CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2023

Second Reading

Resumed from 30 August 2023.

HON TJORN SIBMA (North Metropolitan) [5.36 pm]: I rise to address the Corruption, Crime and Misconduct Amendment Bill 2023. Before I venture into the content of the bill and identify its redeemable and commendable elements, and also reflect on what I think are some significant and dangerous flaws, I first wish to acknowledge that this may be one of the final pieces of legislation that bears the imprint of the Attorney General, Hon John Quigley, who announced in recent weeks that he would not be seeking to contest the state election to be held in March 2025. On a personal note, I wish to convey my best wishes to the Attorney General. I have over the course of my life—this extends to before politics as well—found him to be a most intriguing character.

Hon Sue Ellery: Mad genius.

Hon TJORN SIBMA: Your words, leader!

Hon Sue Ellery: We say that with the greatest affection!

Hon TJORN SIBMA: I think *Hansard* should acknowledge that that sentiment was expressed with love. Indeed, the genius dimension and the other dimension—I do not wish to engage in the silly game of labels—are not to be divorced absolutely from our contemplation of this bill, because there is a certain imprint that I have noted the Attorney General leaves on all the bills that I have dealt with in my time in this chamber. At a personal level, I very much wish him well. I have found him to be a formidable individual, and the description of "formidable" can be taken either way. If I am to engage in this kind of discussion, I would describe him as a maverick, a person of unbridled energy and intellectually restless. On his best days, he is an absolute genius. On his less good days, he is particularly troublesome and worrisome. I think that that individual has earned the right to respect, but I do not believe that any individual should have their history rewritten for them. I say this very politely: the political commentaries—I will not say obituaries, but that is the best way to describe them—have been very kind. If we took them literally, one would think that we farewell a latter-day Cicero or Cato the Elder. I do not think that is absolutely the case here; it is not.

If I am to put it bluntly, in my time in this chamber and in my brief time in this portfolio, I have been troubled by some of the methodology and implications of the Attorney General's work, and this is another one of those occasions. Why would I say that? Like the curate's egg, this bill has good bits and bad bits that I find barely digestible. What does this bill propose to do? I think we should go to the government bench's fount of credibility and hard work in this chamber and read the second reading speech given by Hon Matthew Swinbourn, the hardworking parliamentary secretary.

Hon Darren West: Intelligent!

Hon TJORN SIBMA: Yes, I agree with all these compliments.

Hon Darren West: Highly attractive!

Hon TJORN SIBMA: Again, we have evidence of the government going a bit too far in self-congratulation, but it is nice to see the support.

This bill proposes to do two things. It proposes to, effectively, change the manner in which a commissioner or an acting commissioner of the Corruption and Crime Commission is appointed. The second matter will provide for the creation of a new role, with the title of deputy commissioner, within that organisation. In my view, one of those elements is absolutely meritorious and has been demanded and recommended for a number of years—almost 20 years, I think. That latter dimension is the creation of an addition role to, effectively, provide some executive leadership for the organisation's important functions; however, the first bit, the creation of the new appointment process, is perilous and, in my view, establishes a very dangerous precedent. It is not as dangerous as the earlier precedent in 2021, which was a bill of four or five clauses—I have been told it was five clauses—that named one John Roderick McKechnie. If I have his middle name wrong, I give my apologies to the commissioner. This was an absolute departure from a good 20 years' practice in this state.

Therefore, the position we adopt on this bill is that we will not get in the way of it. We will not oppose the passage of this bill for the very sensible reason that the CCC requires a deputy commissioner to be appointed. We do not want to thwart, at the institutional apex of investigations, that organisation's capacity or ability to manage its workflow at a senior level. We want to provide it with the resourcing and the capability it needs to tackle serious crime and corruption in this state. That is what a responsible political party would do. However, the first element, the actual priority of this bill, is not necessarily to enable, improve or provide additional resources and capacity for the CCC. It is, again, to play a bit of a silly game with the appointment process. Should we look a little warily at the proposition that the Attorney General has asked us to accept without criticism? I think we absolutely should look at that.

It is often the case that this chamber will deal with a single bill on its merits, almost quarantined from a historical context. That is not always the case, but we often deal with bills that are straightforward and provide some operational

enhancement and the like. A range of noncontroversial bills come before this house and, between the government and the opposition, I think it is fair to say that we probably agree on 80 per cent of them. However, certain bills have consequences, even if the legacy they might leave is not readily apparent. In that respect, I think the pretty clear legacy of this bill is part of a continuum, an exercise or an approach adopted by the Attorney General, particularly since the Labor government won the last election—that is, a take-it-or-leave-it approach. I find that deeply problematic. I argue that the debate on and contemplation of this bill should not be divorced from revisiting and reviewing the last at least three or four years of political history in this jurisdiction.

To recap, around 2020 there was an impasse, to describe it politely, on the government's preferred appointee to the position of Corruption and Crime Commissioner. The impasse involved the Joint Standing Committee on the Corruption and Crime Commission, which then comprised two Labor members, a Greens member and an ex-Liberal MLC, Jim Chown. The personalities were not the issue; that was the composition of the committee. The desire to appoint Mr McKechnie for a second term was not endorsed by that committee. The test was that majority and bipartisan agreement had to be reached, and it was not. Because that committee formed the view that that individual was not appropriate to appoint to that role, fingers were pointed at one solitary Liberal MLC. After that, the issue of the appointment of a person to a position and an organisation that should be completely apolitical was politically weaponised by the previous Premier, Hon Mark McGowan, and the continuing Attorney General, Hon John Quigley. I recall being part of a group that was demonised, harassed and defamed. Effectively, the argument was that Liberal members were protecting corrupt members of their own party. That was it. That was about the most disingenuous and disgraceful episode we have seen in recent political history. This position should be beyond politics. However, not satisfied with that, the previous version, or version 1, of the Labor government committed, as an election pledge, to name one individual—Mr McKechnie—to that position. I had never seen that happen before in the annals of Western Australian political history, which has been pretty interesting on occasion, as we have been reminded this week. I had never seen that happen before. That was very, very poor. At that point, absolutely and incontrovertibly, we politicised that organisation and an individual in that organisation. That should not have happened.

I have not addressed another thing that was running concurrently. I refer to the laptop saga, Operation Betelgeuse and, effectively, the warfare and lawfare engaged in by the now Attorney General against the dignity of this chamber and of former President Hon Kate Doust. We fought a battle for which no-one was awarded but everybody suffered. However, the principle was upheld, and that was the principle of parliamentary privilege. It is interesting and appropriate that this debate is occurring on a Wednesday because ordinarily our process on Wednesdays is to reflect upon committee reports. Probably the most substantial committee report was tabled in this house before the forty-first Parliament came into effect, in May 2020. I wish to remind members of certain elements of that report. I will briefly quote from the then President's statement. I refer to 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*. That report should never be forgotten. The consideration of that committee report was the only opportunity to get on the record what the privileges committee had to do. I was a very recent member of that committee at that time. I was put on it in October or November 2020. Part of the statement the President made reads as follows —

> The committee has been restrained —

I emphasise "restrained" —

> in what it has been able to say publicly in deference to the ongoing CCC and police investigations and its own privilege inquiries, and, crucially, during the various legal actions to determine the validity of the CCC notices to produce and defend against the Attorney General's —

Extraordinary —

> legal action to diminish parliamentary privilege and the powers of the Parliament.

That is why I do not go in for the full lionisation of the Attorney General. It is not out of any disrespect, rudeness or incivility, and I like those words.

I will also draw members' attention to the very brief executive summary of the report, which, with members' indulgence, I will read, because I think it focuses the mind somewhat on the kinds of substantial issues that we are dealing with when we see a bill like this. I will read paragraph 3 of the executive summary because it is important. It states —

> Over the past two years the plain facts in this matter —

This relates to the broader issue —

> 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.

This is the parliamentary privileges committee of the upper house reporting on the bipartisan committee—remember that. Paragraph 4 states —

> To be perfectly clear, this matter is not about an orchestrated attempt by a so-called 'Opposition-dominated' Legislative Council to hide a former Opposition Member's 'dirt file' from examination by law enforcement agencies. Nor is it about any person or body's aim to hinder a CCC investigation, or to prevent the reappointment of the Commissioner of the CCC. And nor is it about the PPC intentionally trapping innocent senior public servants in 'no win scenarios' in order to score some perceived political advantage over the government.

Paragraph 5 states —

> 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.

This is why I do not come to a bill like the Corruption, Crime and Misconduct Amendment Bill 2023 with an easy, breezy attitude and wave it through, because I know what the game has been. After this point in June 2021, a month after, we dealt with the most appalling piece of legislation any government has brought in—one to traduce the independence of the CCC. That was the four to five-clause bill I previously mentioned. Members will recall that the *Hansard* shows that the opposition opposed it because it was wrong. It was ethically, morally, politically and institutionally wrong. It was a bill through which the government named its man, and I said so at the time.

This is not how we deal with an organisation as vital to good governance and supervision in the state of Western Australia as the CCC. We do not politicise that, yet the government has done so.

Through the course of that debate and the regurgitation of invective and slurs in the other house, there was an admission or an indication that there was another bill coming to deal with what the Attorney General perceived to be a flaw in the appointment process. That is now nearly three years ago. According to the Attorney General and the government the flaw is any necessity for bipartisan agreement on the appointment of a Corruption and Crime Commissioner. I know that this is problematic for the government and an obsession for the Attorney General, because he has sought, through this bill, to remove any reference to the bipartisan requirement to appoint a future commissioner and the deputy commissioner that we are about to enable. Again, the deputy commissioner function is a very sensible function. We are not getting in the way of that. But I do not want us to forget recent history. If I have been forced to re-learn the political history of Western Australia over the last 30 or 40 years, the government has done me a service, but I want to reciprocate and remind the government about recent political history.

What is the government's problem with bipartisanship when it comes to the appointment of the Corruption and Crime Commissioner? This is the question I have been asking for a long time, and I have not received an adequate response, other than the process being described as a flawed process. How can anyone possibly mount a respectable argument to suggest that bipartisanship is a dispensable requirement for the appointment of a person to a position as powerful and necessary as this one? It is also, to be perfectly honest, discordant from what I understand to be the appointment process for the position of Auditor General. I do not know whether it is still the process, but I recall being involved in the appointment of the current Auditor General when I was a member of the Standing Committee on Estimates and Financial Operations in the last Parliament and, therefore, also a member of the Joint Standing Committee on Audit. The process involved, I think, the Public Accounts Committee of the other place. That process ran something like this: the Treasurer received nominations for the role, he wrote to the committee, and it mulled over it. I am not necessarily sure whether it had the right of veto, but there was at least a process that involved other parliamentarians and required at least their concurrence to the recommendation.

We have a disaggregated and fragmented approach to the way that we appoint people to these kinds of roles. Frankly speaking, at a more sensible level there is an opportunity to revisit and harmonise this in a way to attempt to avoid what is so evidently clear here and has been evidently clear since 2020, and to avoid these fine people being sullied by some sort of partisan association. I do not want to do that to Mr McKechnie. I do not want to do that to any fine public servant. But that is what this government will do, because it is explicitly, yet inexplicably, dispensing with the need for any sense of bipartisanship. It says a majority will do. Guess what? There will be an occasion in this state—I hope it is soon; I might have to wait—when an overwhelmingly Liberal government controls both houses of Parliament. Does the Labor government want to think about this in the medium to long term? Would the government think it is appropriate for a Liberal government or a Liberal Premier or a Liberal Attorney General who had the gift of both houses of Parliament to appoint whomever they wanted to the Joint Standing Committee on the Corruption and Crime Commission and to name their person and wave it through? What would a Labor opposition do? If Labor is as good as I think it is when it is not in power, its members would complain bitterly. Guess what? They would be right. They should oppose things.

We need to consider the legacies that we leave. The Attorney General is a crafty fellow. He has devised a means by which there will be a process of veto and set a time by which the joint standing committee can exercise that veto. Okay. Do government members foresee reasonably, as intelligent people here to serve the public, and imagine an

occasion when the roles are reversed—or perhaps this will continue, unfortunately—and this committee would ever defy a powerful Premier or Attorney General and exercise that veto? I do not think so. I do not think so because I have seen what happened to two Labor women of integrity the last time this happened. I do not want to mention these people to embarrass them, but I think their dignity and their commitment to principle needs to be articulated by someone today, and that person will be me. Hon Margaret Quirk and Hon Kate Doust paid a price for not toeing the Premier's line or the Attorney General's line.

Hon Steve Martin interjected.

Hon TJORN SIBMA: I am reminded that Hon Adele Farina was also a victim in this imbroglio.

My question is: Why would the government make this worse? Why not look at it as though it is doing exactly what it is doing, which is politicising the appointment process yet again, albeit through a different manner, and pretending that it is not, or pretending that it is okay, or waving it away because the Attorney General is a fine fellow with an interesting life? He is a maverick—a "mad genius", in the words of the Leader of the House. This bill could only have been put together by a mad genius, but it has been enabled by effectively two Premiers in succession and the entire cabinet, and caucus members nodded along with it if they received a briefing on the matter at all. Why have the fight? It is because it can, and it will win. That is absolutely guaranteed.

There is possibly a means of remediating this, and I think it is still a travesty, because it is a sleight of hand. One way would be for this house and the other place to revisit the standing orders and reconsider what an appropriate composition of the Joint Standing Committee on the Corruption and Crime Commission should look like, because, frankly, I do not think that its membership of four solitary individuals has assisted this process over the last few years. I reflect very positively on the four hardworking members presently on that committee; however, frankly, I think it would be to the benefit of the Parliament overall if we were to expand that to five members. We know that members of Parliament are reasonably flexible. We have had a Standing Committee on Legislation in this house, which I think has been troubled by the contemplation of one bill in the entirety of the last three or so years of this Parliament. It might also receive a bit of work from the Minister for Police. Perhaps that is a different committee.

Hon Steve Martin: It's a different committee.

Hon TJORN SIBMA: There we go; that is a different committee.

This house might reflect upon referring that bill later; whether that will be accepted, I do not know, and I am not running the play on that. But I think that sometimes we need to be cautious with the processes we enable and the motivations we bring to a bill. I do not necessarily think that the people in the Department of Justice have willingly provided this advice on the appointment process; I think they have been acting on instruction, and that is fair enough. But I honestly think that this bears all the hallmarks of the Attorney General and a particularly vindictive, bullying and political approach to an organisation and an individual that should be inoculated from this kind of carry-on. Okay; I have said my piece on that.

Members will see from my proposed amendment on the supplementary notice paper that I am attempting to remediate this grievous situation. I expect that my amendment will be opposed, but I want to have a fight. I wish to raise this issue because even though it is likely to go over the heads of the majority of the public of Western Australia, it is an important issue to debate.

Let us get to the good bit. Again, I reflect on the fine words of the honourable parliamentary secretary. He said —

> I now turn to the second key reform in this bill, —

I keep going on about the use of "reform" —

> the creation of the deputy commissioner position. It was recognised some 20 years ago by the Standing Committee on Legislation, which was charged with closely scrutinising the then bill during its passage through Parliament, that workload pressures would eventually require positions to be established to assist the commissioner in discharging their duties, in particular, the crucial non-delegable powers set out in section 185(2). This resulted in a requirement being included in section 226 of the act to specifically consider the need for the appointment of —

Quote, unquote —

> assistant commissioners in the next statutory review of the act. Accordingly, the statutory review, conducted in 2008 by Gail Archer, SC, as she was then, specifically considered the significant workload of the commissioner due to the volume of non-delegable powers, and recommended that the legislation be amended to "allow for the appointment of deputy commissioners to whom specific functions may be delegated by the commissioner, and who are able to act as the commissioner in the commissioner's absence".

There are a number of reasons why the commissioner would be absent. The second reading speech continues —

> This call for a deputy commissioner has since been repeatedly echoed in successive standing committee reports in 2011, 2012, 2014 and 2020. Although the reports often referred to such positions as assistant commissioners, it is clear from the descriptions within the reports that the term encompassed what the 2008 statutory review referred to as a deputy commissioner.
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> This bill delivers on the long-awaited deputy commissioner position to assist in managing the workload of the CCC and support impartial decision-making on an ongoing basis.

I have absolutely no argument with any of that—none. This bill has been a long time coming. What has also been a long time coming, it must be said, in relative terms is debate on this bill in this house. The first briefing that I can recall the opposition receiving on this bill was in May last year. I thank the hardworking staff who, on that occasion, briefed me on the bill's purpose and likely effect. Sorry, I tell a lie; the bill was introduced in May last year and the opposition received a briefing in July. What I find interesting—I thank the Attorney General's staff and the departmental officials—is that recently I was offered a refresher briefing, in which Hon Matthew Swinbourn was also a participant. I thought the refresher briefing was good and helpful, but the fact that I had to have a refresher reflected the government's sense of urgency on this matter. I have been anxious the entire time at a policy and parliamentarian level that if it has been identified that the Corruption and Crime Commission needs additional support to manage its workload in the realm of unexplained wealth investigations—that is a matter I might get into briefly either in questioning or in passing during this second reading contribution—we should just get on with it. Let us appoint this person and potentially all the other subfunctions that fall out of it. Opposition members try to get more information than people necessarily want to yield at any given time. When I received the briefing in July after the bill had been introduced in May, I asked whether funding was attached to support this role. If I recall correctly from my notes at the time, that was not the case. I then thought that there might be a reference to the creation of this position in the midyear review. I cannot recall seeing that. I stand corrected if I misapprehended that. Additional funding may have been provided to assist an unexplained wealth function, but I do not necessarily think it was attached to the creation of this role. The government considered a number of bills and priorities more important than dealing with this legislation, particularly the bit that would enable the creation of the new position of deputy commissioner. Frankly, I find that odd because, yes, in all likelihood, the government might have received a harangue from me for whatever that would have been worth—40 or 60 minutes of the government's time—with the obvious play of me or another speaker moving an amendment. The government could have dealt with this bill last year, but it did not. I do not know why. It is bizarre. Anyway, there we have it.

I want to talk very briefly about another report in passing, because it is germane to this debate and I want to get to the point about how these kinds of issues are linked. I am referring to the Joint Standing Committee on the Corruption and Crime Commission's sixth report, *The Corruption and Crime Commission's unexplained wealth function*: *The review by the Honourable Peter Martino* from March last year. Its explicit area of focus is how the Corruption and Crime Commission has the capacity, or what its constraints are in a logistic, technical and human person capability sense, to deal with what I categorise as a growth area in misdemeanours, criminality and unexplained wealth. The report by Hon Peter Martino reflected on two aspects: the effectiveness of the commissioner's processes in contributing to the aims of referral powers under the Criminal Property Confiscation Act; and what, if any, changes are required to policy, procedure or legislation to improve the effectiveness and efficiency of the commissioner's work under the CPC act—not this one; this is a distinct statute. This report notes that in February 2022, Hon John McKechnie, QC, told the joint standing committee that the CCC —

> … cannot continue to undertake this function and properly fulfil its other functions within current resourcing. Commissioner McKechnie added that '[we] set out to prove the concept that [we] could make a difference … we think we have proved the concept … and it is work that we hope to continue to do'.

In his foreword, the committee chair, the member for Kalamunda, Matthew Hughes, said —

> Hon Peter Martino says that adequately resourcing this function includes the need for there to be a Commissioner and Acting Commissioner at all times. It is 'highly desirable' that the commissioner who examines a person about confiscable property was not involved in earlier decisions to use the commission's investigative powers in same matter.

That is very, very important. Again, dated 2 March 2022, two years ago, this was observed —

> In September 2021 Commissioner McKechnie told the committee that consideration should be given to appointing a second acting commissioner but the commission is at the stage where a deputy commissioner is required. This was said in the context of discussing the Department of Justice's current project to modernise the *Corruption, Crime and Misconduct Act 2003*. The power to appoint a deputy commissioner should be considered during that project.

That was Mr McKechnie's view. Again, I am casting no aspersions on or impugning bad motives to the commissioner in this forum, but after he was appointed in the manner in which he was appointed, he clearly signalled that he needed

to create this function for this organisation to be effective and that he would get on with it. I am very interested to know what has happened between that expression occurring in September 2021 and now, being nearly March 2024.

Debate adjourned, pursuant to standing orders.