CORRUPTION AND CRIME COMMISSION AMENDMENT (MISCONDUCT) BILL 2014

Second Reading

Resumed from 2 April.

MR J.R. QUIGLEY (Butler) [2.44 pm]: I am the lead speaker for the opposition on this bill that amends the Corruption and Crime Commission Act. The opposition will not oppose this bill or what it seeks to do, although we have many questions about the provisions and some of its particular aspects. In essence, as laid out in the second reading speech, this bill seeks to transfer the function of the Corruption and Crime Commission with respect to minor misconduct across to the Public Sector Commission.

Point of Order

Dr A.D. BUTI: Mr Speaker —

The SPEAKER: I know what the point of order is going be. Members, if you want a private meeting, please leave the chamber.

Debate Resumed

Mr J.R. QUIGLEY: Conduct that is judged to be misconduct but does not carry a penalty of two years or more will be transferred across to the Public Sector Commissioner for investigation. In essence, this is something that the opposition supports.

Clause 6 of the bill makes some exceptions to that. It excludes from the transfer of powers for minor misconduct police misconduct, conduct engaged in by the Clerk of a House of the Parliament or a member of a local government or council of a local government. We have some questions about that. I think over a period of time the public has become quite disappointed with the performance of the Corruption and Crime Commission, and that disappointment is reflected and probably shared by commissioners of the CCC. Since the inception of the CCC, no commissioner has served his term. Only three men have been appointed, so I will not say "her". But there has not been a commissioner who has seen out his term. We can all remember the first commissioner, the former Chief Judge of the District Court Mr Kevin Hammond—a person with extensive judicial experience and a very balanced judicial officer. He rose to the rank of Chief Judge of the District Court and was highly regarded by the legal profession and the community. He was a no-nonsense Chief Judge of the District Court, but he had endless courtesy and patience when dealing with both counsel and the accused persons who came before his court. He was certainly no wimp, and he had a reputation of dedication to his professional duties. However, after a couple of years at the CCC, embroiled as it was in some controversy, not occasioned by his actions, Mr Hammond resigned. He resigned half-way through a hearing, which was very regrettable. He resigned halfway through the first public inquiry that CCC undertook, which was the Smiths Beach inquiry. He resigned and retired with that matter only part heard.

The government of the day then appointed Mr Len Roberts-Smith, QC, who, until then, had been a Supreme Court judge and who, from time to time, sat on the Court of Appeal. He came to the office of the Corruption and Crime Commission and had to take up the cudgels, as it were, of the Smiths Beach inquiry, which had been left partly heard. It is always very difficult and unsatisfactory when one judge or one arbiter of fact hears a lot of the evidence, but before arriving at a conclusion on that evidence, resigns without reason other than he wished to spend more time with his family. As I said, Kevin Hammond was then followed by Mr Len Roberts-Smith, QC, who moved into the chair and started looking at that file, which had been examined by Mr Hammond for well over a year before Mr Len Roberts-Smith came into the chair. That is not fair on the CCC, nor is it fair on the people or the witnesses who appeared before it. All the commissioner has to go on before arriving at conclusions is the transcripts and the memoranda generated by the previous hearing. Mr Len Roberts-Smith arrived at a lot of conclusions and referred matters to the Director of Public Prosecutions for prosecution. As I recall—I stand to be corrected—I think one or two convictions arose out of those hearings, mainly involving public servants or term-of-government servants but nothing that reflected the sensational evidence that was given during the hearing itself.

A lot of people welcomed Mr Len Roberts-Smith to the CCC, with his extensive judicial experience. He was a Queen's Counsel, but I do not think he got halfway through his term before he came up with the same reason as his predecessor for retiring—that he wished to spend more time with his family—and promptly exited the CCC. He was followed by Judge Roger Macknay, a very experienced judge of the District Court, who came into the chair, but who did not get halfway through his term before he said he was retiring to spend more time with his family. Each commissioner served about half a term before they bailed out. It is interesting to note in Mr Len Roberts-Smith's case, having said he was leaving the CCC to spend more time with his family, after a very short break, he changed his mind and took on the very enormous task of looking at sexual abuse within the armed services in the Australian Defence Force. He left the job to spend more time with his family but then took on a more onerous and demanding role shortly after leaving the CCC. That gives me a hint that all was not

well at the CCC. On the appointment of the third commissioner, Mr Roger Macknay, I am on the public record as welcoming his appointment as a very sensible and balanced judge of the District Court. As I said at the time of his appointment, I had known him since my childhood. He was a prefect at the secondary college I went to. I knew him from secondary college all through his legal career and practiced in front of him when he was a judge. I welcomed his very sensible and sober approach to everything he undertook, but after a relatively short period, he too suddenly got the urge to bail and spend more time with his family.

Since that time, there has been no commissioner at the CCC. There has been only a revolving door of part-time commissioners, who I understand are drawn from the bar and they spend a couple of weeks there on rotation. The CCC has been very much a ship without a stable rudder. This, I suggest, is reflected in the conduct and culture of the CCC, which has gone downhill at a rate of knots because it has been leaderless. We have read from time to time—it is necessarily a very secretive organisation—that its own officers have engaged in the most reprehensible conduct. They have altered official records and diddled the travel allowance and have been pushed out the door for serious improper conduct. I regard officers within the CCC as having a special duty not to engage in corrupt conduct such as fiddling their travel allowances and other claims. But that is what happened and I suggest that is because the CCC has not had a stable leadership.

There are various reasons why the CCC has not had stable leadership and why those former chairmen have left. One of the explanations that I have advanced at least, although only speculatively because I have not spoken to those commissioners, is the rate of remuneration. By reason of the legislation we cannot pick just anyone to be a CCC commissioner; it must be someone who has the status of a judge. Each of these gentlemen had been a senior judge when they took on this role. Their remuneration was their judicial pension to the level of remuneration had they remained on the bench. After many years of serving Western Australia as judges they retire on 60 per cent of their finishing salary for life and when they pass from this world, if they are survived by their spouse, she gets 50 per cent of that. When they take on the role of the CCC, the remuneration is at the rate of a judge. Given the stress felt in that role, why would they take on that position? They have served for 10, 15 or 20 years on the bench, retired on 60 per cent of their finishing salary and are then invited back into public service to be paid only 40 per cent of a judge's salary because they are paid only that difference between their pension and the full salary of a judge. Yet they are taking on a role that is very, very demanding—so demanding that, as I say, three commissioners have said halfway through their term that they are out of there.

Let us look at the track record of the CCC. A number of convictions have been laid following CCC inquiries, but there also have been a lot of spectacular failures at the Supreme and District Courts and at the level of the Court of Appeal. Who will ever forget the charges brought against, I think, the Coffin Cheaters bikie gang for giving false and misleading evidence to the CCC? When they were presented down at the Supreme Court, the charges were struck out by the Supreme Court because they were wrongly framed in one case and, in another case, the questions asked of the witness by the CCC were often a combination of propositions. When the witness answered, it was alleged to be an untrue answer and it was unclear the portion of the question to which the witness was responding.

The Supreme Court said it could not make sense of it and that the charge had to be struck out. People have been able to go down to the CCC and, in some cases, almost thumb their noses at it.

We think that the Corruption and Crime Commission does need some major overhauls, and one of them, of course is to get into position as soon as possible a full-time commissioner dedicated to serving a full term. It would be a breakthrough to have a commissioner serve a full term for the first time. The Corruption and Crime Commission Act passed in 2003, over a decade ago, and no commissioner has gone the distance.

Secondly, we agree with the Premier that there should be a role for the CCC in combating organised crime. We strongly disagree with the Premier on his approach and we strongly disagree with the government on its approach. What we say to the Premier and the government in this regard is this: the CCC should not have an original jurisdiction over organised crime and bikies. That is clearly the position of the Joint Standing Committee on the Corruption and Crime Commission. There are two reasons for this. The joint standing committee identified one, which is referred to in the government's second reading speech delivered by the member for Kalamunda, the leader of government business in the house—that is, there would seem to be conflict between the CCC's oversight role of police and exercising an original jurisdiction, as it were, in relation to investigating organised criminal enterprises. Clearly, given Parliament's legislation concerning, for example, the Criminal Investigation (Covert Powers) Act, there would be sting operations and authorisation for members of the police force to trade in drugs in controlled operations—perhaps at times to even consume them—and to use large amounts of buy-money in controlled operations. These operations have huge potential for police misconduct and they should be tightly supervised by a completely independent body—not a body that itself engages in the same conduct, because if something goes wrong, there might be a perception that it will not pursue its partners in the operation with the same vigour as it would if it was just completely independent.

I can always remember before the CCC, when there was the Anti-Corruption Commission, an undercover operative with the Western Australian police force came to see me, and I will not name the officer concerned. This operative was under investigation for illicit use of drugs. I had a conversation with him and he detailed to me how in the course of his job he was required to carry a briefcase with thousands and thousands of dollars to buy amphetamines and to be wired for sound at the same time, and to take the amphetamines back to headquarters with the sound recording. One of his biggest buys, remarkably enough, was in that tall residential tower in Kings Park Road, but that is by the by. He also detailed to me how in the course of one operation involving a bikie group, which I will not name, he became the bikies' official photographer and was at their clubhouse in Kalgoorlie taking photographs of them. They put him in this role because they knew he could develop film and they did not have to put their films through the chemist—this was before digital cameras—so when he was developing the film he would say, "One photo for gang and one for the commissioner." This chap was of striking appearance—I would say of effeminate appearance, like a pretty looking man; it was unusual. During this process one of the bikies, whilst he was consuming drugs in this house in Kalgoorlie with this chap taking the photographs, said, "I think I know you. Weren't you Constable Care in Kalgoorlie coming around and lecturing us at school about drugs?" The undercover operative had been doing that in a former role and this bikie had recognised him, whereupon he said, "You're mad! Pass us that bong." He then started consuming cannabis out of this smoking pipe in an effort to convince the bikie that he was not a police officer. He said to the bikie, "You've smoked too much of this stuff! I'm not a policeman", while smoking, and he got out of that house without being assaulted and with this life. The question subsequently arose about what he should tell the ACC because it was pressing him on the use of drugs. I told him to tell the truth and he did. I was not in the hearing room, but he probably gave the Clinton defence that he did not actually inhale the smoke into his lungs! I have to say this, which will identify the person: I was speaking only a few years ago to someone about this incident reminding them of it and I said I wondered where the person in question was now. I was told he was in Long Bay jail. He had left the police force and could not get out of the lifestyle of trading in drugs, and got arrested in Sydney.

I say all of this because all of these operations require strict vigilance and oversight. The opposition says that, yes, it is important that we keep the original jurisdiction of investigating organised crime separate from the oversight body. Where the government says in the second reading speech that it still has this ambition to reorganise the legislation in that regard, we will oppose it for that reason. We say that there is a very important function for the CCC to perform in relation to organised crime, and that is in relation to the anti-association laws. Under the anti-association laws as currently framed, before a bikie gang can be outlawed there has to be an application to the court and a declaration made that it is a criminal organisation. I note from the Wainohu case in New South Wales that the judge said it involved the examination of over 80 lever arch files of evidence—a huge job. We have a Supreme Court that does not even have a full complement of judges, let alone the prospect of having to pull one of these judges off the bench to sit persona designata—that is, in his civil capacity, not as a judge—for maybe three or four months to hear one of these applications. We said at the time that legislation passed that the most appropriate body to hear one of those applications was the CCC. It has the resources and it will have, hopefully, before too long, a commissioner, and that can happen without the disturbance to the calendar and diary of the Supreme Court, which is under-resourced, as are the District Court and the Magistrates Court. It was the government's election promise to introduce a system of rapid justice. There cannot be rapid justice when there are insufficient magistrates and judges. That election promise of the government is in tatters and even His Honour Chief Magistrate Steven Heath of the Magistrates Court said as long ago as April that there are no hearing dates available in 2014. All talk of rapid justice has fallen by the wayside. We say that burdening the Supreme Court with the task of looking at anti-association laws when the bench is under-resourced and undermanned—there are, of course, brilliant female judges there—is ridiculous.

I turn to the specific terms of the Corruption and Crime Commission Amendment (Misconduct) Bill 2014. Although the opposition will support the transfer of minor misconduct matters to the Public Sector Commission, it has some serious questions to ask during consideration in detail. One of the serious questions I will ask the Premier, who I understand has carriage of the legislation, relates to clause 6—proposed amended section 3—which is about minor misconduct. When we talk about the Corruption and Crime Commission not having a function for minor misconduct, this bill exempts the following: police misconduct—so the CCC will still have an oversight role and an education role in police minor misconduct; conduct in relation to a member of a house of Parliament or the Clerk of a house—we agree with that still being in there; and, misconduct engaged in by a member of local government or a councillor of local government. I will not move an amendment—I do not know whether the government has thought through this aspect of it, and I invite it to—but should that not include prison officers? I pose that question to the Premier because if we take, for example, the Spratt case that was investigated by the CCC, it involved the cell extraction of Spratt—an exercise that involved police and prison officers because the prison officers had been trained in cell extraction. After this legislation passes, if another situation were to arise of a joint operation in a lockup involving police and prison officers, if it did not constitute serious misconduct—that is, an offence involving two years' imprisonment or more—but was minor misconduct

by the officers, as was also found in relation to some officers in that case, the CCC, looking at that vision of the cell extraction, would look at one person because he was a police officer, but could not look at another person because he was a prison officer. I raise that matter only because circumstances occur in lockups, and occasionally in prisons, that necessitate a joint effort by police and prison officers. I do not know whether thought has been given by the government to that particular aspect, or whether there has been stakeholder consultation.

It is only our opinion, and we are not seeking to amend it, but the legislation is awkward in the sense that although it transfers the oversight of minor misconduct to the Public Sector Commissioner, many of the statutory rules concerning what the Public Sector Commissioner can do and how he goes about his business—the findings he can make, his functions and powers et cetera—will now be in the Corruption and Crime Commission Act and not in the Public Sector Management Act. Although that will not present a problem to Corruption and Crime Commission members or, I would have thought, to the Public Sector Commissioner, who are familiar with the legislation, it might do so to a lot of other people who need to access the provisions of the amending legislation. We thought it would have been better if a lot of this had been fitted into the legislation governing the Public Sector Commissioner, rather than residing within the Corruption and Crime Commission Act.

Mr C.J. Barnett: Can I just interject? I think you make a fair point about prison officers; I will have a look at that. It is a sensible point you make.

Mr J.R. QUIGLEY: I thank the Premier. We are not approaching this from a position of ideology.

Mr C.J. Barnett: No, I appreciate that.

Mr J.R. QUIGLEY: We are trying to look at it —

Mr C.J. Barnett: I think you raise a significant point, and I will seek advice on that, yes.

Mr J.R. QUIGLEY: I thank the Premier for the indication that he will take advice on that.

I again raise this awkwardness about a lot of the powers of the Public Sector Commissioner existing within the Corruption and Crime Commission Act, rather than within the commissioner's legislation. I think it is awkward—it is a view—but here we are, and we will not seek to try to disfigure this amending legislation because it would require a large amount of amendments.

I am confused and concerned about other aspects of the legislation, but we will come to those during consideration in detail. For example, section 23 of the original Corruption and Crime Commission legislation is headed, "Commission must not publish opinion as to commission of offence". The very good reason for that is that the Corruption and Crime Commission will hear and receive evidence of a nature that would not be admissible in a criminal trial. We think that is proper. To get to the bottom of what is occurring within the public sector, it is often necessary for the commission to take hearsay evidence or to accept secondary documentation as proof of a fact and not rely upon original documentation. Of course, the commission, in making a finding, does not make a finding to the criminal standard. It does not say that it is satisfied beyond a reasonable doubt that X has committed an offence; it says that it is satisfied. In other words, it makes a finding on the balance of probabilities. The law in Australia is that when making a finding on the balance of probabilities in relation to conduct involving a crime, the High Court of Australia ruling in Briginshaw v Briginshaw—I think it was a 1938 case with the lead judge being Justice Dixon—applies. The point is that there should be a sliding scale of balance of probabilities, and the more serious the allegation, the more convinced the fact-finder should be before he is satisfied. For minor matters in civil courts involving negligence, for example, it is decided on the mere balance of probabilities: was it more probable than not that something happened? In a royal commission in which an allegation of a crime is brought, the commission should not come to a finding without being satisfied to something maybe approaching beyond reasonable doubt but not that high—still on the balance of probabilities, but it is not a static test.

Section 23 of the Corruption and Crime Commission Act 2003 states —

> (1) The Commission must not publish or report a finding or opinion that a particular person has committed, is committing or is about to commit a criminal offence or a disciplinary offence.
>
> (2) An opinion that misconduct has occurred, is occurring or is about to occur is not, and is not to be taken as, a finding or opinion that a particular person has committed, or is committing or is about to commit a criminal offence or disciplinary offence.

The commission is not allowed to make a finding that a criminal or disciplinary offence has been committed; it can make a finding of misconduct but that should not be read to mean a finding that a criminal offence or a disciplinary offence has occurred. That is for obvious reasons—because it is to the civil standard.

I am confused about clause 14 of the amending legislation. Clause 14 deletes section 23. The prohibition on the Corruption and Crime Commission making a finding of criminal conduct will be deleted. I do not know the rationale for that, especially given that later in the amending legislation there is a provision to a similar effect applicable to both the Corruption and Crime Commission and the Public Sector Commission. Clause 26 inserts proposed section 217A at the beginning of part 14 of the act. I need reassurance that this bill still restrains the Corruption and Crime Commission from making that finding, having deleted section 23.

Clause 26 of this bill states "At the beginning of Part 14 insert". I have to go back to the original legislation. It is complicated, but I will seek to clarify this during consideration in detail. The CCC remains restrained from making a finding of criminal conduct—or I think it does—and it extends it to the Public Sector Commission. I do not know why the government proposes to delete section 23 and why those provisions are now in proposed section 217A. I find it a little awkward because it is putting responsibilities and restraints on the Public Sector Commissioner into the CCC act. At the beginning of part 14 of the CCC act, we will insert proposed section 217A, which seems to replicate section 23. I do not know why the provisions in section 23 have been pulled out from where they were and put in here. Proposed section 217A states —

> (1) This section applies in relation to a finding made … by the Commission or the Public Sector Commissioner in the course of performing a function under this Act.
>
> (2) The Commission or the Public Sector Commissioner must not publish or report a finding or opinion that a particular person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.
>
> (3) A finding or opinion that misconduct has occurred, is occurring or is about to occur …

I can understand that for a criminal offence, but I am wondering about its suitability and applicability to the Public Sector Commissioner, who is looking at minor misconduct by public servants. The Public Sector Commissioner, having completed an investigation into minor misconduct—I am not talking about a criminal offence now—seems to be prohibited from commenting on whether there has indeed been minor misconduct. We would have thought that the very function of the Public Sector Commissioner was to make a finding of minor misconduct or of a disciplinary offence. His function seems to be delimited in that regard for a reason that the opposition does not quite fathom. We can see that it will continue to delimit the power of the CCC from making a finding of a criminal offence, but it seems to be too much of an imposition on the Public Sector Commissioner in that regard.

The opposition agrees with the rest of the bill. As I said, the one area that we would have looked at and suggested an amendment relates to prison officers engaged in a joint operation, because it seems a bit incongruous. The Premier has said he will take advice on that and the opposition is very satisfied with the Premier's position in that regard.

I would like to conclude with some general comments about the Corruption and Crime Commission that really take me back to where I started. The ship has been without a captain and its role has been ill-defined. Before a new commissioner takes on the job, they will want to know exactly what they are taking on. It is stated in the second reading speech —

> The 2012 bill —

That bill was going to give original crime jurisdiction to the CCC —

> did not proceed past the second reading stage due to the 2013 election. As the *Hansard* record reflects, the Premier has said previously that the government is not ignorant of the potential risks to the CCC's independence by enabling it to work more closely with police. Further work will therefore be undertaken to refine the legislative mandate of the CCC and its structure in order to enhance its capacity to combat organised and serious crime. The government plans to introduce additional amendments to this effect at a later stage.

I agree with the Premier that there is a good function to be performed by the CCC in relation to organised crime. Having studied this closely for most of my professional life, I take issue with the Premier that that involves an original jurisdiction; in other words, that it can go off on its own bat and say, "We will investigate this lot by ourselves. We will look at this particular outfit." The problem is one of ongoing corporate knowledge. Imagine if the CCC had this jurisdiction from the outset and there had been this continual churn of commissioners. There is no continuity at looking at organisations with ownership of corporate knowledge, such as the police department has with its organised crime and state intelligence divisions, which look at these all the time.

Mr C.J. Barnett: I might be misunderstanding you, but if there was an approach by the police commissioner to engage the CCC in an organised crime issue, would that be acceptable to you, or some sort of caveat such as that? I take your point about an original power.

Mr J.R. QUIGLEY: Yes, I do, Premier. I think that that would be acceptable—not just acceptable, but desirable. But there has been a problem, and the problem has been a lack of trust by the police in the Corruption and Crime Commission. We want to see this. We think that there is more utility in what the Premier is now saying than there is in his anti-association laws to bust open these bikie gangs. If the Premier looks at the budget papers, he will see that the CCC has to put in something about anti-fortification laws and the tearing down of fortresses, so it budgets for one application a year, and year after year it shows that zero applications have been made. During estimates, when I pressed the CCC about why applications were not being made and why the CCC was not involved in this work, it said that the police would not go to the CCC. When I asked the police during estimates why this was not happening, they said that they have a preference to use the Australian Crime Commission, because there is a bit of a duplication of powers. The real power of the CCC is to put people on the stand and compel answers, not to allow people to go into an interview room with a solicitor and say that they refuse to answer. It can put these bikies and other organised criminals into a hearing room—often a private hearing room where other people do not know what the person is saying—and compel answers. We know the power of that from what has happened at the Independent Commission Against Corruption hearings in Sydney; these people have been called into public hearing rooms and have been exposed by what others have said in private session. The Australian Crime Commission also has that power. The police have not been using that power, but we would encourage that.

As I have said, in relation to the government's anti-association laws, which have not been fired up, when the case of Wainohu, who was the head of the Hells Angels in Sydney and there was that dreadful murder at the airport—that state has similar anti-association laws—got before the Supreme Court, the judge was hit with 80 lever arch files of documents. We think that the Supreme Court is overworked. We appreciate the Premier's concern during the election campaign about rapid justice, but when the Supreme Court is under-powered with its appointments, as is the District Court, the ideal place to bring on those applications for declarations against bikies would be the CCC. It would be the perfect place. It has the resources, instead of the application being made to a Supreme Court judge, who has to come off the bench and sit persona designata. The Premier would achieve his promise to the community about firing up the CCC against bikies if the CCC were put into the anti-association laws. These people could be brought before the Corruption and Crime Commissioner to be examined without disrupting the work of the Supreme Court, and the Premier would achieve and deliver to the community that which he promised.

I will say another thing about the CCC. The Premier wanted to concentrate on its core function of police oversight. We agree with that. That came from the royal commission into police. The structure of the CCC was arrived at after roundtable conferences involving the WA Police Union. Now it has fallen into a bit of a heap, because the police union is saying that none of its members will cooperate in voluntary interviews with the CCC; in other words, if the CCC wants to interview police union members, it has to get them into a hearing room, whether it be a public or private hearing, and compel them to answer questions. The police say that the reason for this is that if they go into a voluntary interview and voluntarily answer questions and they are subsequently charged, those voluntary answers can be adduced in evidence against them. The Premier can solve this with the stroke of a pen and, if I can be so presumptive, I will tell him how. When I was acting for the police and they were interviewed by internal investigators, I prepared a screed for them that stated, "I am not participating in this interview of my own free will; if I am ordered to answer questions, I will answer them honestly, but only as a matter of compulsion." That was then published in the police union diary, and the police used to repeat that in front of every internal investigator. If they were subsequently charged, their answer therefore was not a voluntary answer; it was a compelled answer and was not to be used against them.

How do we solve the imbroglio between the police union and the CCC? My suggestion is that if the Commissioner of Police issued a lawful direction, which is well within his jurisdiction, to order the police to answer questions from the CCC as a matter of compulsion, either in a specific case, which would be better, or generally, even if they were not in a compelled hearing, and that the refusal to cooperate with the CCC would be viewed as a disciplinary offence, there is no way that what they say could be adduced against them if they go into a voluntary interview. That would immediately relieve the police union and its members of that concern, and that roadblock would be cleared.

Former Commissioner Macknay has said in Parliament that the police oversight role at the CCC is stalling because of the intransigence of the police to participate in voluntary interviews. It is expensive to require police to go into a compelled interview, because the CCC has to set up a hearing room, serve papers and administer the oath to the person, yet all the CCC might want to ask is: "Can you confirm that you were the passenger in the pursuit vehicle who was communicating with VKI during the pursuit and can you tell us what VKI said to you during the pursuit—for example, continue or desist?" At the moment, police will say, "I am not answering that question. I have advice from the union not to participate in voluntary interviews. If you put me on oath and take me into a private hearing room or a public hearing room and put me on oath, I will answer because I am compelled to answer." I am just saying that we should make the commissioner compel them to cooperate with

the CCC, and then whatever they say cannot be used against them—problem solved. There would be no cost to the government and no legislation would be required, and that roadblock would be cleared.

The previous Attorney General, Hon Christian Porter, said candidly in this chamber that the CCC's performance of its core function was unacceptable and that it was looking at only one or two cases as though they were spot audits, and some of those took years to get to. In Hon Christian Porter's view, as expressed in this chamber, the CCC's function in that regard was unacceptable and something had to be done to speed up the process. That is why the opposition supports the government taking away the role of the Corruption and Crime Commission to deal with minor misconduct; it frees up resources so it can look at its core object. That core function could be further enhanced and facilitated by the Commissioner of Police requiring his men and women to cooperate with the CCC. Why should they not cooperate? Why should they stand up this body? The opposition supports the suggestion that legislation be brought into this place so that the powers of the CCC can be utilised by the commissioner in his pursuit of organised crime, and more power to your arm, Premier. If the CCC is going to undertake the function of the Australian Crime Commission, there is not a problem in replicating the Australian Crime Commission, giving them —

Mr P. Papalia interjected.

Mr J.R. QUIGLEY: That is what it is not doing; that is what is not happening. Police are not going along to the CCC at the moment because, as has been said in this chamber, they do not trust the CCC. Clearly, the CCC has a function to investigate organised crime, but it is not what was originally proposed in the 2012 bill; it is about the powers that the CCC has presently. The CCC presently has the powers, but they are being under-utilised. It is good that minor matters are being taken away from the CCC to clear the logjam. It is important to have a shake-up of the CCC, particularly as the budget of the CCC is equivalent to the budget of the Office of the Director of Public Prosecutions, or thereabouts, which is responsible for the prosecution of all offences in Western Australia. When we consider the performance of the CCC and compare it with what has happened in New South Wales, our CCC has been underperforming. Officers from the CCC have approached me—I have not spoken to them about this because I regard it as an offence—endeavouring to tell me of the terrible morale and the problems that exist within the organisation. I do not know what all those problems are, because I have not wanted to listen to them. There are proper channels for that to happen, and that is through the Office of the Parliamentary Inspector of the Corruption and Crime Commission. We look forward to hearing the Premier's advice on clause 6 and to consideration in detail for the clarification of some of these points.

Mr C.J. Barnett: I make the point that there will be an amendment that relates to the issue raised about remuneration for the commissioner.

Mr J.R. QUIGLEY: That will be an amendment to the principal act.

Mr C.J. Barnett: Yes, to deal with the issue of a salary that makes it attractive for someone to take it on.

Mr J.R. QUIGLEY: That is not in this bill, but it is one of the things that need to happen for the CCC to attract a person who can give leadership over the course of a whole term.

Mr C.J. Barnett: That is forthcoming, yes.

Mr J.R. QUIGLEY: I will conclude my remarks at that point.

DR A.D. BUTI (Armadale) [3.43 pm]: I also rise to make some comments on the Corruption and Crime Commission Amendment (Misconduct) Bill 2014. As mentioned by the member for Butler, the opposition will not oppose this bill. As has been stated, the main purpose of the bill is to remove minor misconduct by public officials from the responsibility and jurisdiction of the Corruption and Crime Commission and to move that to the Public Sector Commissioner. The opposition thinks that has a lot of merit. In some respects it is a surprise—this is not a criticism of this government; it is just a surprise overall—that this legislation has not come before this house earlier. The CCC deals with corruption and crime, and one may argue that minor misconduct by public officers is a form of corrupt behaviour, and so it is. But, of course, the CCC should be dealing only with major corruption, and to that end we are very supportive that the Public Sector Commissioner should deal with minor misconduct as defined in the principal act.

I have some remarks to make on the issue of organised crime. In many respects the CCC does not have a fantastic record in dealing with police complaints. I have brought to this house before issues of alleged police brutality and how the CCC dealt with such issues. The eighteenth report of the Joint Standing Committee on the Corruption and Crime Commission, "Parliamentary Inspector's Report Concerning the Procedures Adopted by the Corruption and Crime Commission when Dealing with Complaints of the Excessive Use of Force by Police", tabled in Parliament on 8 September 2011, referred to an incident regarding Assistant Professor Robert Cunningham from the University of Western Australia, who happens to be a personal friend. As a result of a good Samaritan act in Fremantle, he experienced a nightmare. On the night of 2 November 2008, he was walking by the Esplanade Hotel with his fiancée at the time—they are now married—when he went to assist

a person who probably had had too many drinks and had fallen into the garden bed outside the Esplanade Hotel. He helped him out of the garden bed. At the time, his partner was approached and spoken to by two police officers. The police officers talked to her, and she responded by telling them that they should be more concerned with addressing criminal activity elsewhere. They threatened to give her a move-on notice. She informed them that she lived in Fremantle. By that time, Professor Robert Cunningham had moved away; he did not realise the police were speaking to his partner. He turned around and noticed that the two police officers were talking to his partner. He came back and asked them what they were doing and said that he was her lawyer. Before he knew it, he had his hands forcefully moved behind his back. He and his partner were pushed to the road and reinforcements were called. It is uncertain how many police cars arrived, but four to five police cars is the figure that was stated in a court proceeding. Professor Cunningham and his partner are not large people; they are quite small in stature. I have seen CCTV footage of the incident. They were not posing any physical threat to the police officers. They were tasered, although that is not seen on the CCTV footage.

Ms S.F. McGurk: She was tasered twice.

Dr A.D. BUTI: She was tasered twice, and they were taken to the Fremantle Police Station and questioned. Professor Cunningham asked for medical assistance, which is what should happen under the protocols of the police force for the use of Tasers. They were denied medical assistance. Then things got quite strange. This was on 2 November 2008. Professor Cunningham made a complaint to WA Police about the way in which he and his fiancée were dealt with on that night. They were charged with obstructing a police officer. Interestingly, they made the complaint to the police, and they also made a direct complaint to the Corruption and Crime Commission—Mr Cunningham did. Mr Cunningham's office at the University of Western Australia, which is not easy to get to, was forcefully opened and the hard drive of his computer was taken.

The ACTING SPEAKER (Ms J.M. Freeman): Member for Armadale, can I just ask you for clarification of whether this is a civil proceeding at the current time and whether there are any concerns that you might have about raising this in the house.

Dr A.D. BUTI: The matter has been raised a number of times in Parliament as public knowledge, and there is a civil matter at the moment, which I do not think has actually got to court. I do not see how that could be sub judice if it is already a public matter.

The ACTING SPEAKER: The Clerk's advice is that you need to be cautious in terms of what you are discussing if the matter is before the courts or if it is to go before the courts given the sub judice conventions of the house. I acknowledge that you have raised this matter before.

Dr A.D. BUTI: I would not want to jeopardise the action by Professor Cunningham and his partner. As the Joint Standing Committee on the Corruption and Crime Commission stated in its report, it was concerned that the finding of the CCC was not to deal with this matter any further. The committee was also concerned with the internal findings of the WA Police Force. I have stated over a long period that there should not be an internal investigation unit of the police force; there should be an external police investigating unit—and then have the CCC. When I was a lawyer at the Aboriginal Legal Service, we made numerous representations to the police that they should not be investigating themselves. One could argue that the CCC is the external authority, but if one looks at the various reports of the Parliamentary Inspector of the Corruption and Crime Commission and the various reports of the Joint Standing Committee on the Corruption and Crime Commission, one would have concerns about the vigilance and the effect of the CCC or the internal investigation unit of the police force.

Some time has been spent considering whether the CCC should be involved in organised crime matters. As we know, legislation was foreshadowed by the Premier in the last Parliament to give the CCC oversight with regard to organised crime, but there was dissension within the ranks of the Liberal Party and concerns that if that bill were brought before the house, it would be defeated on the numbers in the house with the support of the opposition. If the CCC is involved with organised crime there is a problem at two levels, as I see it. First, would we actually be setting up two investigating forces—the police investigating force and the CCC investigating force? Will both those forces be competing for the same resources or will the police force still do the investigations and the CCC take over the quasi-judicial role of investigating organised crime? If that is the case, cooperation between the police force and the CCC is needed at the same time the CCC is to have an oversight on the behaviour of the police force. On one level we are asking the police force and the CCC to collaborate, but, at the same time, the CCC has to also investigate complaints against the police force. That could raise many conflict of interest issues and compromise the ability of the CCC to be an independent investigator of the police force. If the CCC has to work in collaboration with the police force in fighting organised crime, and then at the same time investigate complaints against police, that could be problematic, particularly with an organised crime matter. Imagine if the police are investigating an organised crime matter in collaboration with the CCC that has been given increased powers with regard to organised crime. A complaint is then made against the police and the CCC must investigate that matter, while at the same time it relies on the police to do the investigation to assist the CCC regarding organised crime. At one level, Premier, it sounds attractive for the CCC to be involved in

organised crime—we agree that it should remove itself from investigating minor misconduct—but it presents many problems, as voiced in the last Parliament by some of the Premier's colleagues and by the opposition and the parliamentary standing committee on the CCC. That committee has been quite forceful and clear that the CCC should not have a major role in organised crime matters and that that should be left with the police force. Perhaps the police force needs further resources to fight organised crime.

The question posed by the Premier to the member for Butler was: what if the Commissioner of Police makes that suggestion? He may make that suggestion but the police commissioner is not the only person that Parliament should rely on with regard to these sorts of matters. One would have to ask why the police commissioner is making those recommendations; perhaps because of resource implications, it would be nice for the police commissioner to not have to deal with organised crime. However, it would become very difficult on a number of levels and it will blur the demarcation and who has responsibility for what. It will definitely blur the independence of the police force from the CCC and, as I stated, the Joint Standing Committee on the Corruption and Crime Commission has quite emphatically and clearly said that the CCC should not be given the powers that were proposed in the previous Parliament with respect to organised crime. The views expressed by the standing committee still remain very valid today. Perhaps we need to look at beefing up the strength of the police force in its ability to fight organised crime. The CCC has actually gone missing in action in many respects on a number of matters, particularly with regard to complaints against the police, as has been stated by the parliamentary inspector and also the parliamentary standing committee on the CCC.

Mr C.J. Barnett: I understand your point of view, but the CCC also has powers—one might say extraordinary powers—that would generally not be available to the police, and I do not think that we would want them to be generally available to the police. That is another aspect of that issue.

Dr A.D. BUTI: At one level I can understand what the Premier has proposed for a number of years in many respects. I just feel that the problems that it will create will make it very difficult, and I also take on board the views of the parliamentary standing committee on the CCC.

It is a very difficult area but at this stage I think we need to look at the current workings of the Corruption and Crime Commission. Removing the minor misconduct area is a very sound proposal, and that is why the opposition supports the Corruption and Crime Commission Amendment (Misconduct) Bill. As I said, I have concerns about the organised crime issue. I understand that we must always be vigilant about how much power we give to the police because of the question of how far we go towards a so-called police state et cetera. Governments will continue to grapple with the best way of fighting organised crime, but at this stage I think the best way is to leave that role to the police force. However, the police force's role may be improved if the CCC's oversight of the police force is improved. The reason for the criticism of the CCC, highlighted in various reports of the parliamentary inspector, not investigating a number of complaints of excessive force by the police is unclear. The CCC made the judgement that there was nothing further to investigate, but in a couple of cases it seems strange that the CCC made that decision. But it has never said whether there was some other reason for that. Is it lack of resources? I do not necessarily think it is lack of resources, but there must be some reason. It is hard to understand why the CCC has not dealt with that. I imagine that it is a resource issue to some degree, but the CCC needs the will and determination to investigate complaints against the police. Maybe with this minor misconduct area removed —

Mr P. Papalia: What complaints has the CCC failed to act on with regard to the police?

Dr A.D. BUTI: In 2008–09, Justice Steytler, Parliamentary Inspector of the Corruption and Crime Commission —

Mr P. Papalia: You are talking historically.

Dr A.D. BUTI: Yes.

Mr P. Papalia: Not recently?

Dr A.D. BUTI: No.

The Joint Standing Committee on the Corruption and Crime Commission reports were also concerned that the CCC did not investigate those matters. That brings me to the end of my contribution.

MR P. PAPALIA (Warnbro) [4.02 pm]: I rise to support the member for Butler's response to the Corruption and Crime Commission Amendment (Misconduct) Bill and agree that the opposition does not oppose what is proposed in the bill. Like the other two speakers before me, I will start with some observations about the second reading speech. The minister's second reading speech referred to the government's intent to at some time in the future change legislation enable the Corruption and Crime Commission to have a more cooperative working relationship with police and provide the CCC with an investigative function into serious organised crime. I share the concerns aired by the member for Armadale and the member for Butler about that suggestion.

At the outset, I will place on the record that I am restrained in my observations regarding the CCC's activities because I need to declare that one of my brothers is the director of operations there. That is not relevant to the comments I am about to make but I want that to be clear.

Earlier this term, I sat as Deputy Chairman of the Joint Standing Committee on the Corruption and Crime Commission. Reflecting on what I observed there, I recommend that anyone considering what the CCC should and should not do, particularly whether its powers should be enhanced or its tasking be changed regarding organised crime, should consider that committee's recommendations. I am talking about the current committee members. My experience of committees since I was elected to this place about seven and a half years ago is that that committee, above all others I have participated in, is guided—I am not suggesting the others are not, but it is equally balanced—very well by the intent of all its members to achieve nothing other than the best possible outcomes for this state concerning the Corruption and Crime Commission. From my observation, that often means that it will conflict with the government of the day. I saw it when I was a backbencher in government and it conflicted with some of the views of the then Attorney General. Firstly, when I was not on that committee and subsequently when I was, at times I saw that committee contradict the views of the Attorney General of the day. I think that will be the case and I think it is a very good sign because the committee members are very well informed of the Corruption and Crime Commission's activities, the motivations of the commissioner and other staff and what perhaps constrains them at times and prevents them from doing what other people in the public might think they should be doing. That has guided the committee. We are and have been well served by the committee members who have served in that role since the inception of the Corruption and Crime Commission and the oversight committee. I advise anyone who is looking for a way ahead with the Corruption and Crime Commission, particularly whether it should be involved in investigating organised crime, to heed the advice of that committee.

I acknowledge the observation that the CCC has great powers; it has coercive powers. A lot of its other powers are not that exceptional compared with those of WA Police. The police have a lot of monitoring, interception, undercover and clandestine capabilities that in many respects are at least equal to those of the CCC, although the CCC's coercive powers are different. That is clearly something that could be employed in pursuit of combating organised crime but I suggest, as did the member for Butler, that the CCC should be used in the same role as the National Crime Authority had been employed in the past. The CCC has been employed by WA Police, but not extensively, when the CCC has used its powers to assist in pursuing people involved in organised crime, but it does not have a cooperative, very close working relationship. WA Police use the powers of the commission from time to time, but it has not used them very much. I understand that the Joint Standing Committee on the Corruption and Crime Commission is undertaking an investigation into why there appears to be tension between the Corruption and Crime Commission and WA Police. That is a worthwhile activity for no other reason than it will identify that WA Police has not been employing the commission as it might have. The legislation does not need to be changed, as I understand it; the issue is more about the development of relationships between the CCC and WA Police. I cannot go into any more detail about some of the inquiries I participated in, but my assessment was that there is plenty of opportunity for the Corruption and Crime Commission to work more with the WA Police than we see, and it does not require legislative change to achieve that.

That is the main observation I wanted to make. I know that it is not in this legislation, but there was a reference in the second reading speech to the likelihood that the legislation dropped during the last Parliament might be reintroduced. I think that needs to be commented on, and all the opposition speakers today have done so. I would be very wary of WA Police and Corruption and Crime Commission personnel having a close working relationship because, as the member for Armadale indicated, it is likely to undermine the Corruption and Crime Commission's oversight role of the police. The CCC has a very special role to watch and investigate the police. People who work closely together on an investigation build a relationship that might not otherwise be the case, and their ability to assess each other in an objective fashion potentially becomes compromised. Beyond that, as has been seen time and again, and as referred to by the member for Butler, the very time when there is the greatest opportunity for an investigator to be compromised is when they are involved in investigating organised crime. They are exposed to the potential for compromise just by the very nature of the people whom they are investigating and the circumstances and type of crime undertaken. The CCC's oversight role is supposed to be separate from the police and it watches the police. It provides an opportunity for an independent investigation into the police as a last recourse, and we do not want to compromise that valuable role. That is the prime separate role that the CCC was established to do, apart from looking at corruption, and I do not think we want to compromise that in any way.

I do not have any concerns with the proposal to move minor misconduct matters away from the CCC. However, in light of the current climate of economic austerity—or the demand for economic austerity made about the state budget and which will become more imperative in the future—it is worth making the observation that our support is granted only for as long as shifting oversight of minor misconduct away from the CCC does not result in a significant cut to its budget. That would concern me. If the CCC is not doing what we want it to do, we need

to guide it more towards doing that task. If the CCC is not being employed adequately or efficiently by WA Police, we need to ensure that that changes, but we should not use shifting some of the CCC's education role to another authority as a reason to cut back funding and potentially further hinder its ability to conduct oversight of serious corruption. I have no doubt that serious corruption in Western Australia has not necessarily been investigated as thoroughly as it should have been. That situation will not be helped if the commission responsible for that role has its budget cut, using whatever justification.

My final observation is that it has been an inappropriately long time for the commission to have gone without a full-time commissioner. I think that is inexcusable. As the member for Butler identified, it is unavoidable that the commission will be less effective if it does not have a long-term permanent commissioner. I think it is undeniable that there is a problem with the commissioner's remuneration. The legislation demands that the commissioner be an individual with certain experience, and the only people who can apply are not willing to sacrifice their retirement for 40 per cent of their full-time wage. Effectively, that is all they will get in excess of their retirement pay, and I think that needs to change as a priority. The opposition has called for that to happen—how many months ago did the shadow Attorney General suggest that?

Mr J.R. Quigley: It was about six.

Mr P. PAPALIA: It was probably six months ago. We have clearly indicated that we would support any change in that regard. There is no reason that that should not occur as a priority, and then we should seek a permanent, highly motivated commissioner who will be there for a longer period than we have experienced to date to provide the consistency of leadership necessary to ensure that the CCC does its job in the most effective manner.

Dr A.D. Buti: Can the member take an interjection?

Mr P. PAPALIA: I would love an interjection right now.

Dr A.D. Buti: I do not want the member or the department to be under any illusion that I was saying that the CCC has not been investigating the police well in recent years. I think I should have made the point, especially with regard to a personal case—something that I should not repeat now, by the sounds of it—that there had historically been major criticism of the CCC.

Mr P. PAPALIA: I acknowledge that that was the member's point, and it is a worthwhile point to make. I have not heard anything of that nature for some time now—certainly not in this Parliament. There was a period when a number of investigations were underway. There may have been times when the CCC was criticised for not providing effective or efficient oversight. However, there were also times during the last Parliament when the CCC was very efficient and had it not done what it did, issues would not have come to light. The member for Butler identified a couple of those issues. Some very prominent cases were resolved only as a consequence of the CCC's involvement. Again, that was contrary to the views expressed at the time by WA Police, and I think probably contrary to the advice provided publicly at that time by the commissioner. The CCC's role has been to oversight the police and we have seen its value, but I do not think we have necessarily seen the value that the CCC could provide in combatting corruption more widely in the community and the public service in accordance with its legislation. There is no reason why we should not see that. I do not agree that the CCC needs legislation to achieve a focus on or an expanded role in combatting organised crime. I think the CCC could be doing more about corruption across the public sector.

Dr A.D. Buti: It would just be better if people weren't corrupt, wouldn't it?

The DEPUTY SPEAKER: Order, members! Can you return to your speech, please, member.

Mr P. PAPALIA: If that were the case, we would not need a Corruption and Crime Commission and we would probably not need police. That is undeniably not the case; we need both.

That is all I wanted to observe, much the same observations as have been made already. I am very wary of any reference to potentially introducing legislation in this place that will provide the CCC with an investigative function into serious and organised crime. I am more concerned about the CCC having a very close working relationship with WA Police in the role of investigating organised crime because I think that would undermine its primary role of oversighting the police, and I do not want to see that happen.

MR P.C. TINLEY (Willagee) [4.18 pm]: I thank Madam Deputy Speaker for the opportunity to comment on the Corruption and Crime Commission Amendment (Misconduct) Bill 2014. I think that this is an essential piece of legislation. Whenever we are dealing with the governance arrangements within the state, I think that it is really important that every member of Parliament has a keen interest in, and, if nothing else, a passing knowledge of the role of the Corruption and Crime Commission in Western Australia. That is for no reason other than self-preservation of the individual, so they understand more broadly their responsibilities in opposition and more importantly when they come to government and fulfil the functions of executive government. Nothing has more focused the minds of politicians in recent times than the goings-on at the Independent Commission Against Corruption in New South Wales, which has claimed a number of political scalps—some quite unexpected.

It warrants careful attention. I have listened to the contributions of members who have preceded me today and it appears to me that the amendment to this legislation is worthy of better understanding. Although the lead speaker for the opposition, the member for Butler, has said that we will not oppose the bill, I think it is really important that we tease out—for our education, if nothing else—the exact demarcation of responsibilities. From talk around the corridors and a look at different policy settings, not just here but also in other jurisdictions, it seems that the issue of who has responsibility for investigating organised crime continues to come up. We have a clear view on this side of the chamber that the investigation of criminal behaviour in the first instance should be the preserve of the police force, and it should be empowered, resourced and completely supported at every level of government to ensure it gets all it needs to undertake comprehensive work to combat organised crime. We often use the term "organised crime" and it constructs an image of being all-pervasive, highly organised and highly coordinated, when in fact it is just sometimes at the low end of that. If the CCC were to deal with all matters related to organised crime, I think it would be a real challenge for it, and I do not believe it would be resourced to undertake that.

The Corruption and Crime Commission Act 2003 has three main functions. I always talk about this because it is important to understand the baseline from which we are changing legislation. If we are going to make an assessment about what is proposed by the government, it is really important for our side to understand the nature of what we are changing from. As they used to say, with every plan there is a common base for change—making sure that everybody understands it before we start fiddling with it and working out which bits we do not want. Do not forget that there are three main functions to the CCC—a prevention and education function, a misconduct function and an organised crime function. I opened my comments on the point of organised crime, but the prevention and education function does not often get a lot of airplay. We all remember the high-profile public hearings that have been conducted. We remember all the journalists and so on who were called to the commission and all the different things that have happened in relation to the business of the commission. We really need to promote and endorse that first function. I would be interested to hear from the Premier about whether he has a view on this when he responds later.

A lot of what the CCC had been dealing with—or had referred to it at least and maybe not dealt with—had been at that low end of misunderstanding. Sure, some dealings were potentially corrupt and maybe unethical, but with a resource-constrained organisation such as the CCC we want to make sure that its resources are used effectively and that it is giving value for money. If there is behaviour in the public sector that is less than ethical and less than what is expected in the spirit of professional conduct for a public servant, we have to look at how the people in question arrived at the decision to act unethically or even criminally. My understanding of these matters is anecdotal and I would love to know whether there is research on this—maybe the CCC carries enough information to help in that research—but when cases of misconduct by people in the public sector were referred to the CCC, how many of those people were subjected to any sort of preventative or educational anti-corruption regime? That is an essential function of the CCC that cannot be glossed over.

The prevention and education function involves assisting public sector agencies to prevent, identify and deal with misconduct. The CCC does that by running educational forums and training on managing misconduct, and I have seen and received some of that training; it has been very good. It also looks at assessing misconduct risks, and I think that is an important leadership tool for the agencies it deals with. It helps them to better manage their areas at high or medium risk of misconduct. The obvious example that springs to mind is any relationship with contractors or service providers to government agencies. I personally witnessed that when I was shadow Minister for Housing in what I can only call the botched outsourcing model for the maintenance of the Department of Housing's 36 723 dwellings across the state. The principal problem was that it was unwittingly set up to fail, and in my view the reason for that was that zones were allocated across the state for the provision of maintenance on public housing. The Perth metropolitan zone, which by and large had the largest asset—do not forget this was billions of dollars' worth of assets sitting there—was made one zone and the maintenance for the entire metro region was outsourced to a company called Transfield as the single head contractor. This is one of the problems with the prevention side of this sort of legislation, and we see it again and again when we come to outsourcing under privatisation models. It is a great pleasure to understand that things have now changed. It is the three-year anniversary of the re-tendering of the projects, because the department realised what had happened. The minister had a singular focus on this stuff as well and I had conversations with him in relation to not setting things up to fail. There are now three contractors, with the metro area broken up into three zones, and no one contractor can have more than two zones. I think that adds some sort of commercial efficacy to the idea of competition and we can compare and contrast over a period of time the return for public dollar on maintenance.

With that single head contractor model, and the model for housing maintenance has changed, the head contractor tendered to subcontractors. Those subcontractors were what were called multi-trades, so there would be one company that would have a whole bunch of carpenters, plumbers, electricians et cetera, but they were then subcontracting out to individuals. There was one person with an Australian business number and a van running

around working in this pyramid of contracting. In the country zones, things had to work that way, principally because a person could not be sent from one town to another spending half the day travel, with all the costs of that, just to fix a problem in a public house, so in that case the model works well. However, in the metro area, where the most opportunity is, there was a situation in which public dollars were being spent on the head contractor who then had the responsibility to engage subcontractors. When we raised some issues, as I did, with the CCC in relation to what I determined was just outright criminal behaviour, there was a particular concern there. The matter I raised with the CCC was that one sub-subcontractor, to get it right, was putting in invoices for payment for repairing tiles on the roofs of houses, but when the rabbit was followed to the hole, the actual house that the work was being done on had a tin roof. That is the sort of thing that can happen. We will see how the revised model works, but the proof of the pudding will be in the eating. When I talked about that with the CCC, there was a limit to what it could actually do. Do not forget that was still the public dollar going down that chain and still paying that person. Who is responsible for the governance and oversight of the ethical expenditure of public money and criminal activity? Clearly, in this case, Transfield had a conferred responsibility, but what are the jurisdictional issues if a criminal matter arises and that line has clearly been crossed by sub-subcontractors or even subcontractors—it does not matter; anybody in that chain? When would a body like the Corruption and Crime Commission step in, conduct an investigation and recommend prosecution for that sort of activity. The first point referred to in the Corruption and Crime Commission Act 2003 is education and prevention. I would contend that when the Department of Housing set up this bright idea of outsourcing maintenance for this significant state-owned asset, if all those involved at the senior and mid-level had had a very clear understanding of the governance and downside risk management, they would have included—without overplaying it—at least one line that specified its corruption prevention behaviour or corruption risk matrix. The CCC states that its prevention and education function —

> Involves assisting public sector agencies to prevent, identify and deal with misconduct. This is done by running educational forums and training on managing misconduct, assessing the misconduct risks of various agencies and helping agencies to better manage their misconduct risks.

The total maintenance was about $100 million-plus. I would have thought that any department undertaking such a big shift from an in-house–managed service that had maintenance managers and subcontractors to a lot more control of the individual trades, would have had an identified risk matrix that could be applied over the outsourcing. If one did exist, it either failed or was incorrectly done.

At the minor end of this there was a lot of job ratcheting. That is when a tradesperson is sent out on the basis of an agreed arrangement to change a deadlock, for example, which is a $90 task, as specified on the schedule of rates. The person would get out there, knowing that the ceiling before it has to be requoted is $300, and, miraculously, that job would need a new door as well. According to the subcontractor, the lock alone could not be changed, and oversight was lacking. That is how these unscrupulous individuals—let us leave it at that—were gouging the taxpayer dollar. It was widespread; it did not happen only once. Inferior products were installed that were below the required standard. For example, bathroom vanity units were not made out of the waterproof material they should have been—it was an old, cheap substitute. Obviously, that does not show good respect for the state asset that is absolutely vital to those who cannot look after themselves. The prevention and education function is really important. I have talked about the organised crime function, and the minor misconduct function, which a lot of this Corruption and Crime Commission Amendment (Misconduct) Bill 2014 addresses.

It might sound a bit oblique to members, but the Western Australia Corruption and Crime Commission is one of many. I think every jurisdiction in Australia has them now. The CCC is part of our wider international responsibilities and obligations against corruption. Australian collaboration is really important on an economic level and on an engagement level. We are a signatory to two important international anticorruption conventions. The "United Nations Convention against Corruption" was entered into in December 2005, and the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" was entered into on February 1999. In 1999, the commonwealth Parliament passed the Criminal Code Amendment (Bribery of Foreign Public Officials) Act to implement Australia's obligation under the OECD convention. I am more than happy to take an interjection if I am incorrect, but when our 2003 act was drafted, it would have had to conform to the international obligations that Australia was a signatory to. That is all good. There was no problem because it was absolutely essential. The way we present ourselves is really important because it has regional implications.

[Member's time extended.]

Mr P.C. TINLEY: I was in Indonesia in January with some of my colleagues, and we went to the head office of the KPK—its corruption body—in Jakarta. It is a very interesting new beast. It is known as the Corruption Eradication Commission—I will not even try to say the Bahasa words because I will just embarrass myself, but I might sneak those into *Hansard* later if Hansard comes to see me! It is a government agency establishment —

Mr C.J. Barnett: That sounds a bit corrupt!

Mr P.C. TINLEY: It is not plagiarising, Premier!

Mr C.J. Barnett: It is very minor misconduct!

Mr P.C. TINLEY: Minor!

The Komisi Pemberantasan Korupsi came into force in 2002, and sits quite independently. We spoke with the KPK, and it is a very interesting group. Its members are, typically, all under about 35 years old, except for the senior people—the absolute leadership—and they are quite fearless. There is no point going into it, but given the level of corruption that exists or existed within the Indonesian system at all levels of government and business, it is quite remarkable that none of them have been killed. They have had all sorts of threats and things made against them, but they are quite fearless. When we talked to them about it, they kept referring to their visits to Australia and their whole-of-government engagement over here. That is a really important point, and we do not think about that sort of thing. How we conduct and govern ourselves in that corporate style of governance and oversight actually has regional implications. We are a benchmark for the KPK—one of many—in how it addresses its corruption. It, too, has some anxiety, as have we, I am sure—I know from talking to past commissioners—about whether hearings should be public or private. We saw, through the horrible circumstances that involved former members of this side of the chamber, the incredible impact a public trial has had on them personally and, of course, professionally.

It is worth noting some of the achievements of the KPK. According to my notes, the commission is careful but sometimes quite aggressive in pursuing high-profile cases. It does not investigate a case that has a dollar value of less than $US1 million. We are talking about pretty high-end corruption, and the vast majority of its corruption cases are in Jakarta because it does not have the resources to stretch beyond there. My notes state that in reporting on the activities of the KPK, one foreign observer noted that the commission has confronted, head-on, the endemic corruption that is a legacy of President Suharto's 32-year long kleptocracy. The act passed in 2002 and the KPK started operating in 2003, and the commission has investigated and prosecuted and achieved a 100 per cent conviction rate in 86 cases of bribery and graft related to government procurements and budgets. Remember, the threshold before Komisi Pemberantasan Korupsi will even get involved is $US1 million, and just in Jakarta. It is dipping its toe in what seems to be a vast lake of problems for it.

As I say, the KPK is quite fearless in the way it approaches it. With the change of leadership to a moderate progressive in the form of Widodo, or Joko as he is known locally—a former Governor of Jakarta—we have great hope that it will be given further legs. The resourcing for that of course comes from the Indonesian Parliament. I circle back to the point I made that it looks very closely at what we do. The former member for Perth, Mr John Hyde, now heads up some of the corruption education issues in Australasia for the United Nations. That connection continues. It is great to see that it is able to reach out for assistance to the international and regional communities to which it belongs—long may it go.

I will finish by recording thanks to some of the people who have been in the Corruption and Crime Commission since the beginning. I would not have thought it is a job that members would ever want. It is a very difficult job to make decisions about whether to hold a public or private hearing and whether to investigate or not. There are very serious and onerous decisions to be made. The one person who has been behind the CCC since its inception and survived three commissioners at least, that I know, is Mike Silverstone. I do not have any problem whatsoever in recording my personal regard for Mike Silverstone and what he has had to do. Right or wrong, agree or disagree—there will be divergent views on this—he has displayed a high level of professionalism and undeniable leadership qualities in leading the CCC as its inaugural executive director and now, for more than 10 years, managing such a powerful body. As commissioners come and go, and their judicial independence is as it is, they rely heavily on the Corruption and Crime Commission's operational leadership to ensure that they can keep that judicial independence and allow the commission to get on with its business.

Mike Silverstone spent 42 years of his adult professional life in the public service in Australia and in Western Australia. He is a former Army officer and a former commanding officer of the Special Air Service Regiment. He was my commanding officer when I first came in contact with him in 1983. He rose to the rank of brigadier. He is not unused to controversy. He was the commander northern command during the "baby overboard" saga and went through all of that drama. More sadly, before that, he was a commanding officer of the SAS Regiment when the Black Hawk accident occurred in Townsville in 1996, in which we lost 15 of our own and three from the aviation regiment. His professional service life weighed heavily on him in the early days. He came out of the Army and was, as he says, privileged to be offered the opportunity to serve again, this time out of uniform as the inaugural executive director of a body that has a significant responsibility in our state.

Mike retires in October. He is leaving the state, not because he thinks he has to but because of family connections. He wants to move to chase family connections and those sorts of things; all the normal things that happen in retirement. The feature that members might not appreciate about the service that Mike Silverstone has

given is that it has all had to be done in a clandestine way. His service in the Army, apart from his final operation as a brigadier general, commander northern command, has been in a clandestine mode—ensuring no public profile and ensuring that they never put themselves in a position that might be at odds with their political masters—he is very adept at that. One of the things that I felt Mike brought to the Corruption and Crime Commission was an unrivalled technical collection capability. I would suggest, without disclosing too many operational details, that the majority of the success the CCC had was a result of his direct involvement in its capacity to collect information in a technical environment that previously did not exist in this state at all, even in the police service. Mike's background and his capacity to bring that to bear for an agency such as this is a good example of how he has been invaluable to this organisation.

I think each and every one of us, regardless of being on the right or wrong end of the CCC, owe him personally, the quiet public servant, a debt of gratitude because he has left the culture of the place ostensibly in a far better way than it would have been if it had had the same revolving door of executive directors that it did with commissioners—which is a great problem. We wish Mike Silverstone all the best in his life—to go and enjoy his retirement. I suspect that his idea of retirement will be something quite different from others. He will not be retiring to a paddock or to a beach. I am sure that it will not be long before he undertakes more public service in a voluntary role. He has a great deal to offer. I wish him and his wife, Sharon, all the best in their endeavours, and thank him on behalf of the people of Willagee, and certainly I am sure other members who might agree with me, for his service to this state.

MRS M.H. ROBERTS (Midland) [4.45 pm]: The Corruption and Crime Commission Amendment (Misconduct) Bill 2014 was previously introduced into this house in a different form, as the Corruption and Crime Commission Amendment Bill 2012. Of course that did not proceed past the second reading stage. That ill-thought-out bill brought into this house is an example of how the government does not necessarily get its legislation right. It does not think it through. It did not even appear to have the support of everyone from its own side. There were major shortcomings with the 2012 bill. That is why the Premier and his government had to take that bill away to reconsider it. Indeed, the Premier is on record as acknowledging some of the shortcomings of that bill and his ill-fated intention of attempting to give some criminal investigation powers to the Corruption and Crime Commission.

Before us now is a different bill from that introduced in 2012. This bill transfers the oversight of minor misconduct of public officers from the CCC to the Public Sector Commissioner. The earlier bill also did that. The Public Sector Commissioner's jurisdiction does not include police misconduct or misconduct by Clerks of this Parliament, local government members or councillors. There are some definition changes to "minor misconduct" in this bill. Some clauses are of particular interest to me. The member for Willagee and others have referred to the principal legislation, the Corruption and Crime Commission Act 2003, which was introduced by the Gallop government. It was one of the things we needed to do back then because of the former government's ineffective handling of corruption in this state. People may recall that Hon Richard Court originally set up something called the Official Corruption Commission, which was later discredited. It effectively was not doing the job of —

Mr C.J. Barnett: The Anti-Corruption Commission.

Mrs M.H. ROBERTS: It was the OCC and then it was the ACC, if I can refresh the Premier's memory. It was originally the Official Corruption Commission and then Richard Court's government brought in a further piece of legislation to create the Anti-Corruption Commission. In 2003, the former Labor government introduced the Corruption and Crime Commission Act to establish the Corruption and Crime Commission, as it became known. We also established a royal commission into police corruption, which took the best part of a year.

These are very important matters. It is essential that people have confidence in public sector officers. It is equally important that they have confidence in the integrity of our police officers. Police officers have never had more power than they currently have, and in recent years they have been given even more extensive powers. Only this week we heard of federal government moves, supported by both major parties in federal Parliament, to give police even further powers because of the terrorism threat and the rise in concerns. I of course support police getting those powers, just as I have supported them getting many additional powers through legislation at both a state and federal level in recent years. However, with power comes responsibility. With power, there must be checks and balances. There are lots of areas of government in which integrity is important. I am aware of some recent cases, but I am not so keen to get into those recent cases, as perhaps some of the older ones that have been well canvassed can make the same point. People will recall that during some of the instances that were raised probably more than 10 years ago—I am aware of some more recent similar concerns—there were breaches of all kinds of government systems, including the vehicle licensing system, if I can divert from the police for a moment. If criminal elements seek to identify the location of a witness in the witness protection program or, for some other nefarious reason, try to track down a person who might be a silent elector or a police witness to a crime or something of that nature, they do not have to necessarily get that information through the police

department; they can potentially get it through the vehicle licensing system. I know that in the past, the police data system has been inappropriately accessed and officers have illegally accessed details on the police database and provided them to either criminal contacts or their mates for various reasons. However, other government databases have equally sensitive information. Databases such as the vehicle licensing system provide information such as a person's date of birth and their home address. Many people—sometimes it is women who are being stalked by a former partner or people who are silent electors—need to keep their whereabouts secret for a variety of reasons so that they are not victimised in some way. If those databases are inappropriately accessed, it can make people very vulnerable.

Integrity in our public institutions is absolutely vital. In terms of police, clearly it is exceptionally vital. People want to know that a watchdog is in place to basically provide some independent oversight of police. I note that this legislation refers to the police force. Under the Police Act 1892, it is still referred to as a police force, not a service; that reference has never been amended. The community needs to know that somebody has appropriate oversight. Within the police force, there is a professional standards portfolio, and within that professional standards portfolio, there is what is colloquially known as the internal affairs unit. There is a unit within the police force whose job is to ensure the integrity of the actions of all officers. Members of the public want some further reassurance. Over the years, many people have contacted me because they felt that it was not appropriate that there was just an internal investigation into their concerns. Indeed, I know that often there is quite a surprise in the community when a complaint is referred to the very section of the police service from which it arose. For example, people who raise a concern or make a complaint about an officer within my electorate, which is in the eastern metropolitan district and has been for some years, are very concerned when they find that their complaint is referred to the officer in charge of the unit or station that the complaint has been made about for investigation. That is the process; the complaint is referred there in the first instance. The local sergeant, if it is about a particular police station, or the sergeant in charge of a unit, if it is in other circumstances, conducts the initial investigation and provides a report to internal affairs. Internal affairs then makes some form of assessment as to whether there needs to be any further inquiry. Very often, the complainant gets a letter basically indicating that it is being investigated, especially when it is about what the police might regard as a more minor matter.

I think the reassurance that the community wants is that somebody is oversighting the police, it is not just an internal matter and the police cannot cover up an incident or look after their mates who work in the same workplace. I expect that that is rarely the case, but given their power and responsibilities, the public has some right to reassurance. That is why organisations such as the Corruption and Crime Commission have come into being. I know that, over the years, many people have said that they think some form of royal commission once in a while—about every 10 years—would potentially have more merit than an ongoing commission because of the relationships that can tend to build up between an organisation such as the CCC or the Independent Commission Against Corruption and the police service, especially when officers engaged at the corruption commission are often recruited from the local police service. I would expect that that is probably a greater concern in Western Australia because it is a relatively isolated community. Although Western Australia attracts a great number of people from the eastern seaboard and elsewhere to become permanent residents, there is greater mobility up and down the east coast of Australia between, for example, Melbourne, Sydney and Brisbane. It is a big decision for police officers in any of those states to make the move to a corruption commission in Western Australia. That is why when there is a royal commission into police, be it the Kennedy royal commission in Western Australia or the Wood royal commission in New South Wales, the commissions seek to engage as investigators for the royal commission police officers from outside the state who do not have a connection with the people they are investigating. I am often reminded that Perth is a very small place. I know it is a concern from time to time that relationships can be established between people in an organisation such as the CCC and the police service because they draw from quite an isolated community.

There are quite a number of aspects of this legislation that I am keen to examine further when we get to the consideration in detail stage, but I will take the opportunity to signal some things today. I note that the second reading speech was read in this place on behalf of the Premier by the Leader of the House. He states —

> To the extent to which its oversight and prevention functions are entwined, the CCC will be given power to assist, in cooperation with the Public Sector Commissioner, …

It is one thing being given the power to assist; it is another thing being given the right to assist. I have looked at the relevant clauses and it seems to me that the Corruption and Crime Commission may well need to be invited to assist. I signal that it is a matter of some interest to me whether or not the CCC should potentially have the right or the power to assist of its own initiative, as opposed to a request by the Public Sector Commissioner. I note that elsewhere in the second reading speech the Leader of the House commented that he expects the Public Sector Commissioner and the Corruption and Crime Commission will work closely together on their education programs and also on misconduct matters. Clearly, in some matters, there will need to be resolution as to whether a matter constitutes misconduct or serious misconduct, and where that line is drawn will make a

difference as to who handles that misconduct. The bill refers to serious misconduct and I think—correct me if I am wrong—that is something that would be punishable by two years or more in jail. A decision needs to be made as to what the offence is. Often when there is some, let us call it, misconduct, misdemeanour or some breach of the law, a variety of charges can be preferred in the circumstances; and depending on which charge is preferred, there can be a different penalty outcome. I do not necessarily think these matters will be clear. I will not get into the details now, but even with driving offences, police officers on a daily basis have to make decisions about which offence they will charge a driver with—reckless driving, dangerous driving versus something similar.

[Member's time extended.]

Mrs M.H. ROBERTS: I will be interested to learn what occurs in practice. If anything, I would err on the side of giving the CCC the power to intervene or assist if it deems it appropriate, so it is a kind of call-in function as opposed to just the right to assist upon request. That prevention and education function is moving from the CCC to the Public Sector Commissioner. The second reading speech refers to the need for the Public Sector Commissioner and the CCC to consult, cooperate and exchange information, and that the two commissioners will consult in preparing guidelines et cetera. That is clearly very important and one hopes there will be a good working relationship there. In concluding the second reading speech, the Leader of the House stated —

> The government believes that this bill enhances the integrity and accountability of public officers by refocusing the CCC as the state's pre-eminent corruption-fighting body.

Presumably, that is because the CCC will not be handling those minor matters.

The bill will amend the definition of "reviewable police action" and what constitutes "minor misconduct". It also defines "police service", because of course that has no meaning in the Police Act 1892, and it includes a new definition of "serious misconduct". Clause 10 proposes to insert new section 18(4), which reads

> As an aspect of the serious misconduct function, the Commission may help public authorities to prevent serious misconduct by doing the following —

It then lists paragraphs (a) to (e). I previously made the point that it is one thing if the commission "may" be able to assist; it is another thing to say it has an obligation or right to assist if it so chooses. Proposed paragraph (e) refers to "reporting on ways to prevent and combat serious misconduct." I will give members a potential situation. The CCC might endeavour to help a public authority, or the police for that matter, by reporting on the way to prevent and combat serious misconduct, but what obligation is there on WA Police or on any agency to take up that recommendation? WA Police may well thumb its nose at it. I do not know, and the Premier may have an answer on how that could be enforced. In the end, it may be a decision for cabinet whether the recommendations are taken on board by the agency involved.

I am aware of a situation that occurred in my electorate recently when, allegedly, an off-duty police officer who had been drinking got involved in an incident, and as part of that endeavoured, allegedly, to exercise his powers as a police officer. There were some other issues to this, but the question that arose was: should he potentially be breathalysed as part of that? In one sense, a police officer is never really off duty in that they take an oath of office, so they are potentially on duty 24/7. Let us say that an off-duty officer has a blood alcohol content over .05 or over .08 and attempts to exercise their powers as a police officer. I am aware of an incident in which that is alleged and people are asking me how he could have exercised his power as a police officer if he had been drinking. There was no attempt to breathalyse the off-duty officer concerned, but people have suggested to me that they think it would be reasonable in those circumstances for a breath test to be taken so that it can ascertained whether, in the exercise of this power, the police officer was under the influence of alcohol. It is not for someone like me to make a final call on that matter, but it is something that an organisation like the Corruption and Crime Commission could look at and make a call. I might just add that this is a bit like when video cameras were put in place in interview rooms throughout all police stations for all interviews. Those cameras afforded protection to the police officers because sometimes the individuals being interviewed would make claims afterwards of police abuse or misconduct, and the cameras in a sense served as a protection for the police officer. At first there was some resistance by police to have those cameras in all interview rooms; they saw it as an intrusion. Now I know that many good and honest police officers throughout this state see them as a protection for themselves against allegations of abuse. Similarly, if a breath test were taken, potentially that could demonstrate that a police officer was in fact sober and therefore those imputations that perhaps they had been drinking could be put to one side.

Without getting into further details of that particular incident, the question is: is it just a matter for internal police units to determine what the processes should be when certain allegations are made? I am in no doubt that the CCC, when it investigates some of these instances, could make some very good recommendations as to how police conduct certain processes in future. If, however, the Commissioner of Police determines to take no notice

of those CCC recommendations, there appears to be no compulsion for him to do so. I have given the police example, an area with which I am very familiar, but presumably there are similar examples within other government departments. Many government departments have an enforcement role, such as the Department of Transport, the environmental protection area, the occupational health and safety area, probably the Department of Agriculture and Food, and the Department of Fisheries. They are all agencies—I am sure there are many more—that would have a form of enforcement role, and wherever there is that role there is the potential for corruption. I do not want to see those kinds of recommendations by the CCC in those cases just gather dust. It would be better for them to be acted upon. A good chief executive officer would potentially act upon those recommendations if they were sensible, but there is also a role for government in that place.

The member for Butler and I are keen to raise many more matters at the consideration in detail stage of the bill because this is a very significant bill. I hope that the Premier will respond at a later stage to the issues that I and other members have raised when we reconvene on the second reading debate of this bill.

Debate adjourned, on motion by **Mr C.J. Barnett (Premier).**