

Extract from Hansard

[COUNCIL — Wednesday, 29 November 2017]

p6219d-6224a

Hon Peter Collier; Hon Sue Ellery; Hon Nick Goiran; Hon Michael Mischin; Hon Alison Xamon

*Joint Standing Committee on the Corruption and Crime Commission — Fifth Report —
“Current Committee Confirmed—Clarifying the legal composition and powers of the Committee” — Motion*

Resumed from 8 November on the following motion moved by Hon Alison Xamon —

That the report be noted.

Hon PETER COLLIER: I would like to make a few comments on this report. This report created some contention, not in this house but in the Legislative Assembly. I remind members of the composition of this committee. By convention and with bipartisan support this committee has members from both parties. The Liberal Party recommended Hon Jim Chown as our nominee for this committee, and left the Labor Party to make its determination. The Labor Party or other party nominee was Hon Alison Xamon. She is not from the Labor Party, but from the Greens. I want to make perfectly clear, yet again, that I have absolutely no problem with Hon Alison Xamon being on that committee. I have tremendous respect for Hon Alison Xamon. I think she will be very objective and constructive in her contributions to that committee. But I want to make it perfectly clear that I had absolutely no influence on the nomination of Hon Alison Xamon; it was up to the government to make that determination. I do not make that point to be precious, and members will understand why in a moment, because I have said this already at least three or four times. We made our nominations and it then went to the other place. It was assumed that the other place would provide a nominee from the Liberal Party and a nominee from the Labor Party, but it did not. The Liberal Party nominee was John McGrath. The Labor Party moved its two nominees, and on the vote of the chamber, those two nominees were elected, so there was no longer a Liberal nominee in the lower house. The conventions went out the window. As a direct result, of course, we do not have bipartisan support. That is what this report is all about: whether bipartisan support is required. The committee has come back and stated —

Legal advice sought and received by the Committee supports that it is effectively constituted and able to carry out its functions

I will not go through the findings because I do not have sufficient time, but I will say that members should have a look at findings 2 and 3 very briefly. Finding 2 states —

Achieving “bipartisan support” would require both Labor members’ support as well as the Liberal member’s support.

Finding 3 states —

The definition of “bipartisan support” in the *Corruption, Crime and Misconduct Act 2003* does not mean nor imply equal numbers of members from the major parties. It means only that there must be no dissent by any member of the Joint Standing Committee on the Corruption and Crime Commission who is a member of one of the two major parties.

From our perspective, we assumed that bipartisan support in the other place meant that nominations would reflect the two major parties—that is, the Liberal and Labor Parties. That was not the case. Not only that, when our members commented on that situation in the other place—because this is a very, very sensitive committee and something I would assume the government would be very keen to ensure was impartial and had bipartisan support—and whenever it was discussed, the Premier blamed me for having two Labor members from the other place. He literally named me in the other place as being responsible for the two Labor members. He said I was responsible for putting Hon Alison Xamon on the committee. That is wrong. I want to say quite categorically that what the Premier said in the other place is wrong. As I said, once again, we put our nominee for this committee in good faith to the government and that was accepted unanimously by this house. The government put its nominee, Hon Alison Xamon, who was accepted in good faith unanimously by this house. That nomination had nothing whatsoever to do with me apart from the one vote that I have. The 34 members who voted on this motion agreed to it. It was not my issue.

Obviously—not legally—we have a compromised committee now. We have a committee with two Labor members from the other place instead of a Liberal member and a Labor member, and that bothers me. If members think about that, these are the sorts of things that I was talking about three-quarters of an hour ago regarding feeling cornered. When we get to the point as an opposition at which the government is doing these sorts of things, inevitably we are going to be sceptical of the government’s motives. We can have the self-righteous lectures that we had an hour ago from the Leader of the Government about how terrible the things we are doing are, but, quite frankly, we would not have countenanced or contemplated anything like suspending standing orders an hour ago if the government had been open and transparent, and adhered to the conventions of this Parliament. It is things such as compromising the composition of this committee and, as I keep on saying, cancelling pairs, and trying to handball off the presidency that collectively bring a degree of cynicism and suspicion on the part of the opposition and, I am sure, the crossbench. That is why the crossbench, and the Greens in this instance, took that into

consideration. In normal circumstances they would not, but in this instance they did. When there is a committee that is as sensitive as this one—we all know the sensitivities of the CCC committee and the role of the CCC in investigating members of Parliament—we must ask: why on earth would the government dirty its hands with the composition of this committee? Why on earth would it ensure that there are two members instead of a reflection of the chamber in the other place, one from each party, given the sensitivities of this committee? That is my concern with this, and the fact is that, as I said, yes, legally they can do it. They have the legal advice; this report says that. We have to suck that up. However, the simple fact of the matter is that as long as the government continues down this path of weaving and winding, finding all these almost deceitful mechanisms by which they can bypass the Parliament, inevitably we are going to be suspicious.

We want to act in good faith. We want to ensure that the conventions and the principles of these chambers are adhered to, but the government is making it very difficult indeed. It makes it even more difficult when the Premier of the state of Western Australia states, not once, not twice—I think it was on three occasions—that I am responsible. I say to the Premier, “You are wrong, Premier. You are 100 per cent wrong.” If he wants to know what happened with the composition of this committee, he needs to ask his Leader of the House in this place, any member of the Labor Party in this place, any other member of the crossbench, the Liberal Party or the National Party, what happened with the composition of this committee. We submitted our nominee and the Labor Party submitted its nominee, and they were unanimously agreed to. I am disappointed that we even have to have a report on this issue. Quite frankly, by convention the government would have been better placed doing exactly what it should have done, and that is to appoint someone from the Liberal Party, so it is a squeaky clean committee without any suspicion, any doubt or any innuendo, and so when the CCC committee hands down reports in the future, it is not treated with scepticism and cynicism on the part of the opposition. This is one of those committees that really should be above reproach. I am really disappointed that the government has taken it upon itself to ensure that there are two Labor members from the other place, which if anything just reinforces our suspicions more than ever.

When we do have these debates about conventions of the chamber and how terrible we were in considering the suspension of standing orders, can I say to the government that we would have never considered that if the government had been aboveboard and if the government had been squeaky clean with such things as the composition of this committee. While it continues as it is, we will continue to be suspicious of its motives.

Hon Darren West: Will you take an interjection?

Hon PETER COLLIER: Yes.

Hon Darren West: Forty-one seats to 13.

Hon PETER COLLIER: With all due respect —

Hon Darren West: You want it reflective of the make-up of the house.

Hon PETER COLLIER: I understand that. It really bothers me that eight months into this government the member is still thinking along those lines. Can he hear what I just said? The CCC committee should reflect bipartisan support. I ask the honourable member: what is bipartisanship? It is two parties.

Hon SUE ELLERY: The Leader of the Opposition thinks that there was some grand conspiracy; there seriously was not. I think what happened is that the two houses acted independently, as they should. This house reached its agreement, which Hon Peter Collier played a part in, in putting up two members from this place, which was different from the complexion of the two members from this place who have been put up previously. Previously the complexion was that there would be one from the Liberal Party and one from the Labor Party; we did it differently. I did not do that in consultation with people in the Legislative Assembly, so if there is a proposition that there was some grand conspiracy, there was not.

Hon Peter Collier: It wasn't you; I wasn't talking about you.

Hon SUE ELLERY: I know, but the member said that the government—I am the representative of the government in this place—somehow acted to deceive or to undermine the Parliament by virtue of the composition of the committee. I am just making the point that there were two parts to making up the composition of the committee. This house chose the people it chose —

Hon Peter Collier: I agree.

Hon SUE ELLERY: I know the member agrees with me, but he thinks that somehow there was a grand conspiracy and that our decision in here to support Hon Alison Xamon was done somehow knowing that therefore in the lower house it would do something differently. None of that happened. We made our decision in here to reflect the make-up of the house, and the make-up of the house has changed. That is what we did.

Hon NICK GOIRAN: This is a very important report. I have six minutes left. Let me say these things on this matter. I am not sure whether the Leader of the House has read the fifth report of the Joint Standing Committee on the Corruption and Crime Commission, dated October 2017. If the Leader of the House gets the opportunity to do so, which I strongly recommend —

Hon Sue Ellery: I did read it when it was tabled, but I have not read it again today.

Hon NICK GOIRAN: I do not want to confuse this report, the fifth report, with the fourth report. When we last met on the fourth report the Leader of the House undertook to the house that she would raise the matter with the relevant ministers and seek a response, but she could not guarantee a response and, of course, we have not heard anything since. I do not want to confuse it with that one, on which we are still waiting for the undertaking to be fulfilled. I want to talk about the fifth report, which is the matter before the house. It is important for members to understand that the report sought to get expert legal advice on this matter. The expert legal advice confirms that what has happened with regard to the composition of the committee is lawful. However, if people bother to read the report, they will understand that what has happened is unconventional; it is unprecedented. It has never been the case in the history of the Joint Standing Committee on the Corruption and Crime Commission that the party of the Leader of the Opposition has not had a Legislative Assembly member. That has never happened before. It is unprecedented and unconventional and, frankly, it is bizarre. But that was the decision made by the other place, over which we have no jurisdiction and no say whatsoever.

The Liberal Party in this place is very happy that Hon Jim Chown, who is also a member of the opposition, is representing our party on that committee, as has always been the case. In fact, I had the privilege in the thirty-eighth and thirty-ninth Parliament to represent the Liberal Party, which was then in government, on that committee. What is happening now is unprecedented. Members opposite, particularly the Leader of the House who indicated that she has not had an opportunity to reread the report today because she is busy trying to fulfil her undertaking in relation to the fourth report, unfortunately has not properly appreciated that Hon Alison Xamon is in the unfortunate situation of in effect being a second-class member on this committee. Surely the Leader of the House, who has a responsibility for the running, management, conduct and agenda of this house, would care about that, especially after her absolute outrage earlier this afternoon alleging certain things about Hon Martin Aldridge and how the custom and practice of the house has been. After all of that she thinks that somehow it is okay for a member of this place, a member of the Legislative Council who is elected in the ordinary way like everybody else here and who has equal rights and privileges to every other member, all 35, to be a second-class citizen.

Why? It is because of what the government has done and not because of anything that the Liberal opposition has done. As I emphasised, we are very happy that Hon Jim Chown is representing us on the committee and we do not have an issue with Hon Alison Xamon choosing to put herself forward to serve on the committee. We think that she will do, and most probably is doing, a good job on the committee. Ultimately, it is a matter for the government. If the government wants to have a member on the committee, it is up to it. If it has decided that it does not want a member on the committee, it is no skin off our nose. I think it is strange that the government of Western Australia and its members who are represented here would choose not to have a member on the Joint Standing Committee on the Corruption and Crime Commission, but if it does not want one, why would we object?

However, the point still needs to be made that the purpose of this report—I thank the committee for tabling the report—is that it confirms that what has happened is lawful, but unconventional, unprecedented and has, unfortunately, created a situation in which Hon Alison Xamon is now effectively a second-class member. Frankly, that is wrong and something needs to be done about that. Who can do something about that? The Leader of the House can do something about it because her responsibility as the chief member and most senior member of the government in this house is to do something about it. Unfortunately, the Leader of the House is away on urgent parliamentary business so we will not be able to hear about whether she is able to do something about this in the near future. Maybe she is busy dealing with the undertaking that was made last time in respect of the fourth report. Maybe an undertaking will be delivered in respect of the fifth report. I hope the government takes the opportunity to provide to us some form of proper response, rather than the glib response that we received moments ago.

Hon PETER COLLIER: I feel that given I was halfway through my response to the interjection, it is only appropriate that I finish. My concern is that the comments that were made by Hon Darren West reflect the attitude of the government. His view is that because the government has 45 members in the Assembly, the government should have two members on the committee. Unfortunately, that reflects the attitude of this government. That is almost an identical comment to that made by the Leader of the House when I pursued the issue of the Leader of the House trying to get anyone on this side of the chamber to be President. Her interjection at the time—it is there for all to see in *Hansard*—was words to the effect of, “Don’t you think with 45 members, a thumping majority, we deserve to have the majority?” No, I do not think that. That is my concern. That is where we differ. I will say to the honourable member: what is bipartisanship?

Hon Darren West: My interjection was that you claimed that one person from each side would better represent the other place. That is not the case. The people of Western Australia voted in the Legislative Council members. So if you want the make-up of the committee to be reflective of that, which is what you said —

Hon PETER COLLIER: Can the member tell me what bipartisanship is?

Hon Darren West: It is when both parties work together.

Hon PETER COLLIER: Thank you. The member has agreed to that. Bipartisan assumes in anyone's language that we have two parties—not one, not unilateral, but bipartisan, people from both parties—on the CCC committee. Given the history of the Labor Party and its involvement with the CCC, I thought that if it wants to be absolutely impeccable about the integrity of any committee, it would be this committee. In anyone's language, bipartisanship means one from each party. The parliamentary secretary and the Leader of the Government in the Legislative Council both assuming that because the government has a massive majority in the lower house, it has an inherent right to bulldoze things through shows exactly why we had the debate an hour ago. That attitude is making us cynical and suspicious. This stuff here and the flippant disregard for this chamber, as I said, with the cancelling of pairs, trying to handball off the presidency and stacking the CCC committee with two government members, makes us suspicious. It corners us into a situation in which we do not trust the government. We would like to have some discussions behind the Chair and come to a reasoned decision.

I had a thumping majority on that side of the chamber for four and a half years. We never once abused it. We sat here while the members opposite tried to stare us down and use the guillotine for 24 hours on two occasions. Never once did we abuse it. On every occasion, we followed the conventions of this chamber. It was a difficult decision on this side of the chamber to do what we were going to do today—that is, to consider the suspension of standing orders. The reason we did it was quite profound and quite legitimate. The government holding firm to this misguided notion that having 41 members in the lower place gives it the imprimatur to control government decision-making is exactly why we will continue to hold those suspicions.

To members opposite, this is a no-brainer. An hour ago we sat here, as I said, with the high moral ground of the Leader of the House and a self-righteous attitude that somehow we were trashing Parliament et cetera. When the government does things such as this with a committee that is as sensitive as the CCC committee and puts two Labor members on it, is it any wonder that we are suspicious, guys? Yes, the government has 41 members in the Legislative Assembly. It does not have them here. There are two issues here. There is still a loyal opposition in the Assembly that deserves respect and representation on this committee. In this chamber, Labor does not have the majority, despite its desperate attempts to get it that way, and that was on the misguided assumption that it had the Greens in its pocket, which it does not. Please respect Parliament and understand that having a thumping majority in the Legislative Assembly does not give the government the imprimatur to control everything in this place.

The CHAIR: The question is that the report be noted. Hon Alison Xamon —

Hon ALISON XAMON: I have already spoken once.

The CHAIR: You have spoken. I will most certainly give you the call, but as there is a member who has not spoken seeking the call, I must give the call to Hon Michael Mischin.

Hon MICHAEL MISCHIN: I will not take much time and I thank Hon Alison Xamon. I have listened with increasing concern to the course of this debate and it seems to me that it reveals an astonishingly low sense of morality on the part of this government. I have no doubt that Hon Alison Xamon is a very worthy member and she takes her parliamentary duties very seriously. She is committed to honesty and straightforwardness in government, and I am sure that she will do her job in an exemplary fashion—but that is not the point. Getting away from the merits of the individual members on this standing committee, this government has three nominees on a committee of four. They were the government's nominees—two members of their own party in the other place, and one member of this place. Because of the order of events, we accepted the government's nominee in this place.

It astonishes me that Hon Darren West can seriously say that because the government has the majority in the other place, it ought to say how many members of its choosing it has on this committee, which has responsibility for overseeing the Corruption and Crime Commission, nominating the next commissioner and ensuring that the commission does its job according to law. I am astonished that he would come to this place and dare suggest that because there is a majority down there, the government ought to have a majority on oversight committees where part of the responsibility is to ensure the honesty of the government and its ministers. What is next? Perhaps it ought to have a majority in estimates hearings as well in order to decide what is right and wrong. Anything else? Perhaps we will get around the problem of an election in the future by allowing the government of the day, this particular government, to save the taxpayer the cost and to sit there forever—President-for-Life McGowan, perhaps. That seems to be the idea. Because it has a majority in the other place, it ought to be able to pick and choose how many people it has on every committee and to run the show. That is not an understanding of how Parliament ought to run, let alone an understanding of the importance of oversight. For the Labor Party, it seems

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that it is all about power—not government, but power. Frankly, if that is the morality of the Labor Party, I am not only cynical about it, but I am also deeply suspicious of any decision it makes.

We have seen the accountability of its ministers in this place, especially those who act on behalf of ministers in the other place. It gets down to this: however this government dresses up how lawful it is, it has three nominees on a committee of four members to deal with the oversight of the Corruption and Crime Commission. Hon Darren West can giggle about it as much as he likes and relish the power that his party has, but if past performance is any indication, this government will be exposed as being as corrupt and as devious as the Burke government was.

The leader of this place has talked about conventions and had a say about the appointments of this committee. She has said that what the Assembly does is out of her control and that she represents the government here. That is right; she does represent the government here. She and her government were complicit in ensuring that a majority of their nominees are on this committee. There is simply no answer to that other than that it breaches all conventions and is another example of how this government has disregard for Parliament, conventions, public probity and the people of this state.

Hon ALISON XAMON: This report was about the legal composition of the Joint Standing Committee on the Corruption and Crime Commission.

I note that, although according to the convention of this and the other place the current make-up of the CCC committee is unprecedented, I suggest that it was not unforeseen. If members look at the original *Hansard* from the time at which the composition of a future committee was contemplated, they will see that Hon Giz Watson, my former Greens colleague, talked about the importance of ensuring that other parties were able to be on this committee. I remind members that dealing with anticorruption measures and the importance of oversighting powerful bodies such as the CCC—for that matter, oversighting the activities of the Parliamentary Inspector of the Corruption and Crime Commission—should be a matter of concern to every member and every party. One issue that has been suggested in the past is that perhaps the committee would benefit from broadening out to a wider number of members. That is something that I would like the house to perhaps contemplate and consider. One thing that I do not accept in dealing with issues of corruption is that the Greens, the Nationals, the Liberal Democrats, the Shooters, Fishers and Farmers Party and One Nation should, can or must never have any role in the oversight of this very important body. It is an issue for us all to take seriously. I suggest that there needs to be an opportunity for any member to be a full participant on that committee, if that is the will of the house.

I would particularly like to focus on the issue of being a full participant. This report has identified, to use the words of Hon Nick Goiran, that in effect, as a member of this committee who is not a member of either the Labor Party or the Liberal Party, I am a second-class member, in one respect in particular—that is, the recommendation for the appointment of a Parliamentary Inspector of the Corruption and Crime Commission. In that instance, my view, whether I agree with the committee or not, is of no effect. I am concerned about that because, as has been pointed out in this debate, I was duly elected to this Council every bit as much as every other member. There is no justification for any member of this place who has been appointed to any committee having less of a say than any other member. One thing that I think needs to be contemplated as we move into the future is how we can have an oversight committee that is truly reflective of the make-up of the Parliament and the number of parties represented here without necessarily needing to lessen the number of members from either the Labor Party or the Liberal Party. We need to have a very firm look at any provision that is currently within the act that limits the capacity for every member to have a full say about all the activities of the committee.

For the purposes of this debate, I am pleased to note that I am lawfully entitled to be on this committee. That is a relief. As I said before, I would, of course, have immediately stood down. I would not even have needed to be asked. Had it been found that I was not eligible or if there had been a serious question mark over my eligibility, I would have immediately stood down. I am entitled to be on the committee, but I do not enjoy the full rights of the other members and that is a problem. With the different make-ups of our Parliament these days, I think a very sound argument can be made to have a broader number of parties represented in these important groups. Corruption should concern every single one of us. As such, it would be good for our committees to reflect that.

Question put and passed.

*Joint Standing Committee on the Commissioner for Children and Young People — First Report —
“Annual Report 2016–17” — Motion*

Hon Dr SALLY TALBOT: I move —

That the report be noted.

Question put and passed.

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*Standing Committee on Estimates and Financial Operations — Seventy-second Report —
“2016–17 Annual Report Hearings” — Motion*

Hon MARTIN PRITCHARD: I move —

That the report be noted.

Hon NICK GOIRAN: Annual report hearings are very important. They are coming up shortly and I keenly look forward to participating in them. I thank the Standing Committee on Estimates and Financial Operations for giving us the opportunity to nominate agencies that might be called in for the annual report hearings, which I seem to recall have been indicated to happen in February next year. A quick point I want to make is that I understand that this is the first year that the Standing Committee on Estimates and Financial Operations has used an online system for asking questions. That was first used during the estimates process itself. For what it is worth, I thought it was a good system, and I am pleased that the committee will continue to use it. I understand that we have another couple of weeks, in accordance with the report, to lodge further questions through that electronic system. I ask the committee to persevere with that system, because I think it will be more efficient for all of us in the long run.

Hon ALISON XAMON: I take this opportunity to make a few comments about the process by which the hearings may or may not be conducted. For Council members who are not members of this committee, the opportunity to participate in hearings on annual reports or financial estimates represents a one-off opportunity in any year to grill government departments face to face about matters pertaining to our particular portfolios, for those of us who have portfolio responsibilities. I simply want to make the observation to the committee that perhaps clear attention needs to be paid to the way in which the proceedings are conducted, perhaps to give priority to members of this chamber who do not have the opportunity to undertake those examinations year round, unlike members who are privileged enough to have been appointed by this chamber to the committee on an ongoing basis. One thing that is of no interest to me is to merely sit back as an observer, even having done a fair bit of preparation, watching other people undertake grillings regardless of their level of understanding or knowledge in a particular area, while I have, effectively, a lot of other things that I could be doing with my time. Over the years, the Standing Committee on Estimates and Financial Operations has chosen to take different approaches to the way in which members who are not members of the committee may participate. Perhaps it is a useful exercise to look at the way previous committees have successfully undertaken these proceedings, because I think it is beneficial for all members of this chamber to be able to utilise those opportunities, which are rarely available to those of us not on the committee, to best effect.

Question put and passed.

Progress reported, pursuant to standing orders.