

CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2023

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 5: Section 9 amended —

Committee was interrupted after the clause had been partly considered.

Hon MATTHEW SWINBOURN: Hon Nick Goiran asked me a question just before we were interrupted, but for the life of me I cannot remember what the substance of it was. I believe the answer was no, but I do not want to commit to that unless the member wants to ask me again. I am sorry; I was ready to answer it but now it has just gone.

Hon NICK GOIRAN: The question was on the extent of the consultation with the current Chief Justice and the current Chief Judge and whether they support the continuation of them having a role in the appointment process. I made reference to finding 21 of the Joint Standing Committee on the Corruption and Crime Commission's thirty-first report of November 2016, which reads —

The Chief Justice and the Chief Judge do not support —

Among other things —

the inclusion of serving judicial officers in the appointment process for Commissioners and Parliamentary Inspectors ...

That references the former Chief Justice and former Chief Judge. I was simply seeking clarification on the views of the current Chief Justice and the current Chief Judge.

Hon MATTHEW SWINBOURN: The correct answer to the member's question is no. We did not consult with the previous Chief Justice or former Chief Judge of the District Court whom the member mentioned. During the clause 1 debate, when I think the member was away on urgent parliamentary business, we talked about the consultation that was undertaken. Consultation on this bill was undertaken with the Corruption and Crime Commission, the Public Sector Commissioner and the Parliamentary Inspector of the Corruption and Crime Commission. The consultation was limited to that. There was some debate about what this would mean for each of those. In summary, there was much greater consultation with the CCC, given that the bill relates to it and also that more work is being undertaken on reforming the CCC act; I think that is a matter of public record. The consultation with the Public Sector Commission was primarily about providing draft copies of the bill to the PSC for its feedback and whether it had any issues that it wished to raise on a technical basis, because its interest is in the appointment of statutory officers rather than on the policy considerations. I think the way we described our interaction with the parliamentary inspector was that it was done as a matter of courtesy to the parliamentary inspector. As I said, we ventilated those issues with Hon Tjorn Sibma.

Hon NICK GOIRAN: It is curious that the Chief Justice and the Chief Judge are involved in this and will be given extra work as a result of this legislation in their roles on the nominating committee. With all due respect to the PSC and even the learned parliamentary inspector, they have nothing to do with this. I think it is good practice for the government to consult with the parliamentary inspector whenever making changes to the Corruption and Crime Commission Act anyway, but it is curious that the people who have either limited or no necessity to be consulted have been consulted while those who have a critical role and will be given more work have not been consulted whatsoever. That said, even though it is clear that the Chief Justice and the Chief Judge were not consulted about this bill, does the government know, or has it discussed with the Chief Justice and Chief Judge, whether it can support the continuation of the nominating committee process?

Hon MATTHEW SWINBOURN: The simplest answer is no. We have not sought their views about the continuing existence of the nominating committee process and their involvement in it.

Hon NICK GOIRAN: It is pretty sloppy stuff by the Attorney General because it takes a lot of time for these bills to come to the Parliament, and then it takes some time for them to be prioritised and passed. While we are dealing with the express provisions of the appointment of the commissioner, deputy commissioners et cetera, one of the fundamental recommendations and findings of the joint standing committee have effectively been ignored. They may not have been ignored deliberately but they have been ignored in practice. So here we are. This was a report from 2016. We are now in 2024 and the government of the day has no idea what the Chief Justice and the Chief Judge think about this issue. On page 43 of this report the committee went on to discuss whether there were any constitutional difficulties or hurdles with the involvement of the Chief Justice and the Chief Judge.

The parliamentary secretary and other members will be able to familiarise themselves with the legal opinion of Mr Ken Pettit, now King's Counsel, set out at page 43 of the report. In short, the conclusion drawn by Mr Pettit and

the committee is that there are no limits imposed and no legislative amendments are required. However, immediately after that in the report is a section dealing with the arrangements for appointing a royal commissioner, and in short, because time is quickly marching on this afternoon, the arrangements for appointing a royal commissioner, as the parliamentary secretary will appreciate, do not involve this complex process that we are continuing to enshrine here. Royal commissioner appointments simply involve the Premier or the government of the day. As has been noted in this report that is a fairly uncomplicated and efficient process and it does not involve a nominating committee in the sense of the Chief Justice and Chief Judge et cetera.

We have already discussed, and the parliamentary secretary already has it on the record, that the government has decided not to deal with this issue, whether accidentally or on purpose, and the parliamentary secretary has made it clear that the government sees some value in the role of the Chief Justice, for example, in the continuation of this. This draws to my attention the submission that was made by Chris Shanahan. He is very experienced in this jurisdiction. In fact, on multiple occasions he was acting commissioner. Page 47 of this report draws to the attention of Parliament his submission. He was the one who said on the evidence provided to the committee that the government should continue to have a nominating committee. That would be consistent with the view of the Cook Labor government. In particular, he thought that the role of the Chief Justice was important. I quote from his submission from 3 June 2016 that states —

... the role of the Chief Justice as the head of the nominating committee is likely to attract more candidates from amongst senior members of the Bar and the profession generally than would otherwise be the case, it ensures the propriety and importance of the appointments.

These are all consistent themes emerging from Mr Shanahan, and consistent with what the parliamentary secretary said earlier about the value of having the Chief Justice and others involved. If the government chooses to take Mr Shanahan's view, rather than the view of the then Chief Justice, Wayne Martin, it really should take the whole of Mr Shanahan's view and not cherry-pick. The report states —

Retaining the role of the Joint Standing Committee in the appointment process, and the need to ensure its bipartisan support for a candidate, are also supported by Mr Shanahan.

Bipartisanship is supported by Mr Shanahan. I do not want to spend any more time talking about bipartisanship because we have already spent a bit of time on that; however, here he talks about it being "bipartisan support". We are not talking about bipartisan support anymore; we are talking about an absolute majority of the committee vetoing the process. That is a very distinct, substantive difference from what we have had before. As I said earlier, that is all because there was a situation during one Parliament in which the government decided that it would have only one Liberal on the committee. Even though it is Parliament that ultimately decides, it would have been done on the recommendation of the government of the day. I think that committee currently has —

Hon Matthew Swinbourn: There is one Liberal, one National and two Labor members.

Hon NICK GOIRAN: One Liberal, one National and two Labor members. We could perhaps make a case for that, but even then it causes complications. I appreciate that this Parliament is complicated in that respect. The situation in 2017 led to the problem that we have here. As a result, we are effectively throwing the baby out with the bathwater, we are getting rid of bipartisanship and we do not worry about whether there is bipartisan support anymore. We simply say, "The government of the day will have its way, unless an absolute majority of the committee decides to veto it." That is not the same thing as bipartisan support.

The DEPUTY CHAIR (Hon Dr Sally Talbot): Member, I would ask you to consider whether you have asked your question, in which case I am going to have to report out. I would not like you to have to repeat all this when we come back.

Hon NICK GOIRAN: I understand you need to report out.

The DEPUTY CHAIR: Have you asked your question?

Hon NICK GOIRAN: No.

The DEPUTY CHAIR: Would you like to quickly ask your question?

Hon NICK GOIRAN: The problem is that it will not be quick.

The DEPUTY CHAIR: The parliamentary secretary could dwell on that. Okay; I note the time.

Progress reported and leave granted to sit again, on motion by Hon Matthew Swinbourn (Parliamentary Secretary).