberal member who was on the committee on the basis that that member could be blamed for the fact that the process was so-called blocked. If the parliamentary secretary is saying to Parliament that on 23 April, the committee wrote to the Premier and said that it was unable to provide either majority or bipartisan support, it follows, does it not, that more than one member on the committee was unable or unwilling to provide support for the Premier's recommendation?

Hon MATTHEW SWINBOURN: I think the member is entitled to make that conclusion.

Hon NICK GOIRAN: For all the times that the Liberal member was criticised repeatedly by individuals, such as the Premier of Western Australia and the Attorney General of Western Australia, the Legislative Council now knows that in actual fact more than one member of the joint standing committee was unable or unwilling to provide

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support for the Premier's recommendation. That is not necessarily a startling revelation because that revelation has previously been published and publicised in some publications of integrity. But it puts paid to the continuing wrongful assertions that have been put forward by the Premier and the Attorney General of Western Australia. It is indeed consistent with the experience I have had in the fortieth and forty-first Parliaments, in which the only members seeming to support this recommendation are members of the Labor Party. That said, the parliamentary secretary has kindly provided us with some of the dates involved with regard to that process and, in particular, the dates of the response from the Joint Standing Committee on the Corruption and Crime Commission to the Premier, the two critical dates being 25 March 2020, when the first response was provided, and 23 April 2020, when the second response was provided. During that time, which is just two days short of a month, did the Premier ever discuss this matter with any member of the joint standing committee?

Hon MATTHEW SWINBOURN: We do not know.

Hon NICK GOIRAN: The McGowan government does not know whether the Premier of Western Australia communicated with members of the Joint Standing Committee on the Corruption and Crime Commission in the period between the first rejection and the second rejection. The McGowan government does not know or, in particular, those assisting the chamber with the passage of the bill tonight do not know. Clearly, the Premier of Western Australia must know, but I can only conclude that this matter is not of sufficient importance to the Premier of Western Australia for him to provide that information to us. The parliamentary secretary is representing the Attorney General. He has kindly indicated to us that there are some communications taking place with the Attorney General. Did the Attorney General discuss this matter, being the two rejections by the joint standing committee, with any member of the joint standing committee in the period between 25 March and 23 April 2020?

Hon MATTHEW SWINBOURN: At this juncture, we do not know what the answer to that is. The member's point was about contact. I think he probably meant contact in relation to the issue of appointment, just to be clear.

Hon Nick Goiran: I did say in relation to this issue, yes.

Hon MATTHEW SWINBOURN: If we get an answer, we will pass it on, because we may still get one, but at this point, to help with progress, could we perhaps move on to the next point. If we can get that answer to the member, we will. Those at the table and those watching in the chamber do not know the answer to that at this stage.

Hon NICK GOIRAN: I take it that somebody is going to wake the Attorney General and ask him the question! In all seriousness, I thank the parliamentary secretary for taking that matter on. We will find out whether the Attorney General has been speaking to members of the joint standing committee—whether that is the member for Kalamunda or any other member—about this issue in between the period of the two rejections. I assume that if I were to ask the parliamentary secretary for contact by the Premier and/or the Attorney General on this issue with members of the joint standing committee in the current Parliament, the same response would be provided: with regard to the Premier, we simply do not know and with regard to the Attorney General, we will endeavour to find out if we can at some point.

Hon Matthew Swinbourn: By way of interjection, member, yes.

Hon NICK GOIRAN: Can the parliamentary secretary advise when the Premier first learnt of the sixty-first report of the Standing Committee on Procedure and Privileges titled *Progress report: Supreme Court proceedings and matters of privilege arising in the 40th Parliament*? It was tabled in May 2021. I do not readily have to hand the date it was tabled. Nevertheless, my question is: when did the Premier first become aware of this report?

Hon MATTHEW SWINBOURN: This is what we know. We know that a question was asked in the other place on the day the report was tabled here and that the Premier would have, in all likelihood, been present during the time that that question was asked in the other place.

Hon NICK GOIRAN: What was that date?

Hon MATTHEW SWINBOURN: I believe the member has the report in his hand. I do believe it was 13 May, if I recall correctly—that is going on my own memory—because that was the last sitting day. If I am relying on my memory correctly, that was the day, 13 May, that the report was tabled. That is relying on my memory and I am fairly certain that was the day. These advisers were not here then, but we all were.

Hon NICK GOIRAN: By way of explanation, I do have a copy of this massive report, but it does not actually have a date on it, other than to say May 2021. I think the date the parliamentary secretary mentioned, 13 May 2021, is mostly likely to be correct. The relevance is that the Premier sent a letter to the Joint Standing Committee on the Corruption and Crime Commission on 26 May, but by that date he had already received a list of names from the nominating committee. The parliamentary secretary has indicated that that happened on 4 May 2021. Has the Premier communicated with the nominating committee about its list of names since this report came to light?

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Hon MATTHEW SWINBOURN: Again, I cannot be precise, but not to our knowledge—we do not have any documentation to suggest that there was contact between the Premier and the nominating committee.

Hon NICK GOIRAN: Herein lies the problem. The parliamentary secretary has explained to us that the nominating committee includes very eminent individuals who have said that Mr McKechnie was the outstanding candidate, despite the fact that the government will not provide us with a copy of that letter. We now know that the committee made that recommendation before such time as the startling revelations in the sixty-first report. It appears that nobody in government has gone back to the nominating committee and said, “Do you still find him to be the most outstanding candidate given that in the Supreme Court trial, the revelation came out that Mr McKechnie was sending text messages to the Attorney General in Bali, effectively seeking direction from him on operational matters?”

The parliamentary secretary should understand how difficult it is for members of this place to provide any level of support for what the government is doing in circumstances in which the government will not allow Mr McKechnie to provide any information to the chamber, it will not provide a copy of the letter from the nominating committee because it says that it is confidential, it will not provide a copy of the letter from the Premier to the joint standing committee because it says that it is covered by parliamentary privilege, and it will not provide us with a copy of the advice from the Solicitor-General saying that the individual was eligible. It is unable to provide us with any data whatsoever on the performance of the individual with regard to the organised crime functions under the act. It cannot tell us whether the Premier discussed this matter with members of the joint standing committee during the period in which the committee had rejected the application, and the same applies with the Attorney General.

To round it all out, it appears that no-one in government thought to raise this with the nominating committee to say that it looks like Commissioner McKechnie and the Attorney General are in hot water. No-one thought to do that. In a sense, I am not surprised because, according to the government, at least in the response that the parliamentary secretary provided earlier with regard to this SMS, his response, according to my notes, was, “Well, we don’t know what the SMS meant.”

Hon Matthew Swinbourn: I think I referred to some other phrase that was used in the SMS, rather than the broader SMS.

Hon NICK GOIRAN: That is true, and I think that is a helpful clarification.

The parliamentary secretary then went on to refer to the Senior Counsel who was conducting the matter in the Supreme Court. I think the phrase that he used was that she referred to the matter as uncontroversial. If the parliamentary secretary looks at the transcript in context, the Senior Counsel was saying to the court that the existence of the SMS was uncontroversial; in other words, it is not controversial whether the SMS exists. If we look at the transcript of the dialogue with the judicial officer, we see that the reason the Senior Counsel took a moment to take instructions and to pause and reflect on the matter was that it was not immediately apparent to the Senior Counsel whether it was permissible to disclose the information. That is what is referred to as uncontroversial.

Let us not pretend for a moment that the Senior Counsel who was assisting the Legislative Council was somehow saying that the information contained in paragraph 5.49 of the standing committee’s report was uncontroversial. It is extremely controversial. There is a prima facie case of misconduct by Mr McKechnie. In fairness to the Attorney General, as I have previously said, he cannot stop somebody sending him a message while he is in Bali, but the pattern of behaviour of these two individuals remains to be investigated. Nevertheless, we can see that nobody in government thought to bring this to the attention of the nominating committee.

What we have learnt in the clause 1 debate is that despite the weight that the government gives to the nominating committee’s recommendation, we cannot see it because the government is hiding it from us and we know that the nominating committee was not availed of this new information.

Is the sole purpose of the Corruption, Crime and Misconduct Amendment Bill before the chamber the reappointment of John Roderick McKechnie?

Hon MATTHEW SWINBOURN: Yes; I believe that is the sole purpose of the bill.

Hon NICK GOIRAN: I indicate to the parliamentary secretary that there is an amendment standing in my name on the supplementary notice paper at 1/1 that confirms that. Is the government going to therefore support that amendment?

Hon MATTHEW SWINBOURN: We will not support the amendment. We do not think it adds anything to the bill, so no.

Hon NICK GOIRAN: Is the parliamentary secretary aware that it is the frequent custom and practice with amendment bills that a description of the primary purpose of the amendment is contained in the title of the amendment

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bill? Is the parliamentary secretary aware that that is a common practice and that the amendment that has been foreshadowed at clause 1 would be consistent with that customary practice?

Hon MATTHEW SWINBOURN: I think the honourable member's question was directly aimed at me and my awareness. No, I am not aware of that practice.

Hon NICK GOIRAN: I confess that that was not the response that I expected from the parliamentary secretary. I encourage the honourable member to take advice on that matter for future debates, because it is certainly my experience that when an amendment bill is before the chamber, and the general theme of the amendment can be captured in a few words, it is customary for that to be included in the title of the bill. Of course, it is not difficult to understand why that is the case. It helps to differentiate between bills when multiple amendment bills are put forward to amend a particular act. Parliamentary secretary, is it the government's intention to remove the provisions for bipartisan and majority support by the joint standing committee for the nomination moving forward?

Hon MATTHEW SWINBOURN: The answer is no; that is currently under review and a range of recommendations may arise out of that, but we do not want to pre-empt it at this time.

Hon NICK GOIRAN: Who is conducting that review, when did it start, and when does the parliamentary secretary expect it to be completed?

Hon MATTHEW SWINBOURN: In terms of who is conducting the review, it is the Department of Justice, but I do not have the information here about when it started and I also do not have the information here about when it will finish. I undertake to seek that information and provide it to the member later, but I can confirm that it has commenced.

Hon NICK GOIRAN: I hope that the Leader of the House is paying close attention to this because, three weeks ago, the leader indicated that she thinks that this chamber helps to create better legislation. But not if the information is not available! I am on the record, repeatedly, indicating that when there are referrals to parliamentary committees—I share the view of the Leader of the House on this—that does result in better legislation. But this type of process in which we are being expected to scrutinise important legislation, literally in the early hours of the morning, when information is unable to be provided to the chamber, is wholly unsatisfactory. We are being expected to do our job half-baked. The police commissioner does not expect to be able to do his job half-baked, but the McGowan government expects the Legislative Council of Western Australia to do its job half-baked because it repeatedly is not in a position to provide information to the chamber.

I move —

Page 2, line 2 — To insert after “*Amendment*” —

(Reappointment of John Roderick McKechnie)

Amendment put and negatived.

Hon NICK GOIRAN: Parliamentary inspector—I mean parliamentary secretary; you would make a very good parliamentary inspector, incidentally. I draw to the parliamentary secretary's attention that in his reply to the second reading debate, he referred to various documents that have been tabled in the other place in the context of some discussions about what the now former parliamentary inspector had had to say with regard to a range of things. Is the parliamentary secretary in a position to table those documents?

Hon MATTHEW SWINBOURN: Member, I am able to table the documents that we tabled in the other place previously. I have here an email chain between Michael Murray and John McKechnie, I think it is. These were the documents. I table these documents.

[See paper [352](#).]

Hon NICK GOIRAN: Mr Deputy Chair, I ask that those documents be circulated to members.

The DEPUTY CHAIR: The question is that clause 1 stand as printed. Hon Nick Goiran.

Hon NICK GOIRAN: Thank you. I thank the parliamentary secretary for tabling that document, which is a series of emails by the former parliamentary inspector. During the parliamentary secretary's reply to the second reading debate, he referred to a number of letters to the editor. I cannot recall how many there were, but I think that he read from at least two. Were either of those letters authored by Mr Cunningham, Ms Atoms or Mr Martin?

Hon MATTHEW SWINBOURN: No.

Hon NICK GOIRAN: No; I would not have thought so. It is all very good for Mr Quigley to perhaps arrange for some of the government's ghostwriters to write letters to the editor in a complimentary fashion on the performance

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of the commissioner, but it is of no comfort whatsoever to Mr Cunningham, Ms Atoms or Mr Martin—no comfort to them whatsoever.

As I indicated earlier, the opposition will not be supporting this particular appointment. We will be voting against clause 1 because after a detailed examination of clause 1, we know that the government has been unable to provide the chamber with the core document upon which it is relying. According to the government, the most important document for our consideration, and the very reason why we should provide support for this bill, is a letter from the nominating committee to the Premier of Western Australia dated 4 May 2021. The government refuses to provide that information. It is not that it does not have it available, it is not that it is covered by legal professional privilege and it is not that it is covered by parliamentary privilege; the government says that it is confidential. It says that the main document it is using to justify this bill cannot be provided to the chamber. This is the same government that promised gold-standard transparency. The Leader of the House said that these processes would help to improve the legislation of this same government, yet we as members of the opposition find ourselves in a situation in which we are once again prevented by the McGowan government from sighting a core document.

I did not expect it to happen yesterday or today, but, remarkably, we found out during consideration of clause 1 of this bill that the Premier of Western Australia did not even provide that core document to the Joint Standing Committee on the Corruption and Crime Commission. The four members of that committee in this forty-first Parliament did not get to see that document. If I were a member of that joint standing committee in this Parliament, I would not provide my support for that appointment either, if I were dealing with a government that was hiding information from me.

The government decided to embark upon this process and is asking us to support clause 1, but it expects us to do so blindfolded. Under no circumstances are members of this chamber allowed to see the letter from the nominating committee, according to the McGowan government. This is absolutely unacceptable, and is precisely why the opposition will be opposing this bill and opposing the passage of clause 1.

Hon MARTIN ALDRIDGE: I raised a question in the course of the second reading debate and I am not sure whether the parliamentary secretary replied to it. It goes to the issue of the nomination process. I understand that on 2 June, the joint standing committee replied to the Premier, advising that it had met on that day. Did the joint standing committee advise the government which members of the committee voted against the nomination put forward to them by the Premier?

Hon MATTHEW SWINBOURN: No, member.

Hon MARTIN ALDRIDGE: On what basis does the parliamentary secretary express the view, as articulated in his second reading speech, that it was a member of the Nationals WA who was unwilling to provide bipartisan support?

Hon MATTHEW SWINBOURN: The answer is deduction, member—simple deduction.

Hon MARTIN ALDRIDGE: The parliamentary secretary said “deduction”?

Several members interjected.

Hon MARTIN ALDRIDGE: Bipartisan support requires that the government members and the members representing the party of the Leader of the Opposition in the Assembly agree to meet the threshold for that bipartisan support. Therefore, if the members of the committee are a Liberal, a National and two Labor members, I assume that we will need the Labor members and the National member to agree in order to achieve the bipartisanship threshold. Could it not have been the case that a Labor member, or the Labor members, disagreed with the nomination, and therefore it is indicated that the Labor members on the committee were unwilling to provide bipartisan support?

Hon MATTHEW SWINBOURN: The member for Kalamunda voted for the bill in the Legislative Assembly, and I was here earlier today when Hon Klara Andric also indicated support for this bill. I might add that the nature of the way this bipartisanship works is about the Premier’s party and the opposition party, so through a process of deduction, it is able to be concluded that it is highly unlikely that the Labor members of the committee would have voted against a position put forward by their Premier.

Hon MARTIN ALDRIDGE: This is quite extraordinary. The parliamentary secretary has just —

Hon Darren West interjected.

Hon MARTIN ALDRIDGE: Hon Darren West can stand in a moment.

It is extraordinary that the parliamentary secretary has defended the claim that he has made in his second reading speech on the basis that the member for Kalamunda voted for the bill in the other place. I suspect it is the same words that the Attorney General read into the other place before the member for Kalamunda voted for the bill—I will have a look at that later—and before Hon Klara Andric voted for the second reading of the bill, and that is the basis upon which he has deduced that it was the National Party that did not provide bipartisan support; or perhaps the members

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got whipped, after they had made their decision, and were told that they had to support the bill. It is just extraordinary. This second reading claim cannot be substantiated by the parliamentary secretary. The events that he has just explained happened after the second reading speech was given in this place, so the parliamentary secretary cannot possibly know that to be the case unless the Joint Standing Committee on the Corruption and Crime Commission is leaking again.

Hon NICK GOIRAN: I have one final question, parliamentary secretary, about clause 1. How many complaints during the five years of Mr McKechnie's term were received with regard to his conduct?

Hon MATTHEW SWINBOURN: Can the member clarify—received by whom?

Hon NICK GOIRAN: Parliamentary secretary, it troubles me that the complaints might be so massive in volume that we now need to clarify who might have received the complaints. But for the purposes of this exercise, did the Corruption and Crime Commission receive any complaints about the conduct of its commissioner during the five-year tenure of Mr McKechnie?

Hon MATTHEW SWINBOURN: I take the member to section 27 of the Corruption, Crime and Misconduct Act, headed "Allegation about Commissioner, Parliamentary Inspector or judicial officer not to be received or initiated", which states in part —

- (1) An allegation about the Commissioner must not be received by the Commission.

Therefore, the commission does not receive those complaints.

Hon NICK GOIRAN: Is it not the case, parliamentary secretary, that the commission did receive a complaint, because the commission is well aware of the Cunningham matter and the highly publicised set of circumstances, including that set out by the parliamentary inspector? Is it the position of the government that Mr Cunningham never complained to the CCC during the five-year term of Mr McKechnie?

Hon MATTHEW SWINBOURN: In terms of what I said previously, it was a complaint about the commissioner, as opposed to a complaint to the commission about an outcome—for example, the Atoms and the Cunningham case that the member referred to. I think it is a matter of public record that Dr Cunningham and Ms Atoms were unhappy with the process the CCC followed with their complaint about how they were treated and then took that matter up with the parliamentary inspector.

Hon NICK GOIRAN: First, is the parliamentary secretary in a position to advise the chamber how many complaints were received by the commission during the period that Mr McKechnie was the commissioner from people dissatisfied about the outcome of the commission's work under his stewardship? Second, is the parliamentary secretary able to advise the chamber how many complaints the parliamentary inspector's office received about Commissioner McKechnie?

Hon MATTHEW SWINBOURN: We do not have those figures. The best I can do is undertake to try to get those figures to the member at a later date. It would probably involve looking at the annual reports of the parliamentary inspector to see what is reflected there. But those reports may not even capture all the complaints that have been made, because some of those complaints may have been frivolous or without merit. I undertake to have a look at it, but we are not going to be able to provide the exact number the member is asking for.

Hon NICK GOIRAN: I just make this point in conclusion with regard to clause 1. We can now add this to the litany of information that the McGowan government cannot provide the chamber tonight. It cannot tell us how many complaints were received during the five years of Mr McKechnie being commissioner. The government tells us that he was outstanding, but it cannot tell us how many complaints were received. The government tells us that he was outstanding, yet it cannot tell us whether, on even one occasion, he undertook his duties under part 4 of the act with regard to organised crime. Did he bring anybody in? Did he summons anybody? Did he examine anybody under the organised crime function? We are not told, because the McGowan government comes in here ill-prepared for a bill that it says is the top priority prior to the winter recess—the top priority! One of the members earlier was complaining about the priorities chosen by the government, and the government doubled-down and said that this is the most important bill as far as it is concerned, yet it comes in here ill-prepared.

When it is asked to table and provide information, it says that the information is not available. We can now add to that the list of complaints. There must have been some kind of record set tonight as to how many times information cannot be provided because "we don't know". No wonder the Leader of the Opposition wanted this matter referred to the Standing Committee on Legislation so that we might know these things. But according to the government, that is not going to happen. The parliamentary secretary provided a range of apologies, which I have every confidence were genuine and well-meant, but, ultimately, they are of no use to members of the Legislative Council when they are expected to provide their vote. Yet, as sure as night follows day, we will find that later today, Friday, 25 June, the Attorney General of Western Australia will be running around and telling everybody that the Liberal Party was trying to block the appointment of Mr McKechnie. However, the *Hansard* of the Legislative Council will reflect

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that his government repeatedly refused to provide information to the Parliament or, alternatively, government members were unable to provide it because they simply did not know and had not done their work, yet they expect us to support clause 1.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: I move —

Page 2, line 6 — To delete “and 2” and insert —
to 3

Hon MATTHEW SWINBOURN: I stand to make it clear that the government will not be supporting this. I think this amendment follows further amendments that the member has put on the supplementary notice paper.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: No? Sorry; my mistake, but we do not support the amendment to clause 2 that the member has put forward.

Hon Nick Goiran: Is there a reason that the parliamentary secretary can provide?

Hon MATTHEW SWINBOURN: I can give the member a reason. It is contrary to the practice of the Parliamentary Counsel’s Office to bring clause 3, “Act amended”, into operation at the same time as clause 1, “Short title”, and clause 2, “Commencement”. It makes more sense to bring in the “Act amended” provision at the same time as the provisions that are doing the amending.

Amendment put and negated.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 9 amended —

Hon NICK GOIRAN: Clause 4 of the bill is extraordinary, but, as the parliamentary secretary will be quick to remind us, it is not unprecedented. In response to some questions asked by my colleagues during the second reading debate, he referred us all to an ancient act that had named some individuals. It is that ancient act that the government relies upon as its precedent to ignore and subvert the process that is currently the law of Western Australia and instead to mandate by force of law —

... John Roderick McKechnie is reappointed as Commissioner for a period of 5 years commencing on the day on which ... section 4 comes into operation.

I foreshadow an amendment standing in my name—I will not move it just yet, Mr Deputy Chair—but I want to explain to members the rationale behind it. I was away on urgent parliamentary business when Hon Martin Aldridge was making his second reading contribution, but I recall hearing him encourage members to contemplate the possibility of pausing this matter. I concur with the member that, at absolute best, this appointment and this process that we are embarking upon on the final sitting day, extended as it is, before the winter recess is premature. It is premature for one reason: we are all waiting for a judgement of the Supreme Court of Western Australia in CIV 2717 of 2019. It is a highly publicised expensive piece of litigation best explained by the content of the sixty-first report tabled by the Standing Committee on Procedure and Privileges. A trial has taken place and a judgement is pending. Until such time as that judgement has been delivered, we do not have the umpire’s decision on these important matters of parliamentary privilege. It will make a mockery of this particular process that we are embarking upon at the moment if the judgement comes down a particular way. We do not know what that judgement will be, but like any other litigant in Western Australia who has to wait for their judgement, we need to exercise patience. But patience is not a virtue that has ever been demonstrated by the member for Rockingham and his government. They insist on things happening on their timetable, not in accordance with the timetable that every other citizen of Western Australia needs to comply with. Other citizens have to wait sometimes months and months, and sometimes even years, for judgements, but the McGowan government is above all these things and it decides the timetable.

I just foreshadow that at this early stage in the consideration of clause 4 so that members can have a proper opportunity to consider the position they might take on this matter. To be clear, if the amendment that I have foreshadowed is successful, it would simply mean that Mr McKechnie could still be appointed once there had been a resolution from the other place and from this place on the day after we all have the benefit of knowing what is contained in the judgement, and we can make an informed decision, an informed choice, at that time. Alternatively, that amendment could be defeated and we could take the approach that the McGowan government tends to prefer, which is to do

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

things in a hurry and potentially in due course end up with egg on its face. I thought that the approach proffered by Hon Martin Aldridge, which was for us to hit the pause button here, was an eminently sensible one. We will see what the view is of the government and other members when I eventually move that amendment, but I am conscious that there is another amendment on the supplementary notice paper in the name of Hon James Hayward and there may be other questions on clause 4.

Hon JAMES HAYWARD: I move —

Page 2, lines 16 to 19 — To delete the lines and insert —

reappointed as Commissioner commencing on the day on which the *Corruption, Crime and Misconduct Amendment Act 2021* section 4 comes into operation:

- (a) for a period of 5 years; or
 - (b) the term of the McGowan Government,
- whichever is lesser.

Hon NICK GOIRAN: Is the government going to respond to this?

Hon JAMES HAYWARD: I would like the opportunity to speak to the amendment. As we know, this decision has been made by the Premier. I think I described it earlier as sticking the bolt in the fuse box to get the thing going. The Premier is obviously dissatisfied with the fact that the fuse box has tripped out three times, so he has decided to stick the bolt in and get the thing going. I mentioned that I believe there is some risk involved in that, but that is the Premier's decision, and, inevitably, we are getting closer to that decision being made in this chamber. This amendment would simply limit the appointment to the term of the McGowan government or five years, which is what the government is proposing. That would seem to be a fair approach, given that it is an appointment made by the Premier.

Hon MATTHEW SWINBOURN: I can confirm that we will not be supporting the member's amendment. I do not think that will surprise anyone. We do not think it is appropriate to tie the commissioner's term to the term of government. Despite what members have unfairly said about the politicisation of the appointment process, the reality is that the role of the commissioner is apolitical when he is in that position. The term, as with many of these kinds of positions, is fixed for five years; it is not tied to the government of the day. The bill simply provides a five-year term, which is the term provided for commissioners under the act, and we will not be deviating from that.

Hon MARTIN ALDRIDGE: I rise to support the amendment moved by Hon James Hayward. I think it is eminently sensible. The government claims that it has a mandate for this bill. It may have a mandate for a four-year term, but it is trying to make a five-year appointment. Why is it binding a future government—a future incoming government in less than four years, hopefully—to a decision that this government is forcing through the houses of Parliament this morning? I think this amendment is a sensible solution that will make it clear that it is only one party—the Labor Party—in this place and the other place that has supported this appointment and therefore the appointment should exist only as long as the government exists.

Amendment put and negated.

Hon NICK GOIRAN: Clause 4 seeks to appoint Mr McKechnie for a five-year period. The government has just refused the amendment proposed by Hon James Hayward. During Mr McKechnie's five-year tenure, is the government aware whether the Parliamentary Inspector of the Corruption and Crime Commission has expressed concern about Mr McKechnie's disinclination to investigate allegations of excessive use of force by police?

Hon MATTHEW SWINBOURN: Chair, we are diligently looking for information but we cannot bring anything to light at this point in time, so I am not going to be able to answer the member's question at this time in a way that is going to satisfy him.

Hon NICK GOIRAN: The question relates to whether, during the time that Mr McKechnie was the CCC commissioner for a period of five years, the government is aware that the Parliamentary Inspector of the Corruption and Crime Commission expressed any concerns about Mr McKechnie's disinclination to investigate allegations of excessive use of force. At this particular point in time, despite diligent searching, the government has not been able to avail itself of some pretty landmark reports by the parliamentary inspector and the Joint Standing Committee on the Corruption and Crime Commission. I refer the parliamentary secretary to the fifteenth report in the fortieth Parliament, presented by Margaret Quirk, MLA, and Hon Jim Chown in September 2020, entitled *If not the CCC ... then where?: An examination of the Corruption and Crime Commission's oversight of excessive use of force allegations against members of the WA Police Force*. Let us put to one side the issue about the parliamentary inspector expressing any concern, or, indeed, the joint standing committee. If the parliamentary secretary has a copy of that report handy,

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

I encourage him to turn to the executive summary on page 4. It is listed as page 4, but I am not sure that the committee had its numbering correct. Nevertheless, it is the penultimate page of the executive summary. Halfway down the page, a comment is made by the committee. Let us keep in mind that the member for Kalamunda was a member of the committee at this time and there was no minority report on this one, despite the fact that it was laid on the table on 24 September 2020. The comment is —

The Committee was particularly troubled to learn that over the past two years, the Aboriginal Legal Service of Western Australia ... has only referred a handful of matters to the CCC because the CCC very rarely conducts its own investigation into complaints about police. The ALSWA raised a number of key concerns about the CCC's lack of responsiveness to the needs of Aboriginal people, including the identification of ongoing systemic issues.

Has the Premier or anyone within the McGowan government consulted with the Aboriginal Legal Service of Western Australia about the appropriateness of the appointment of Mr McKechnie for another term of five years?

Hon MATTHEW SWINBOURN: No, member.

Hon NICK GOIRAN: Are any members of the Legislative Council of Western Australia concerned or interested in the Aboriginal Legal Service of Western Australia? Are they concerned that the Aboriginal Legal Service of Western Australia has expressed concern about this for over two years? Those two years coincide and overlap with the five-year tenure of Mr McKechnie during which the Aboriginal Legal Service of Western Australia has raised a number of key concerns, according to the Joint Standing Committee on the Corruption and Crime Commission—not a concern, but a number of key concerns. What are they about? They are about the Corruption and Crime Commission's lack of responsiveness to the needs of Aboriginal people. Who was responsible for that? Who was at the helm of the Corruption and Crime Commission at the time? It was John Roderick McKechnie.

In the meantime, no-one in the McGowan government has decided to consult with the Aboriginal Legal Service of Western Australia. Why not? Why does the McGowan government not care about its views? Does it care that the CCC was not responsive to the needs of Aboriginal people? Does the McGowan government care about that? It does not care enough to consult with the ALS. Yet, remember, this is the top priority of the McGowan government. That is not our judgement on that matter; the government admitted yesterday that this was going to be its top priority. Once again, the McGowan government expects us to support clause 4 of the bill by naming this individual, who, according to the Aboriginal Legal Service of Western Australia, was at the helm over the two years during which the CCC lacked responsiveness to the needs of Aboriginal people. There is no mention of that. Can members find it anywhere in the government's second reading speech either in the other place or in this chamber to justify the appointment? They do not mention it. In fact, the parliamentary secretary, in his speech, to justify this legislation, simply said that this individual is "the best corruption fighter Western Australia has ever had"—the best! But we do not ask the Aboriginal Legal Service of Western Australia for its opinion, because the McGowan government does not care. If it cared, it would ask it, but, then again, perhaps it was unaware of this situation. Perhaps there are some fair-minded members opposite who are unaware of this report and the concerns of the Aboriginal Legal Service of Western Australia. Might this be a time to pause? Might this be an opportunity to reflect on these matters and say that maybe we should not rush ahead with this? Maybe there are some fair-minded members opposite who do care about the Aboriginal Legal Service of Western Australia and its views and want to investigate this matter a little further. They might investigate it, come back to the chamber and say that they have satisfied themselves that the appointment is still appropriate. But at the moment, they do not know that because they have not asked. It is not the fault of members, but it is the fault of those responsible for this particular bill. They had the opportunity to consult and they decided not to do so.

It makes one wonder whether the McGowan government actually read any of the reports of the Joint Standing Committee on the Corruption and Crime Commission from the fortieth Parliament. As I was at pains to explain during my second reading contribution, it does not take long to read through some of the parliamentary inspector's reports and the joint standing committee reports to quickly come to the conclusion that Mr McKechnie most certainly has not been the best corruption fighter in Western Australian history; indeed, the record reflects to the contrary. It is in the background of those comments that I will seek the support of members for the amendment that I will move momentarily, which I foreshadowed a little earlier in the consideration of clause 4, which simply seeks for us to pause at this time and allow the appointment of Mr McKechnie in due course. That "in due course" period has some parameters; it has two components to it. The first component is that the judgement in the litigation between the President of the Legislative Council of Western Australia and the Corruption and Crime Commission is handed down and, thereafter, there is a resolution from the other place and this place that endorses the reappointment. That is the pause button we would be hitting if we agree with the amendment for which I seek the support of members. I move —

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

Page 2, lines 17 to 19 — To delete the lines and insert —

commencing on the day after a resolution endorsing the reappointment has been agreed to by both Houses of Parliament following delivery of a judgment in Supreme Court matter CIV 2717 of 2019, *President of the Legislative Council of Western Australia v Corruption and Crime Commission of Western Australia & Ors*.

Hon MATTHEW SWINBOURN: The government will not support Hon Nick Goiran’s amendment. The court case is about the commissioner exercising his statutory powers under the Corruption, Crime and Misconduct Act 2003 to investigate and fight corruption. To put the reappointment on hold pending the determination of this case would set a precedent that the commissioner could not hold office while any legal challenge to the exercise of the commissioner’s powers was before the courts. Section 12(1) of the CCM act already provides for the removal or suspension of the commissioner by the Governor on address from both houses of Parliament. Subsection (2) provides that the Governor may suspend the commissioner from office if the Governor is satisfied that the commissioner —

- (a) is incapable of properly performing the duties of office; or
- (b) has shown himself or herself incompetent properly to perform, or has neglected, those duties; or
- (c) has been guilty of misconduct ...

We are not supporting this amendment for two reasons. First, we do not think it is necessary due to the existence of section 12 in the act, which we think is the appropriate mechanism to deal with any question about performance of duties or misconduct. Second, we do not think it sets a desirable precedent if every time there are legal proceedings concerning the interpretation of the act or the exercise of the commissioner’s power, Parliament’s view is that the commissioner should be suspended, or might be suspended, from office.

Hon NICK GOIRAN: There is a big difference here because the circumstances of this matter are that the then commissioner, Mr McKechnie, has already been reprimanded once by the Standing Committee on Procedure and Privileges with regard to an indiscretion of parliamentary privilege. Despite the fact that he told people publicly that he would take a more timorous approach to this matter, the record reflects that he did the exact opposite, so much so that there has been this massive dispute in the Legislative Council. I agree with the parliamentary secretary that ordinarily there cannot be a situation in which every time somebody wants to dispute the interpretation on something, the commissioner of the day needs to stand down and be suspended, but this is no ordinary matter. These are extraordinary circumstances, and I do not think it is appropriate for Mr McKechnie to be the commissioner while this judgement is pending. I respect the fact that the government holds a different view about that matter. That said, parliamentary inspector—I mean parliamentary secretary; I really want you to have that job obviously!—is the government saying that its position in regard to the highly publicised investigation into former MPs, which I think is called Operation Betelgeuse, is that that operation can continue only if Mr McKechnie is the commissioner?

Hon MATTHEW SWINBOURN: No, member, that is not our position.

Hon NICK GOIRAN: Is it not? It is not the government’s position according to its representative here today. This is the first time that we have heard this. It is not the government’s position that the appointment of Mr McKechnie is some kind of prerequisite for the continuation of that operation. To be very clear: the Corruption and Crime Commission has the full support of the opposition for that operation, and it is clear from the record that it has the full support of the Standing Committee on Procedure and Privileges, so much so that the Standing Committee on Procedure and Privileges has recently invited and encouraged the CCC to access the more than 450 000 records and documents, including the much-publicised laptop. It is all available. According to the Parliamentary Secretary to the Attorney General this can be done. It does not matter whether Mr McKechnie is there or not.

I wonder whether somebody has told the Premier of Western Australia that and I wonder whether somebody has told the Attorney General that, because all the public comments have been to the contrary, and there have been these continuing false comments made. The beautiful thing about this chamber is that there is an honourable member like Hon Matthew Swinbourn here, and he knows full well that he cannot mislead Parliament. The Premier of Western Australia and the Attorney General run around saying whatever they like without any regard whatsoever, but when there are an honourable member and advisers here who bother to tell the truth, we suddenly realise that they are not going to mislead Parliament. The truth of the matter is that that operation has always been able to continue. It has nothing to do with Mr McKechnie and his reappointment—nothing whatsoever. Of course, the CCC could continue to do it. If anyone has even a basic understanding of how the CCC operates, they will understand that it has been able to continue under the acting commissioner. I entirely agree with the parliamentary secretary, and I reiterate that the opposition supports the continuation of that operation. The false comments made by Hon Darren West on Facebook during the course of this debate are reprehensible, and he would do well —

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

Several members interjected.

The DEPUTY CHAIR: Order, members!

Hon NICK GOIRAN: Does the honourable member see—I think it is Hon Dan Caddy—that sharing it would be an incredibly stupid thing to do, because this member needs to get some advice from a defamation lawyer. I do not think that sharing it would be an intelligent thing to do, but I will leave that to the government to work out. The last time that honourable member did something stupid, he had his Twitter account revoked. These are serious matters. The opposition supports the continuation of that operation. We always have. The Standing Committee on Procedure and Privileges has always supported it. But our position has always been that we cannot access the privileged documents. That means that if there were draft parliamentary questions, it would be a case of: “No Mr McKechnie, no the CCC, you cannot have access to draft parliamentary questions. You cannot have access to draft parliamentary speeches.” There are 1 120 documents, as best that I can recall, that the expert committee of the Parliament of Western Australia has audited and determined are not available—should not be available—yet the law of Western Australia has been breached a thousand times and the Attorney General and Premier of Western Australia are running around and we, particularly Liberal members, have been putting up with this garbage for more than a year. It has been nothing but another Labor lie.

I am grateful that if nothing else has been achieved out of this process and this bill goes ahead and Mr McKechnie ends up being the head of the CCC, at least the parliamentary record will reflect that that operation was never, ever impeded by this process. We, the opposition, look forward to the outcome of the judgement, whatever that might be, and we continue to thank the hardworking members of the procedure and privileges committee for the work they did. Nevertheless, our position is that this would be an appropriate time to pause and wait for that judgement to be delivered and we seek the support of members for the amendment currently before the chamber.

Hon MARTIN ALDRIDGE: This is the last time I will speak this morning on the committee stage of this bill. I implore members that if there is one amendment on the supplementary notice paper that should be supported, and if they can support only one amendment tonight, it is this amendment. We know that the CCC has extraordinary powers. It is a powerful entity of the state. The sixty-first report of the Standing Committee on Procedure and Privileges sets out quite clearly the abuse of power and the potentially unlawful conduct of the CCC and others, which is exactly the reason we are in the Supreme Court litigating on behalf of this chamber to protect the privileges of this place, but also to defend the law of Western Australia.

The trial has occurred, the judgement has been reserved and I suspect it is imminent. The government just needs to be a little more patient because if that judgement does not go the way of the CCC, it could have implications for the office of the commissioner. There is an acting commissioner in place. He has been doing a good job. The government has the numbers in both chambers; it has absolute control. It could pass a resolution on the next sitting Tuesday. But no, just like when this chamber considered the sixty-first report, again government members have been muzzled and, I suspect, they will not stand tonight and support this amendment, but they should. If there is any amendment on the supplementary notice paper that should be supported tonight, it is this amendment.

Division

Amendment put and a division taken, the Deputy Chair (Hon Peter Foster) casting his vote with the noes, with the following result —

Ayes (11)

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

Noes (16)

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

Pairs

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

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

Amendment thus negatived.

Clause put and passed.

New Clause 5 —

Hon NICK GOIRAN: I move —

Page 2, after line 20 — To insert the following new clause —

5. Section 204 amended

After section 204(4) insert:

- (5) For the duration of the reappointment of John Roderick McKechnie as Commissioner, the Parliamentary Inspector is to prepare reports on the performance of the Commissioner and table those reports by no later than 30 September each year.
- (6) Without limiting what may be contained in a report prepared under subsection (5), it must include —
 - (a) the number of complaints received about the Commissioner;
 - (b) the number of claims of parliamentary privilege received by the Commissioner.

By way of explanation, section 204 is found in part 13, “Parliamentary Inspector of the Corruption and Crime Commission”, of the Corruption, Crime and Misconduct Act 2003. The part has several divisions, including division 3, “Reporting”. Specifically, section 204 deals with periodical reports to Parliament by the Parliamentary Inspector of the Corruption and Crime Commission. The parliamentary inspector is already required by law to provide an annual report within three months after 30 June every year. This amendment specifically seeks that the parliamentary inspector provide a periodical report to Parliament by no later than 30 September every year. Members may ask why we would need the parliamentary inspector to provide a periodical report by 30 September each year. It is because it is fair to say that the reappointment of Mr McKechnie, if nothing else, has been controversial. I think members could generally agree that it has been a controversial reappointment.

The reappointment has clearly not received bipartisan support and in actual fact, as I mentioned earlier, it has received the support of no party other than the Australian Labor Party. Nevertheless, the reappointment is going ahead because the first four clauses of this bill have been agreed to, in particular clause 4. If the appointment is going ahead and Mr McKechnie is to be the head of the CCC, despite this controversial process, it seems to me that it would be appropriate for the parliamentary inspector to provide particular oversight and scrutiny of the performance of Mr McKechnie. The report that he would provide on the performance of Mr McKechnie would include at least two things. Of course, the parliamentary inspector would be free to include whatever he likes in the periodical report but it would include at least two things. They are set out in the amendment on the supplementary notice paper, specifically in proposed section 204(6). It would require the number of complaints received about the commissioner to be disclosed—not what the complaints are but just the number, the raw data—and, in addition, the number of claims of parliamentary privilege received by the commissioner, for obvious reasons given that the commissioner has already been chastised once by the Standing Committee on Procedure and Privileges and is now at the centre of a major Supreme Court litigation in relation to this issue. I seek the support of members with respect to this idea of oversight by the parliamentary inspector specifically with regard to these issues.

Hon MATTHEW SWINBOURN: We will not be supporting Hon Nick Goiran’s amendment because it would include provisions in section 204 that are inconsistent with the existing operation of the legislation and would otherwise be superfluous. The parliamentary inspector’s functions are included in section 195 of the act and the inspector’s powers are included in section 196. Neither provision expressly contemplates that the parliamentary inspector will be responsible for monitoring the performance of the commissioner as opposed to allegations of misconduct or the operations of the commission et cetera. The parliamentary inspector already has the function to report and make recommendations to Parliament and the joint standing committee via section 195(1)(e), as well as the power to, at any time, prepare a report regarding matters affecting the commission, and lay it before both houses of Parliament. I refer the member to section 199. The parliamentary inspector also already has the obligation to provide an annual report, which must be laid before each house of Parliament.

Hon NICK GOIRAN: I ask the parliamentary secretary to turn to section 195(1)(f) and confirm that he still maintains the advice he has given to the chamber, given that it is clear in that section that a function of the parliamentary inspector is —

to perform any other function given to the Parliamentary Inspector under this or another Act.

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

Hon MATTHEW SWINBOURN: If I can summarise what I have just been told, I think it relates to the lack of connection between what the member is proposing and the actual functions that exist for the parliamentary inspector. The parliamentary inspector already has a range of reporting powers, and we feel that is sufficient for him to be able to address any number of issues that may arise with the commissioner.

Hon NICK GOIRAN: I do not disagree with the parliamentary secretary that the parliamentary inspector already has the capacity to do these things. There is sufficient scope for him to do that. He has a function under section 195 to report and make recommendations to either house of Parliament. He also has a power under section 196 to investigate any aspect of the commission's operations, or any conduct of officers, and one of those officers is the commissioner himself. I agree with the parliamentary secretary that there is already capacity for the parliamentary inspector to do that. The difference here is that this would be this chamber saying to the parliamentary inspector, "We definitely want you to be doing this for the period that Mr McKechnie is in the role."

For the reasons I indicated earlier, I seek the support of members for new clause 5.

Division

New clause put and a division taken, the Deputy Chair (Hon Peter Foster) casting his vote with the noes, with the following result —

Ayes (11)

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

Noes (16)

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

Pairs

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

New clause thus negatived.

New Preamble —

Hon NICK GOIRAN: There is a proposed new preamble standing in my name on the supplementary notice paper. I move —

Page 1, the line following "An Act to amend the *Corruption, Crime and Misconduct Act 2003*." — To insert —

Preamble

Whereas:

- A. The WA Inc Royal Commission *Final Report* contained detailed proposals concerning the establishment of the Office of the Commissioner for the Investigation of Corruption and Improper Conduct so that the appointment process would not create a political appointment.
- B. In enacting the *Anti-Corruption Commission Act 1988*, Parliament established a process that would not create a political appointment.
- C. In enacting the *Corruption and Crime Commission Act 2003*, Parliament rejected an appointment process proposed by the Government that created a political appointment and established a process that would create an apolitical appointment with bipartisan support.
- D. John Roderick McKechnie was appointed Commissioner on 28 April 2015 for a five year term that ended on 27 April 2020.

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

- F. Premier Mark McGowan recommended the reappointment of John Roderick McKechnie in March 2020.
- F. The reappointment did not have the support of the majority of the Standing Committee and bipartisan support.
- G. Premier Mark McGowan resubmitted the reappointment recommendation in April 2020.
- H. The resubmitted reappointment did not have the support of the majority of the Standing Committee and bipartisan support.
- I. A new Standing Committee was established in May 2021.
- J. Premier Mark McGowan recommended the reappointment of John Roderick McKechnie in May 2021.
- K. The reappointment did not have the support of the majority of the new Standing Committee and bipartisan support.
- L. In enacting this legislation, Parliament recognises that it is making a political appointment.

Hon Sue Ellery interjected.

Hon NICK GOIRAN: I am disappointed that before there is even an opportunity to persuade members, the Leader of the House has already indicated, I take it, the position of members. I cannot imagine that government members will take a position contrary to her. That said, I think that the amendment is self-explanatory. The preamble simply sets out a series of facts. If it is the case that the government does not support this particular amendment, I ask the parliamentary secretary to clarify which of the stated facts are incorrect.

Hon MATTHEW SWINBOURN: I am not going to go through the member's list and say which ones are incorrect. I am going to say simply that the government does not support the amendment. We do not think it is appropriate to include a preamble of this type. The matters that are stated are already matters of public record. The use of preambles in statutes is apparently a somewhat archaic practice. They are still used, of course, in private law instruments such as deeds or contracts. I have certainly drafted a few of them myself. The advisers here have only ever seen them used in old statutes. I have been advised that to include a preamble of this nature would be contrary to current drafting practice. These types of matters are included in the proposed amendment, and that is, as I say, on the public record, including in debates on the bill, and these matters already form part of the legislative history of the bill and may be used to assist in understanding and interpreting the legislation. We say that there is no need to include a preamble in the bill. God forbid that we revive an apparently long-abandoned drafting practice that used to occur. Member, we will not be supporting the amendment.

Hon NICK GOIRAN: The parliamentary secretary might be interested to know that the practice is not as ancient as he might think. If he were to ask the Leader of the House, who has been here for, as I recall, just over 20 years —

Hon Sue Ellery interjected.

Hon NICK GOIRAN: — the honourable member would be able to tell him that during the time that she has been a member of this place, indeed a preamble has been moved with respect to at least one bill that I am aware of, and I suspect that there may well be more than one, so the practice is maybe not as ancient as the parliamentary secretary might think.

Hon Matthew Swinbourn: I said archaic.

Hon NICK GOIRAN: Sorry; not as archaic as the parliamentary secretary might think. Nevertheless, I seek the support of members for the amendment. I think it is telling that the government has been unable to indicate which of the statements are not accurate. I could understand it if the government was not excited about the last limb in the proposed preamble, because obviously that is clearly a point of contention between the government and other members in this place. We say that very clearly what is occurring here is that a political appointment is being made. The parliamentary secretary and the government say that is not the case. In fact, I recall that the parliamentary secretary indicated that that is not the case because of the nominating committee and this infamous letter that has been prepared by the nominating committee, which this chamber is not able to see.

I could understand if government members might want to delete the final line, but it is not clear to me why any of the other facts stated in the proposed preamble might not enjoy the support of the government. In the absence of an explanation to the contrary, I seek the support of members for the insertion of this proposed preamble.

Extract from Hansard
[COUNCIL — Thursday, 24 June 2021]
p2020a-2073a

Hon Sophia Moermond; Hon James Hayward; Hon Donna Faragher; Hon Dr Steve Thomas; Hon Sue Ellery;
Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

Division

New preamble put and a division taken, the Chair casting his vote with the ayes, with the following result —

Ayes (11)

Hon Martin Aldridge
Hon Peter Collier
Hon Donna Faragher

Hon Nick Goiran
Hon James Hayward
Hon Sophia Moermond

Hon Tjorn Sibma
Hon Neil Thomson
Hon Wilson Tucker

Hon Dr Brian Walker
Hon Colin de Grussa (*Teller*)

Noes (16)

Hon Klara Andric
Hon Dan Caddy
Hon Sandra Carr
Hon Sue Ellery

Hon Peter Foster
Hon Lorna Harper
Hon Jackie Jarvis
Hon Alannah MacTiernan

Hon Kyle McGinn
Hon Shelley Payne
Hon Stephen Pratt
Hon Martin Pritchard

Hon Matthew Swinbourn
Hon Dr Sally Talbot
Hon Darren West
Hon Pierre Yang (*Teller*)

Pairs

Hon Dr Steve Thomas
Hon Dr Brad Pettitt
Hon Steve Martin

Hon Kate Doust
Hon Rosie Sahanna
Hon Ayor Makur Chuot

New preamble thus negatived.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [1.49 am]: I move —

That the bill be now read a third time.

HON NICK GOIRAN (South Metropolitan) [1.49 am]: I rise on behalf of the opposition to speak to the third reading of the Corruption, Crime and Misconduct Amendment Bill 2021. The bill that is currently before the house is identical to the bill that was passed at the second reading. What has happened, however, in the intervening period of time is, as I recall, the second reading vote was taken at approximately 8.45 pm yesterday and it is now just after 1.45 am the following day. In the preceding period, the Legislative Council formed a Committee of the Whole House and interrogated this four-clause bill. The casual observer might remark that that period seems significant for a four-clause bill, and in one sense they would be right, but what is happening is significant. What is happening is the appointment of the Corruption and Crime Commissioner of Western Australia. It is being done pursuant to a process that subverts the ordinary law of Western Australia.

The ordinary law of Western Australia sees the Premier of the day, whether they are Liberal, Labor or otherwise, receive three names from a nominating committee, which is chaired by the Chief Justice of Western Australia, select one of those names and provide it to the Joint Standing Committee on the Corruption and Crime Commission, and is only ever then able to recommend that appointment to the Governor if that recommendation attracts the majority and bipartisan support of the Joint Standing Committee on the Corruption and Crime Commission. This is a process that has been in place in Western Australia and has been tried and tested for just shy of two decades. It has worked well. Premiers of the day have not always had their appointments endorsed—that is a matter of public record—including a time when I was a member of the then government and chaired the Joint Standing Committee on the Corruption and Crime Commission, and we said to Premier Barnett that we did not agree with his appointment.

This process has been tried and tested through multiple governments of different persuasions, but it is only this government, the McGowan government, that has such arrogance that it says that the rule of law does not apply to it, and when it cannot get its way, it decides that the solution is that it will simply change the law, despite the fact that the whole construction of the process was to avoid exactly this. The whole point of attracting bipartisan support was to ensure that these appointments would be apolitical, yet the McGowan government decides to do the opposite.

Regrettably, I take this opportunity to report to the President that during the consideration of the bill by the Committee of the Whole House, we were impeded in our work. I regret to inform the President of that. The

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government was ill-prepared for the consideration of the bill, despite the fact that we found out yesterday that it is the top priority of the government. Despite it being the top priority of the government, it was unable to provide us with information that was key to our deliberations. No data was able to be provided on whether Mr McKechnie had, over the course of his five-year tenure, utilised the very important and extensive powers to fight organised crime—no data was able to be provided. The government was not willing to provide the advice that had been obtained by the independent Solicitor-General on the eligibility of Mr McKechnie. The government refused to provide a copy of the letter that the Premier sent to the Joint Standing Committee on the Corruption and Crime Commission, claiming parliamentary privilege, which is particularly ironic, given the circumstances of this matter. But, most critically, we were impeded in our deliberations during the Committee of the Whole House because the government refused to provide a copy of a letter from the nominating committee received by the Premier, yet it is that letter from the nominating committee that the government relies upon to say that this is why the process is not political. This is why this person is said to be the outstanding candidate, but it refuses to provide that information to the house. It refused to do so in the Committee of the Whole House. It is my view that that matter needs to be investigated by the Auditor General of Western Australia to see whether it was reasonable for the government to withhold that information. We will see whether the McGowan government decides to comply with the law of Western Australia under the Financial Management Act.

In the meantime, most particularly, we were in effect being asked to assess one individual's candidacy for this very important position, but we were unable to ask any questions, either directly to that individual or through other means, all of which could have been avoided in the event that this matter had been referred to the Standing Committee on Legislation. This is the government that promised gold standard transparency and when a matter of its highest priority was brought to Parliament, it decided that it was not going to provide information to Parliament. I very much regret that in the course of the debate that had to occur over the last two days, very robust remarks had to be made about an individual in Western Australia. But the opposition will not apologise for doing its job. If the McGowan government wants to change the law, it is entitled to do so. It knows full well that it has the numbers and total control of both houses of Parliament to do that, yet it is the duty and responsibility of the opposition to ask the questions that need to be asked. When we have an appointment of this magnitude and the government is unable to identify whether any complaints had been made about that individual, that is a dereliction of responsibility by the government. When it is unable to identify data with regard to that person's performance over five years, despite it being prioritised, that is a dereliction of duty.

I very much regret that once this bill receives royal assent in due course, the following day McKechnie will start a new term that will be forever clouded as a political appointment. That need not have been the case, but such has been the insistence of two individuals in particular, the Premier and the Attorney General. Nevertheless, President, I am pleased to report to you that the Committee of the Whole House was able to ascertain from the government that the much sensationalised operation about some former members of this place has been able to continue, notwithstanding that Mr McKechnie has not been the commissioner for more than a year, and that that would continue to be the case irrespective of whether this bill passed. I am particularly pleased about that because it not only is a matter of public record that the opposition supports the work of the CCC in pursuing that operation for any possible misconduct by former members or any unlawful conduct by members, but also once again highlights the importance of the work of the Standing Committee on Procedure and Privileges in the previous Parliament and the very difficult task it had to audit more than 450 000 documents and determine whether those documents were subject to parliamentary privilege.

On behalf of the opposition, I once again thank the members of that hardworking committee for the work that they undertook, despite all the controversies associated with it, and particularly the pressure that was wrongfully applied by the Premier and Attorney General. It has been exposed today that they have repeatedly over the course of the last year said inaccurate, false things. I encourage members in this place, irrespective of the position they took on this bill, to think very carefully about false statements that they make outside this place.

I thank the Parliamentary Secretary to the Attorney General for the way he has handled this debate. Obviously, the opposition strongly disagrees with the approach the government has taken and we will not endorse this process, which clearly subverts the ordinary law. Nevertheless, we recognise the efforts of the parliamentary secretary in the circumstances in which he has found himself.

In closing, I indicate that the opposition will not support the third reading of the bill because the McGowan government has hidden from the Legislative Council the key document that it is relying on. The opposition might have taken a different view if it had been provided with information, but we cannot provide support for a process in which we are blindfolded and the government is ill-prepared for a bill that it has prioritised. I encourage members to oppose the third reading of the bill.

Division

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Hon Nick Goiran; Hon Colin De Grussa; Hon Matthew Swinbourn; Hon Tjorn Sibma; Hon Stephen Dawson;
Hon Alannah MacTiernan; Hon Brian Walker; Hon Martin Aldridge

Question put and a division taken with the following result —

Ayes (16)

Hon Klara Andric
Hon Dan Caddy
Hon Sandra Carr
Hon Sue Ellery

Hon Peter Foster
Hon Lorna Harper
Hon Jackie Jarvis
Hon Alannah MacTiernan

Hon Kyle McGinn
Hon Shelley Payne
Hon Stephen Pratt
Hon Martin Pritchard

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Noes (11)

Hon Martin Aldridge
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Hon Dr Brian Walker
Hon Colin de Grussa (*Teller*)

Pairs

Hon Kate Doust
Hon Rosie Sahanna
Hon Ayor Makur Chuot

Hon Dr Steve Thomas
Hon Dr Brad Pettitt
Hon Steve Martin

Question thus passed.

Bill read a third time and passed.