CORRUPTION, CRIME AND MISCONDUCT AND CRIMINAL PROPERTY CONFISCATION AMENDMENT BILL 2017

Second Reading

Resumed from an earlier stage of the sitting.

HON ALISON XAMON (North Metropolitan) [5.08 pm]: Before we broke for question time, I said that the Greens have always held and still strongly hold the view that the Corruption and Crime Commission's most important role is oversight of the police. We maintain the position that that is how we are best able to fight serious and organised crime. It means we are ensuring that we are monitoring people who are legally permitted to use force against other people and deprive them of their liberty. That is why Parliament gave the CCC its very broad and unusual powers in the first place. A genuine concern was articulated by the Joint Standing Committee on the Corruption and Crime Commission of the thirty-eighth Parliament that legislation such as the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 will redirect the CCC's resources away from this core business—this fundamental role—of undertaking oversight of the police.

I have stood in this place in recent weeks and said that the CCC's current oversight of police already needs improvement, as evidenced by the CCC's refusal for years to exercise its statutory duties on police misconduct and the use of excessive force against Dr Robert Cunningham and Ms Catherine Atoms. I will refer to the parliamentary inspector's "Annual Report 2016–17". The parliamentary inspector was appointed in January 2013, and his report states —

> During my term I have become concerned about the Commission's response to complaints of the use of excessive force by police officers, and during the reporting period a particular complaint to me about the issue has increased my concern.

The Corruption and Crime Commission's 2016–17 annual report states that 2 636 allegations were received about police. Of those, 1 444 resulted in no further action, 1 126 were referred back to police with the CCC to be advised of the outcome, 54 were referred back to police with CCC monitoring or reviewing police handling of them, nine were investigated by the CCC cooperatively—seven with police—and only three were independently investigated by the CCC.

This bill proposes that the CCC be further diverted from its primary task of oversight of police to act as a substitute investigator on issues that may appear to be too sophisticated and malleable for the police. This will mean that the CCC will collaborate and share functions with the very entity that it is supposed to be monitoring, despite the committee's narrower recommendation. It will divert resources from the CCC's usual functions. The CCC will carry out functions of the Criminal Property Confiscation Act 2000, which targets far more people than serious and organised criminals. The bill does not even narrow the CCC's role to be involved only if there is at least a reasonable suspicion that serious and organised crime is involved. The Greens are of the view that this does not strike the right balance. As such, I will move an amendment aimed at ensuring at least that the bill targets only organised crime.

This raises the issue of who the bill will target. The second reading speech links this bill to serious and organised criminals, but as we already know, the reach of the Criminal Property Confiscation Act 2000, and hence the reach of this bill, is far wider than that. In fact, the act's reach is so wide that when it was introduced, the Greens opposed it in that form, although we initially agreed with its objectives.

I want to be very clear that the Greens have always concurred with the policy position that wealth accrued as a result of direct criminal activity should be taken away. Our objections to the Criminal Property Confiscation Act 2000 are many, including that the act reverses the onus of proof. We remain concerned about that. We have never stopped being concerned about that act severely curtailing court discretion and that, unlike every other Australian jurisdiction, apart from the Northern Territory—including New South Wales and Queensland, where the CCC is also responsible for confiscation proceedings—in Western Australia there is no threshold requirement that the respondent be convicted of, reasonably suspected of, or in any way connected with crime. The statutory trigger for forfeiture is the wealth of the respondent.

In addition to all of those defects, the Criminal Property Confiscation Act 2000, as we have seen, is potentially highly detrimental to innocent third parties in multiple ways. The glossary in the act defines property as —

> (a) real or personal property of any description, wherever situated, whether tangible or intangible; or

This is probably the most critical concern —

> (b) a legal or equitable interest in any property referred to in paragraph (a);

A person might own an asset, but an innocent third party might have a secured or unsecured debt over it, such as a bank, credit agency or family member. From the briefing, I understand that third parties are generally not made aware of confiscation proceedings until after the court has made an order. At that point their only recourse is the

objections process in the act. Section 28 of the act states that a court may declare upon application by the DPP—or the CCC, if clause 30 of this bill is passed—that property not owned by the respondent is available to satisfy the respondent's liability if it is more likely than not that the respondent effectively controlled the property when the freezing notice was issued or the freezing order was made; or an unexplained wealth declaration or criminal declaration was made; or the respondent gave away the property at any earlier time. It is presumed that the respondent effectively controlled the property at the material time or gave it away unless the respondent establishes the contrary. In other words, the onus is on the applicant to prove that their case is reversed. My understanding is that an innocent third party who is a co-owner of the property may lose the case unless they can prove that they are the majority owner of the property.

A case has already been mentioned by Hon Aaron Stonehouse, but I also wish to make reference to it in my contribution. It is the disturbing issue of what happened to a Vietnamese mother of one and factory worker, Tam Nguyen, who married Phi Van Tran in 2002 and they became co-owners of their home in Girrawheen. The story was reported by *The West Australian* in August last year. The marriage broke down and they separated in 2010, after which Ms Nguyen continued living in and paying the mortgage on the home. In 2013—three years after they split up—her estranged husband and his new partner were convicted of drug trafficking and the estranged husband's share of the house became subject to the act's criminal property confiscation provisions. The article indicates that Ms Nguyen's share of the house is 50 per cent and as such she was left in the position of either having to buy out her estranged husband's share or the house would be sold from underneath her and she would receive 50 per cent of the proceeds. This case relates to a different category of confiscation from the ones that the bill covers, but the same issue arises with the categories that the bill covers.

There is an objection process in part 6 of the act through which an innocent third party may have recourse if property in which they have an interest is frozen or confiscated under the act, but the process necessitates a court application by the third party within a limited time, which is extendable by the court if the property has been frozen but has not yet been confiscated. Various authorities involved in confiscation proceedings have been consulted on this bill, but really importantly, and as mentioned by Hon Michael Mischin, we have not heard the voices of a range of other stakeholders, including creditors who have loaned money for non-criminal purposes, whether formal, such as banks, or informal, such as parents and grandparents sending money to their children or grandchildren, or a number of other stakeholders who are well versed in the deep problems of the original act that we are looking for the CCC to adopt. We are left with a bill that proposes to bring together all the extraordinary defects of the Criminal Property Confiscation Act 2000 with the extraordinary powers of the CCC. The Greens simply cannot support this. If the original Criminal Property Confiscation Act had been appropriately reviewed and amended and its defects addressed many years ago, perhaps we would be in a very different position right now. Unfortunately, this legislation is still causing serious injustice to innocent people and a serious lack of proportionality for too many people when meting out justice.

Let us talk about some of the checks and balances that we may need to look at in the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. We know that the Corruption and Crime Commission must provide an annual report to Parliament providing information as set out in section 91 of the Corruption, Crime and Misconduct Act. The bill proposes to add to this list a description of the commission's activities during that year around its unexplained wealth functions. That is a good start. I am always a fan of ensuring that we have as much information as we can get within these reports so that Parliament can be well informed, particularly on entities such as the CCC that enjoys such extraordinary powers. But given the potential impact of this bill on innocent third parties, I will be moving a further amendment aimed at ensuring that Parliament is kept more fully informed of the impact on these people.

We will be talking about the bill in more detail when we go into Committee of the Whole. The Greens want to once again reiterate how concerned we are that we are extending such flawed provisions even further into the CCC. We are very concerned that this will take away valuable resources from what should be the core business of the CCC and, importantly, that it potentially creates a conflict if the CCC needs to work hand in glove with the very agencies that it has been given exceptional powers over to ensure that it keeps track on its efforts to stop corruption in this state.

HON CHARLES SMITH (East Metropolitan) [5.22 pm]: It is refreshing at last to finally hear the Attorney General make some sense—to me at least and my party—by admitting that our adversarial criminal court justice system is a failure, in particular in prosecuting organised crime. The Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 is ultimately a step in the right direction. However, the big issue with this bill and the legislation currently available to us is how the court process hinders its effectiveness. As noted by the Attorney General in his second reading speech —

> Although Western Australia was the first jurisdiction to implement what was considered to be ground-breaking legislation providing for the confiscation of unexplained wealth, those powers have seldom been used. In the 16 years since the commencement of the Criminal Property Confiscation Act,

> a total of 28 applications for unexplained wealth declarations have been made. However, since 2011, only one application has been made. This is because the DPP simply has not had the resources to pursue those applications. The result is that the Criminal Property Confiscation Act has not significantly benefited the fight against serious … crime …

Western Australia is equipped with legislation to fight serious crime, but sadly it is not being used. There are two issues: firstly, that even with these amendments, the Director of Public Prosecutions will still suffer from a lack of resources that prevents it from pursuing these orders. Unfortunately, this problem will persist without additional funding to the DPP and/or a restructure to reduce bureaucratic waste and a push to increase its efficiency. Therefore, empowering the Corruption and Crime Commission would most certainly aid in the fight against unexplained wealth but to a limited extent. Secondly, the current system is inefficient and ineffective in dealing with these matters at trial. That is to say, very often these matters get bogged down with procedure and I believe this to be the crux of the issue at hand. Even if the DPP were to receive increased funding and the commission granted the additional powers provided in the bill, whichever body is empowered to prosecute on these matters will still face the same issues at trial. Together these two points provide an issue with the current legislation, its proposed reforms and the procedure involved in these matters at a court level. As previously alluded to, the procedure of criminal court is long, complicated and expensive. It is an axiom that the DPP simply does not have the resources to prosecute on everything due to these inherent issues. Therefore, even by enacting this legislation, the DPP will have only a very finite resource with which to prosecute, which would inevitably result in other cases being delayed or a potentially worse scenario with criminals escaping justice. The nature of the procedure and the provisions currently allowed for bogs down an already slow mechanism. For example, a recent 2018 case dealing with the Criminal Property Confiscation Act in Brennan v The State of Western Australia began in 2014 when a freezing notice was placed on the appellant's property. On 22 April 2015, the plaintiff was convicted in the District Court of an attempt to possess cannabis with the intent to sell and supply. The offence was committed on 14 March 2015 and involved over 22 kilograms of cannabis. There are numerous reasons that may lead to a five-year period between offence and sentencing, but the mere fact that there are these reasons that can push back a sentence in what is an increasingly common criminal act is ludicrous. In this case and in the Commonwealth Bank of Australia v The State of Western Australia, another 2018 case, we can see the process become slowed down further by objections raised by banks in cases of freezing notices. Some members, including me, may find it a rather curious notion that a bank can impede upon criminal matter. Ultimately, our courts are ill equipped to deal with these matters and the adversarial nature of proceedings may hinder the discovery of the truth. The High Court of Australia in Jackamarra v Krakouer noted that the ultimate obligation of the court is the attainment of justice that the law requires and in the current system it is fighting an uphill battle to obtain such a lofty goal. It is not just me saying this; this notion is borne out by the community at large. In 2009, the Australian Institute of Criminology published a report titled, "Confidence in the criminal justice system", which examined the faith in the justice system of 36 nations. Australia was ranked twenty-sixth with only 35 per cent of surveyed Australians having quite a lot of confidence in the system, falling behind 49 per cent in the United Kingdom and 57 per cent in Canada.

Another issue is that the courts are not as concerned for the truth as perhaps they should be. This point was noted decades ago by the Supreme Court of Victoria in Mooney v James where the court quoted Professor Edmund M. Morgan's 1942 foreword to the American Law Institute's *Model Code of Evidence*. It states —

> Thoughtful lawyers realize that a law-suit is not, and cannot be made, a scientific investigation for the discovery of truth. The matter to be investigated is determined by the parties. They may eliminate many elements which a scientist would insist upon considering. The Court has no machinery for discovering sources of information unknown to the parties or undisclosed by them. It must rely in the main upon data furnished by interested persons. The material event or condition may have been observed by only a few. The capacities and stimuli of each of these few for accurately observing and remembering will vary. The ability and desire to narrate truly may be slight or great. The trier of fact can get no more than the adversaries are able and willing to present. The rules governing the acceptable content of the data and the methods and forms of presenting them must be almost instantly applied in the heat and hurry of the trial. Prompt decision on the merits is imperative, for justice delayed is often justice denied.

With regard to the above quote, particularly those parts concerning evidence before the court, one finds a significant problem.

In the adversarial system, the court can make a determination only on the evidence presented before it. The judge takes a passive role and the arguments and investigations are done by the parties, which is a particular burden faced by the Director of Public Prosecutions. In addition, those interested parties must also parlay with the rules of evidence and submit their evidence through the correct procedure or lose out on having the court examine potentially case-changing evidence or data. This can be seen quite clearly in one of the unexplained wealth

cases in Western Australia. In the 2018 case involving the Commissioner of the Australian Federal Police, Her Honour Justice Banks-Smith stated —

> Contrary to the applicant's submissions, I do not accept that the respondents' application was clearly hopeless from the start. The Grounds raised particular questions as to the treatment of income or other funds. It may be that some of those issues were questions of law and capable of determination without additional evidence. But the fact that both parties sought to rely on forensic accounting reports … points to the potential for responsible but differing views, including as to the potential relevance of failure to disclose certain specific information.
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> I am also cognisant of the fact there is not yet a body of useful case law on preliminary unexplained wealth applications.

There are two important points in this statement. Firstly, it shows that there are certainly questions about the evidence that had been admitted and, secondly, it provides proof that the current legislation does not work as effectively as it might do. However, the proposed amendments, as previously stated, would not entirely alleviate the issues faced by the Director of Public Prosecutions. Her Honour also notes a severe lack of useful case law on these applications, which is unfortunate given the 18 years these laws have been on the books. It proves their ineffectiveness and again speaks to the issues faced by the DPP.

I therefore propose that criminal cases, or at the very least cases involving this legislation, should be dealt with in a nature similar to royal commissions—that is, an inquisitorial approach to criminal justice. Criminal trials should not be conducted in the same way as civil cases. These are not mere disputes around wrongs; they concern the safety of society at large, particularly in cases of drug lords and profiteers, which this legislation targets. Of course, the presumption of innocence and other such axioms should remain; however, the point of a criminal trial should be to adduce whether a party is guilty by an impartial inquisitor rather than by two parties arguing about whether something should be accepted, particularly when the state, despite its power, is over-encumbered with the weight of a backlog of cases and its prioritisation of them. The guilty should not be afforded reductions purely because the DPP does not have the time to deal with their cases, especially when they are provable. Criminal cases should not be trials of economics, but trials of justice. An impartial adjudicator conducting a trial in an investigative manner is more likely to yield a more just result.

HON NICK GOIRAN (South Metropolitan) [5.33 pm]: I am pleased to rise to contribute to the consideration of the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. In doing so, I want to address a few matters touched on by the government in the second reading speech in which it provided its explanation for why this bill ought to be passed by the house of review.

Before I do that, I want to draw members' attention to some more of the McGowan government's fake news on this particular legislation. The government has a propensity for peddling such things. I refer to an article in *The West Australian* on Saturday, 26 August 2017, when that media outlet was conned by the McGowan government to produce the following —

> State Government plans to drag crime targets before the Corruption and Crime Commission as soon as January to explain their wealth are in jeopardy because of a sceptical Upper House.

I will pause there for a moment to remind members that I am quoting an article from 26 August last year.

Hon Aaron Stonehouse: Was "sceptical" cited as a word used by members of the upper house?

Hon NICK GOIRAN: It is the journalist's word. I continue —

> Attorney-General John Quigley introduced laws last week that would make the CCC the lead agency responsible for chasing unexplained wealth instead of the under-resourced Director of Public Prosecutions.

I pause again to indicate to members that I intend to take up both of those issues in a moment. As reported in this article, the government now refers to the CCC as the lead agency—we will unpack that a little later—and it refers to the Director of Public Prosecutions as under-resourced. The article from 26 August last year continues —

> But his decision to tack on to the Bill an unrelated amendment to the CCC Act has imperilled its speedy passage through the Upper House, which is proving rocky territory for the Government's law and order agenda.
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> This month its "no body-no parole" laws were referred to a committee by Liberal Democrat Aaron Stonehouse with the support of Liberals, Greens, Nationals and crossbenchers.
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> There is broad support for the unexplained wealth provisions of the latest Bill but shadow attorney-general Michael Mischin is less enthusiastic about the amendment to the CCC Act.
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> That change would involve one word being inserted into the Act to restore the CCC's jurisdiction over non-Cabinet MPs, which according to Commissioner John McKechnie was extinguished in 2015.

> Mr Mischin said while he supported all MPs coming under the glare of the CCC, he was unsure Mr Quigley's Bill was the best way to go about it and the matter could be another candidate to be considered by a committee.
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> "It hasn't been considered by the Liberal party room, he said.
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> "I'm just giving you my personal view that I think it does need to be fixed up but it needs to be fixed up properly.
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> A committee would tie the Bill up for months, angering Mr Quigley who has told the CCC it would be passed by Christmas, prompting authorities to line up crime targets for hearings by January.
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> "Any delay to this Bill will offer succour to the 'Mr Bigs' who are trafficking ice and offer comfort to any parliamentarian who has done the wrong thing," he said.
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> Nationals, Greens, One Nation and crossbench MLCs said they remain undecided on the Bill.

It is interesting, as I look at my watch and note that it is now 13 June 2018, that on 26 August last year there was all this outrage by the government's lead minister on this bill. I remind members, in particular the Leader of the House, that this bill was introduced into the Legislative Council on 14 September 2017, about three weeks after this article sets out all the McGowan government's outrage about the so-called sceptical upper house. The bill was introduced into this place on 14 September 2017. I was not sure when the bill was next brought on for debate last year, so I had to ask my learned friend Hon Michael Mischin. He informed me that the next time the bill came before the house was this week. It seems extraordinary that nine months has passed. A human being can be created and born in that time, yet the McGowan government ran off to the media with some fake news about the fact that there will be a "sceptical upper house" and how we are responsible for proving to be a rocky territory for the government's law and order agenda. The only thing that is rocky territory for the government's law and order agenda is the ineptitude of the Labor government in drafting and approving legislation. I do not know what goes on in the Labor caucus, but it is obviously the case that there is zero scrutiny of legislation. That is what causes the rocky road. The government should not blame members of this chamber if things do not pass through in a speedy fashion because it serves up legislation that is constantly in need of amendment.

To demonstrate this point, I turn to the supplementary notice paper and note that we are on no less than issue 4. At least that is the version I have; I do not know whether a further one has been issued since then. Let us assume for the moment that we are up to issue 4. That means that on no less than four occasions one or more members have seen fit to give notice to the Clerk of the Council that they intend to move amendments. One might charitably say that the government has a case in the event that all of those proposed amendments will be moved by the opposition or the members of the crossbench, but that is not the case. I turn to the supplementary notice paper and notice that the Leader of the House no less has several amendments in her name on behalf of the government to bring to our attention. The only stumbling block or the only thing that causes "rocky territory" for the government's law and order agenda is the ineptitude of the McGowan government that is on display each and every time a piece of legislation comes to this house.

It is rather ironic that the article from 26 August last year just so happened to mention the so-called no body, no parole laws that were referred to a committee by Liberal Democrat Aaron Stonehouse, according to this article. It is rather ironic that the government chose to use that as some kind of reference. Members may well recall that thank goodness that particular bill was referred by that member to a committee because it proved, yet again, to be deficient. It proved yet again that the government needed to move an amendment to its own legislation. This fake news that keeps getting peddled by the McGowan government about the Legislative Council showing constant disdain for the role of this chamber in reviewing legislation is beyond a joke. I add that what is as bad as this fake news that the McGowan government keeps peddling to *The West Australian* and other media outlets is the lack of integrity by these ministers of the McGowan government in suggesting that things are going to be done in a certain period when they have absolutely no idea whatsoever. Fancy telling *The Weekend West* that crime targets will be before the Corruption and Crime Commission as soon as January. On what basis would it ever suggest that?

Hon Michael Mischin: Especially when it does not bring a bill on.

Hon NICK GOIRAN: Exactly—when its legislation has not even passed the Legislative Assembly.

Why do I say that? The concern in this article was that the so-called sceptical upper house was going to have a problem with the bill because other matters were entwined in the bill. Members may well be aware that in the other place, those issues were separated and the one bill became two. At this point in time the matter had obviously not even passed the Assembly, yet people were complaining about the Legislative Council and how slowly things were going to progress here—the rocky territory of the Legislative Council! I would have thought the government would have its own house in order first. Clearly that was not the case because the government decided to separate that bill into two. When it was brought to the Legislative Council, I would have thought the government would have made it a priority. But no, that did not happen. Instead, do members know what the government made the

number one priority? It wanted to make sure that the Corruption and Crime Commissioner's pay was frozen! "Mr Corruption and Crime Commissioner and the Parliamentary Inspector of the Corruption and Crime Commission, we would like to give you more work to do and, by the way, we'd like to freeze your salary. Actually, before we give you the work, we'll make sure that your pay is frozen and then we'll give you some more work later."

Hon Alison Xamon: What was the outcome of the Salaries and Allowances Tribunal?

Hon NICK GOIRAN: It is very interesting that Hon Alison Xamon should ask that question. Incredibly, the government decided that it was the top priority before the end of last year to ensure that not only judges had their salaries frozen, but also of course members of Parliament had to have theirs frozen. I have previously given my comments on that. All of that said, "We're going to freeze the pay of MPs by way of a statute—a high priority piece of legislation—in circumstances in which the tribunal had already frozen it anyway." What a joke! We still had the Attorney General and his friends trying to criticise this place for the job that we were going to do. We are going to do that now—we are going to scrutinise the legislation. We will go into committee because of the government's ineptitude with the legislation. We are going to do all of that. But of course all of this could have been done last year. Do not shake your head, Leader of the House, because you are the one who chooses —

Hon Sue Ellery interjected.

Hon NICK GOIRAN: I am not taking your interjection.

Hon Sue Ellery interjected.

Hon NICK GOIRAN: No, sorry; I am not interested in your interjections.

What is unbelievable is that the Leader of the House could try to suggest that that was anything to do with delay on our part. It is the Leader of the House and the Labor government that chooses when bills are brought on. We do not choose when bills are brought on. The Leader of the House chooses when bills are brought on. She did not want to bring it on because she was too busy freezing everybody's salaries. Remember, that was the big priority. I notice the government never goes to the media to report those things. It does not say to the media, "By the way, while you're doing this article, can you please let everybody know we thought that we would freeze the salary of the Parliamentary Inspector of the Corruption and Crime Commission? We thought that was very important. And we're going to give him more work to do at the same time." I notice the government never does that.

Now to the substance of the bill, Mr Acting President, after we have exposed the sham and the fake news from the Labor government with respect to this bill. Let it be clear to anyone who is interested in the passage of this bill that it was only brought on by the Leader of the House this week. It could have been brought on a long time ago. The Leader of the House read the second reading speech into this place on 14 September last year. Here we are, some nine months later, debating it for the first time. On this very delayed bill before the house, I note that the government, in its wisdom, in its second reading speech, stated —

> Although Western Australia was the first jurisdiction to implement what was considered to be groundbreaking legislation providing for the confiscation of unexplained wealth, those powers have seldom been used. In the 16 years since the commencement of the Criminal Property Confiscation Act, a total of 28 applications for unexplained wealth declarations have been made. However, since 2011, only one application has been made. This is because the DPP simply has not had the resources to pursue those applications.

My question for the Leader of the House, who has delayed the passage of this Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill for nine months, when she eventually replies to the second reading debate of this delayed legislation, is: why has the Director of Public Prosecutions simply not had the resources to pursue these matters? That is the first question. The second question is: what quantum of resources would be needed for the DPP to carry out its function? Plainly, it used to do that. According to the government's second reading speech, it was going along swimmingly until 2011. Suddenly in 2011, there was a problem. What was that problem? Can we identify that problem? Was the DPP's budget suddenly slashed in 2011? I doubt it, but perhaps the government can let us know what this incredible set of circumstances was in 2011 that has resulted in the DPP suddenly not having enough resources to pursue people with unexplained wealth. Even if the Leader of the House can answer that question, what level of resources does the DPP say it needs to do this job properly? The Leader of the House should not tell us she does not know because the government is now asking the CCC to do this job, so someone needs the resources. The government must have been able to quantify what resources somebody would need to fulfil this function. Whether it is the DPP or the CCC does not matter; either way, they will need resources and the government surely must have quantified those resources before coming to the house to ask us to agree to empower the CCC in this fashion, in circumstances in which the DPP says it does not have enough resources to pursue the matters.

I note that, according to the government, the DPP is to retain its functions. The second reading speech specifically states —

> The bill does not propose that the conferral of powers upon the Corruption and Crime Commission in relation to unexplained wealth and criminal benefits be a transfer of those functions to the exclusion of the Director of Public Prosecutions.

The government has decided to give these functions to the CCC but to keep them also with the DPP. Remember that the DPP is the body the government says cannot do it because it is not resourced. The next round of questions for the government is: why are we continuing to empower the DPP in such a fashion, if the government has decided the powers should go to the CCC, and the DPP says it does not have the resources anyway? It seems to be rather pointless, but perhaps the government can explain that.

I find it rather curious that, in its second reading speech, the government has chosen to reference—somebody has given the government advice that it would be a good idea to do so in the second reading speech, which was eventually delivered in this house in September last year—the report to the Criminology Research Advisory Council. That was from December 2016, so the government then read into the house the following —

> A number of positive attributes of the New South Wales Crime Commission model were highlighted. These included that matters are dealt with by a single agency with experienced specialist financial intelligence analysts, are investigated using the agency's coercive powers to obtain information, and are settled in almost all cases without the need for costly litigation.

In its second reading speech, the government is saying that, in effect, it has decided that on the basis of this report of December 2016, it would be a good idea to follow the positive attributes of the New South Wales Crime Commission model. The government then proceeds to tell us that the very first of those attributes is that it is dealt with by a single agency, yet in the same second reading speech it tells us that it will keep some of the powers with the DPP. Is it a single agency or will multiple agencies be doing these functions? It seems rather peculiar, in the same second reading speech, to promote the virtues of a single agency dealing with this matter at the same time as saying two agencies in Western Australia will have these powers. Something is not quite right. That is okay because it is just that sceptical upper house that is asking these questions! It could not possibly be that the government has it wrong yet again!

I move on. I note that the second reading speech includes reference to recommendations made by the Joint Standing Committee on the Corruption and Crime Commission in the twenty-eighth report of 2012 and the first report of 2013. In its second reading speech, the government elected to also reference the fact that the Corruption and Crime Commission Amendment Bill 2012 was introduced into the Assembly on 21 June 2012 and that it proposed legislative amendments that provided the Corruption and Crime Commission with functions under the Criminal Property Confiscation Act. The only basis upon which the government could possibly include those pieces of information in the second reading speech would be, presumably, to add weight to what it is doing, albeit delayed extraordinarily by the Leader of the House, who chose not to bring on this bill for nine months. Nevertheless, the only reason she would do this would be to add weight to what the government is doing, despite the government surely knowing that the 2012 bill did not include just these types of functions for confiscation and the like; it included much more. It was a very, very controversial piece of legislation and new members opposite might be interested to know that on one of those occasions, I was in a difficult situation as the Chairman of the Joint Standing Committee on the Corruption and Crime Commission, having to take a contrary view to that of my party—something we have a little bit of liberty to do from time to time in our party, unlike members opposite. That was not a particularly pleasant time, but it was necessary because, as Hon Alison Xamon outlined in her speech, it was the joint standing committee's view at that time, of which I was chair, that the best way to fight organised crime in Western Australia was to ensure that the Corruption and Crime Commission was overseeing the police and that the police undertake the task of fighting organised crime. However, that was not the proposal in that bill; the proposal in that bill, which was popular at the time due to some work that had been done by the last Attorney General in the previous Carpenter government, was to look at converting the Corruption and Crime Commission into an organised crime fighter, so to speak. That was the popular thing to say. It is the kind of thing that easily attracts headlines and more fake news, yet upon proper analysis and investigation, it was clear to the committee that it was not a good idea. We were consistently getting feedback from individuals saying, "Don't go down this path", and I refer members to the multitude of reports that that committee tabled dealing with these matters. I question whether this government, in its haste to peddle fake news headlines, has bothered to read those reports. I question whether that has been done, because had that been done, the government would know that the Director of Public Prosecutions, amongst others, was suggesting that there is a better way to do this, and the better way to do this is to establish a standalone agency for confiscations. I understand that there are parties in this place that do not support the notion of confiscations as a matter of principle, and that is fine; they are quite entitled to that policy position. The point here is that irrespective of whether a member is pro or anti the capacity for a government to confiscate people's proceeds of crime and unexplained wealth, the evidence is that the best model

is a standalone agency, and that is not what the government is doing. The government is choosing to invest these powers in the Corruption and Crime Commission and, in doing so, is also retaining the power for the DPP to do likewise. It is quite within the province of the government to do that, but it ought to provide an explanation about why it has chosen to do that and it needs to do better than simply referencing joint standing committee reports that it plainly has not read. That will not be sufficient to pass the test in this house, even for an opposition that has indicated its support for the bill. We will still ask the government and put it to the test so that we are confident that it knows what it is doing and that there are no further errors in this bill other than those that have already been identified, even by the government itself.

The opposition's position, of course, will always be to provide rigorous scrutiny of government legislation. But that says nothing because there are members who have already expressed opposing views to what the government is doing. I say to the government: good luck in getting that legislation passed through in a speedy fashion; the legislation that it has chosen to delay for nine months and has chosen to bring in only now, and now just because it is the eleventh hour before the winter recess. Quick, quick! It needs to get this thing through as a priority piece of legislation! That is fine; the government is in control of the legislative agenda and it can bring it on when it wants, but do not expect us to suddenly decide that there will be no scrutiny of the legislation. That is not going to happen. That will never happen during this term of Parliament, Leader of the House. I do not know how long it will take the government to work that out, but it will eventually dawn on it that this opposition will be ruthlessly scrutinising all pieces of legislation, and we need to do that because this government consistently, since it was elected in March last year, has produced legislation that is flawed and needs to be fixed. This bill will be fixed, by the government's admission, and as evidenced by the proposed amendments on the supplementary notice paper.

I would like to ask the government a number of other questions and perhaps they are best done during the Committee of the Whole, but in order to perhaps facilitate the passage of this legislation as quickly as possible, hopefully this week—despite the fact that the government decided to delay it for nine months—I indicate to the Leader of the House that I have a number of questions. One question will include the not unexpected question about who was consulted in the drafting of this bill. I attended a briefing on this in August last year—I think I was there with Hon Michael Mischin—and I was told at that time that the Parliamentary Inspector of the Corruption and Crime Commission had not been consulted about the bill. That is what I was told during that briefing. I found it staggering that the person who has the chief oversight role of the Corruption and Crime Commission has not even been asked about new functions that will be given to the agency that he oversees. We could say, if we were a sceptical upper house, that the reason the government never consulted with the parliamentary inspector was that it was about to freeze his salary, and so it would not possibly want to have consulted with him about giving him new work, because it would have been a little embarrassing to say, "We have this extra work for you, Hon Michael Murray, QC, but we just have to let you know that we're going to freeze your salary at the same time." That would be a bit embarrassing. If we were a sceptical upper house we might ponder that, but irrespective, one would assume, would members not, that if the Parliamentary Inspector of the Corruption and Crime Commission had not been consulted about this bill in August of last year, fast forward to June 2018, surely he must have been consulted by now? Could anyone imagine the government telling us, in its reply to the second reading debate or in the committee phase, that after all this time it has decided to delay the bill for nine months and it still has not consulted with the Parliamentary Inspector of the Corruption and Crime Commission? That would be embarrassing, but I am sure we will not have that situation; I cannot possibly imagine that that is what would have happened. No doubt part of the reason that the Leader of the House has delayed the passage of this bill for nine months is so that she and her team can consult with the Parliamentary Inspector of the Corruption and Crime Commission. Given that that will be the most reasonable explanation for why this bill has been delayed for nine months, I look forward to hearing from the Leader of the House what the parliamentary inspector had to say about this bill. What was his feedback? Is that why there are now amendments on the notice paper? Were there other things that the parliamentary inspector recommended be amended but the government decided to decline? We will find out about all those things shortly.

I would like the government to also inform the house about feedback from the stakeholders who were consulted. Assuming that the information given to me in the briefing in August last year is true and correct, I know that the government consulted with the DPP, WA police and the District and Supreme Courts, and so I look forward to hearing from the government about what those stakeholders had to say. I do not want one of these typical responses from this government, "We consulted with those people and they were in favour of the bill." Do not tell me that, because that will just delay its passage when we get into the Committee of the Whole. That is just a nonsense response. We want to know exactly what they said. If that is in documentary form, it would be terrific if the government tabled those documents. That would really facilitate the passage of this, but knowing this government and its commitment to zero transparency and its specialisation in evasion, I suspect that it will refuse to table any of those documents and so we will have to go through it in more tedious ways and ask about each of those stakeholders and exactly what they had to say about this legislation.

I am regrettably rapidly running out of time, but I would like the government to also indicate to the house why it has chosen not to amend the definition of organised crime in this bill. For members' benefit, when the Joint Standing Committee on the Corruption and Crime Commission looked at the issue of how we would best fight organised crime in Western Australia, we said two things. Firstly, make sure that the police force is clean, and the best way we can do that is by ensuring we have an oversight agency—the body best placed to do that is the CCC—and get it to focus on that. Members may be aware that there was a period when the Corruption and Crime Commission was doing very little in its oversight of police. There were next to no independent investigations taking place at the CCC. Due to the pressure that was applied on the CCC at the time by the joint standing committee and the then Parliamentary Inspector of the Corruption and Crime Commission, there was a shift in culture at the CCC and we saw far more oversight of the police. That had the interesting side effect that suddenly the rapport between the police and the CCC was not as good. There were instances of, if you like, Mexican stand-offs between those two agencies, so the committee had to try to help those two agencies improve their working relationship. In that respect, I refer members to the eighteenth report, tabled in March 2015, titled "Improving the working relationship between the Corruption and Crime Commission and Western Australia Police".

The first thing the government should do if it wants to fight organised crime in Western Australia is make sure that it has a clean police force, whose job it is to tackle the Mr Bigs, and it can do that by having an oversight agency like the CCC that is focused on that function. The second thing that it needs to do is amend the definition of "organised crime". I have lost count of the number of reports that have been tabled by the Joint Standing Committee on the Corruption and Crime Commission asking for that to be done. If the government is ever going to do anything, that is the thing that it should do. I do not understand why the government has elected not to do that, because it is the most important thing to do in the fight against organised crime. Instead, it has decided to entrust the CCC with these confiscation powers for unexplained wealth when the Office of the Director of Public Prosecutions already has the capacity to do that; it just needs more resources. If the government knows anything about the unexplained wealth provisions that have worked in other jurisdictions, it will know that this will pay for itself, because the agency, whether it is the DPP or somebody else, will confiscate the proceeds of crime and unexplained wealth from these so-called Mr Bigs and that revenue will obviously be available to the government. It strikes me as odd that the simple thing that could have been done by the government has not been done, and I would like an explanation of why that is the case.

Did the government consider the tenth report of the joint standing committee tabled in April 2014 in the thirty-ninth Parliament, which some might refer to as a weighty tome, or was it too thick for the government to read and that is why we find ourselves in this situation? It was all a bit too much and there were too many pages to read and so it has gone for a thinner report that was tabled by the joint standing committee. That report, of course, is the twenty-eighth report, which was tabled in June 2012 and which I think Hon Alison Xamon quoted earlier. It is titled "Proceeds of crime and unexplained wealth: A role for the Corruption and Crime Commission?" Was it too hard for the government to read the thick report, which some have referred to as a weighty tome, and so it has gone for the easy version? We will find out in due course when the Leader of the House eventually gives her reply to the second reading debate, after having delayed debate on the bill for nine months.

We look forward to the answers to all those questions, because of course if any of those questions are not answered in the reply to the second reading debate, we will have to go into Committee of the Whole House. We will have to do that anyway because the government has amendments that it wants us to pass and the only way that can happen is by going into Committee of the Whole House. We will go into Committee of the Whole House because of the government. Let us not have any more of this fake news and start blaming Hon Alison Xamon or Hon Aaron Stonehouse because they will move amendments. Yes, they have amendments. That is not why we will go into Committee of the Whole House. We will go into Committee of the Whole House because the Leader of the House wants us to consider further amendments from her friend the Attorney General, as per usual.

In the few minutes I have left, I would like to know whether the government has given any consideration to the fact that if we proceed with this bill, the CCC will have to have a working relationship with the WA Police Force. In fact, I seem to recall that somewhere in the second reading speech there was mention of the sharing of information. If that is the case, has the government considered how that working relationship will work and how that can be done in the most effective fashion? Has it given consideration to the optimum model as set out in finding 10 of the joint standing committee's report of 28 June 2012? I realise I am asking the government to look at quite a few joint standing committee reports.

Hon Alison Xamon: Because a lot of work was done on it.

Hon NICK GOIRAN: A lot of work was done on it. No doubt the government is completely across all of this, because, remember, it has had nine months to get on top of this. That is why the Leader of the House has delayed the passage of the bill for nine months—so that there could be consultation with the Parliamentary Inspector of

the Corruption and Crime Commission, which, staggeringly, had not been done in August last year, and also to make sure that the government is completely across all the joint standing committee reports on these matters that were tabled in the thirty-eighth and thirty-ninth Parliaments.

I ask the Leader of the House whether she can advise when the CCC will be in a position to be operational to commence the proposed new function. Apparently, it was ready to go. It had Mr Bigs lined up in January for hearings. The government probably had to say to the Mr Bigs, "Sorry; can you not turn up? Can you just give us a bit more time? Can you just go about your ordinary business? Talk amongst yourselves, Mr Bigs. We'll call you back when we're ready. Unfortunately, we've decided not to bring on the bill in the Legislative Council. It's a little embarrassing. That's why we can't continue with your hearings." No doubt the CCC is in a position to be operational as soon as this bill passes. I look forward to the Leader of the House informing us about that and answering all those other questions that I have posed, preferably before we go into Committee of the Whole House, so that we can facilitate the passage of this bill in a speedy fashion.

HON SUE ELLERY (South Metropolitan — Leader of the House) [6.17 pm] — in reply: I thank members for their contributions to the debate on the important Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. Some of the issues have been raised by a couple of members, so I will not do it member by member, but if they have been raised by several members, that is how I will tackle it.

One of the first and, indeed, last issues raised was the relationship between the Corruption and Crime Commission and the WA Police Force. Their relationship is such that the commission's unexplained wealth investigations do not compromise or overlap with WA police investigations. I am advised that the commission has already established a strong working relationship with the WA Police Force proceeds of crime squad. The commission is working to establish a regular meeting with the WA Police Force for the purpose of de-conflicting investigations and targets to ensure that there is no conflict between the commission and the WA Police Force investigations.

It is anticipated that the majority of referrals for unexplained wealth investigations will come from the Western Australia Police Force. If the WA Police Force refers a matter to the commission for investigation, it will do so having determined that a commission investigation will not compromise or overlap a WA Police Force investigation. The commission has already established a quarterly meeting of interagency financial investigators. That meeting, of which there have been two to date, is attended by the WA Police Force's proceeds of crime squad. A memorandum of understanding exists between WA police and the commission that can be amended to include agreements in relation to unexplained wealth. The two agencies already successfully investigate serious misconduct cooperatively and work together for that purpose. There is no reason to believe that that cooperative relationship will not continue in relation to unexplained wealth. Information will be exchanged under proposed section 21AD of the amended Corruption, Crime and Misconduct Act 2003, which will provide the commission with a broad power to exchange information with appropriate authorities, including WA police.

The issue of negotiated settlements was raised. To paraphrase, the questions were: Will our anti–crime and corruption agency be negotiating with criminals? Is there not a risk when dealing with organised criminals that there will be a compromise that is not in the public interest? Questions of oversight were also raised. Confiscation proceedings are civil proceedings. Part VI of the Supreme Court Act 1935 provides a system for the mediation of civil proceedings. The Supreme Court's practice direction 4.2 states that mediation is an integral part of the case management process, and in general no case will be listed for trial without the mediation process having first been exhausted. As a result, there are both legal and ethical obligations upon the parties to civil proceedings, of which the commission will be one, to attempt to reach a negotiated settlement. Contested litigation is costly and time intensive. In appropriate matters, settlement is the best way to maximise the overall return to the state and, commensurately, the best way to maximise the overall deterrent and disruptive effect of the regime. The exercise of any aspect of the commission's exercise of its unexplained wealth function, including the conduct of any negotiated settlements, will be conducted under the oversight of both the Parliamentary Inspector of the Corruption and Crime Commission and the Joint Standing Committee on the Corruption and Crime Commission.

An issue was raised about how evidence obtained coercively by the commission would be used in CPC act proceedings, which are civil proceedings. Proposed section 61(8) of the CPC act provides that section 145 of the Corruption, Crime and Misconduct Act will apply to the examination of a person that occurs as a result of an examination order made by the commission. The effect of proposed section 145(1)(a) of the CCM act is that evidence given during an examination conducted by the commission will be admissible as evidence against the person in any proceedings under the CPC act, including any proceedings related to unexplained wealth. Similarly, proposed section 94(5A) of the CCM act provides that any statement of information coercively obtained under the section 94(1A) is admissible in evidence in any proceeding under the CPC act, including any proceedings related to unexplained wealth.

The next issue was that the experience of the Director of Public Prosecutions is that most unexplained wealth matters arise from criminal investigations, so will the commission be in a different position and find it difficult to

investigate people who are not suspected of criminal activity? The commission considers the WA Police Force to be one of the commission's major stakeholders in unexplained wealth, and anticipates that the majority of referrals for investigation will come from the WA Police Force. The WA Police Force has a number of criminal matters that for various reasons it cannot progress by way of criminal charges. In appropriate cases, the commission will fill that void by conducting an unexplained wealth investigation and disrupt criminal activity through confiscations. The commission has a role in investigating criminal conduct that amounts to serious misconduct under the CCM act—for example, offences of corruption or bribery—and anticipates that unexplained wealth matters may arise from those investigations. The benefit of unexplained wealth provisions is that there does not have to be a predicate criminal offence. The commission, having intelligence analysts, forensic accountants and covert capabilities, is in a position to proactively identify and investigate targets for unexplained wealth when there is insufficient evidence for a criminal investigation.

Another issue raised was how we will ensure that the commission's role to work cooperatively with the WA Police Force on unexplained wealth and its oversight role over the WA police do not merge and that cooperation does not compromise oversight. Section 33(1)(b) of the CCM act already provides for the commission and the WA Police Force to investigate cooperatively in relation to serious misconduct. The two agencies routinely conduct joint investigations for that purpose. There has been no suggestion that those cooperative investigations have compromised the commission's oversight role of the WA Police Force. A related issue to that is: will unexplained wealth investigations come at the cost of the commission being able to investigate serious misconduct? No. Under the CCM act, all allegations of serious misconduct received by the commission must be assessed by the commission, and this will continue. The commission regularly assigns priorities and, if necessary, suspends or terminates an investigation if resources should be committed to a more important investigation, and this practice will continue. The proposed unexplained wealth power is an important tool in being a disrupter. However, if the public interest is better served from time to time by a serious misconduct investigation, resources will be diverted accordingly.

The proposition was put that it was the view of the former DPP that a transfer of powers, or change to the system, ought to transfer all powers from the DPP and no longer involve it in confiscations. The question was: why is that not reflected in the policy of this bill? Prior to the drafting of the bill, the commission consulted with the then Acting Director of Public Prosecutions, Ms Amanda Forrester, SC, on the commission's proposal to be conferred with powers in relation to unexplained wealth. In her response to Commissioner McKechnie, QC, of 14 March 2017—I will check that—the acting DPP broadly supported a proposal to confer unexplained wealth functions and powers upon an agency other than her office; however, she expressed the view that it would be preferable that a conferral of unexplained wealth functions on another agency should not be to the exclusion of her office. The commission adopted the acting DPP's views.

A question was asked about whether the commission consulted with the DPP on the proposal, and if the current director had a different view from that of the previous DPP, why was that so. I have sort of started to touch on that already. Yes, the commission consulted with the DPP. Prior to the drafting of the bill, the commission consulted with the acting DPP, as she then was, Ms Amanda Forrester; I have already responded to that bit. The DPP was subsequently provided with a copy of the draft bill. Consultation between the commission and the DPP regarding proposed amendments followed. That resulted in the Attorney General moving an amendment to the bill—clause 43—on 7 September 2017 to delete proposed subsection (5A), which was included by way of a drafting oversight. The commission is not aware of any concerns of the DPP about the bill as it is currently drafted.

The former DPP gave evidence to the joint standing committee that discussed the three potential multidisciplinary models for dealing with civil non-conviction–based confiscations. Members should see page 27 of the committee's twenty-eighth report. Mr McGrath indicated that if resources were not an issue, the DPP would regard as the optimum model the creation of an independent confiscations agency—that was on page 27; however, he expressed concern in his evidence about the considerable planning and resources that would be required to create a standalone confiscation agency.

On the question of the adoption of the New South Wales Crime Commission model, using the Corruption and Crime Commission, the view of the then DPP, Mr McGrath, SC, was that as the commission operates in a multidisciplinary structure and is an investigative agency with wide powers, the CCC may well be placed to become involved in civil confiscations under the CPC act, and in particular unexplained wealth. That was on page 28 of the twenty-eighth report.

A question was asked about who had been consulted on the bill and whether the Law Society of Western Australia or the Criminal Lawyers Association of Western Australia had been consulted. The answer is no. The Corruption and Crime Commission consulted by letter with the Chief Justice of Western Australia, the Chief Judge of Western Australia, the Director of Public Prosecutions and the Commissioner of Police. By way of letter dated 7 April 2017, the former Commissioner of Police Dr Karl O'Callaghan offered his support for the draft of a cabinet

submission to amend the Criminal Property Confiscation Act to allow the commission to conduct unexplained wealth investigations.

The issue was raised of what the government realistically expected and how success was to be measured. Our minds were terrifyingly drawn to an image of the Attorney General in a bath full of coins.

Hon Michael Mischin: I don't think the world's ready for that, which is why I'm concerned.

Hon SUE ELLERY: I am certainly not ready for it. I do not know about anybody else.

The question was asked about what the measure of success would be. The answer is that the primary purpose is deterrence rather than the collection of some target amount of money, for example, and that it would be speculative to estimate the number of investigations that might be used to determine whether it has been successful. It would be speculative to determine what amounts would be realised by the legislation, certainly during the initial period of its operation. That is one of the reasons the commission has requested that the question of funding be reviewed after three years when the commission and Parliament will have a much better idea of the numbers, the range of investigations and the quantum of funds that have been paid into the confiscations account.

The question was raised about the resources that will be devoted and where they will come from, and whether the Corruption and Crime Commission would change direction from being an integrity agency. The commission has undertaken to exercise the proposed function within existing resources and to review that after three years. The commission will manage priorities to deal with what is regarded as most urgent from time to time. As noted in the Corruption, Crime and Misconduct Act, all allegations of serious misconduct must be assessed and that will continue. The commission regularly assigns priorities and, if necessary, suspends or terminates an investigation if resources should be committed to more important investigations. That practice will continue.

A question was asked about what terms of agreement, if any, about payments from the confiscations fund to the commission have been agreed to and what work has been done to determine a memorandum to decide what money will go to the commission from money that is seized? Clause 73 of the bill will amend section 131 of the CPC act to ensure that the commission will have access to funds that may be paid out of the confiscation proceeds account at the direction of the Attorney General. No arrangements have been put in place between the Attorney General and the commission to assist in determining the circumstances for money to be paid to the commission out of that fund.

The question was raised of what we would see in annual reports and budget papers to show what the success has been. The commission proposes to report on the same matters that the DPP includes in its annual report relating to CPC act proceedings that are relevant to unexplained wealth and criminal benefits, including the number of freezing orders obtained and the number of declarations made by the court. In addition, the commission will broadly describe the volume of matters that it has dealt with and the processes involved in exercising its function.

Questions were raised about some negotiations that took place with the commonwealth and some other jurisdictions before the change of government in 2017. I am advised that officer-level negotiations were authorised by the Law, Crime and Community Safety Council, at least by Attorneys General of the commonwealth, Victoria, New South Wales, and Western Australia, but the negotiations were undertaken without state commitment and occurred during the term of the previous government. Victoria subsequently pulled out of those negotiations and the current Western Australian government has not been a part of those negotiations. I understand that negotiations have continued between the commonwealth and New South Wales. An issue was raised at the ministerial level with the commonwealth for a limited referral of powers to enable the commonwealth to prosecute with state laws for multijurisdictional offences. I may have got the question wrong, but as we understand the question, we understand the reference to offences is that, in the context of the referral negotiations, for an unexplained wealth order to be obtained under the commonwealth Proceeds of Crime Act, there needs to be some relationship to an offence. That is under section 179E(1) about the making of an unexplained wealth order. Under the previous Western Australian government, Western Australian officers were encouraged to participate in the negotiations I have already referred to the limited referral of Western Australian legislative powers to the commonwealth Parliament. At a meeting of the Law, Crime and Community Safety Council on 19 May, Western Australia indicated that it would not continue to be a participating jurisdiction in those negotiations.

Hon Michael Mischin: Sorry, what date was that?

Hon SUE ELLERY: It was May last year.

A text-based referral by state Parliaments of state legislative powers to the commonwealth to enable the commonwealth Parliament to amend the Proceeds of Crime Act 2002 would in turn enable commonwealth agencies to investigate unexplained wealth matters when there is a link to state or territory offences. That is, this reference will insert into the Proceeds of Crime Act both state and territory offences to enable the Australian Federal Police to use relevant powers and take action under that act on unexplained wealth connected with those state offences, which is what currently happens with wealth derived from commonwealth offences.

Another question was raised about policy development regarding protections against anti-consistency provisions to negate state law and a variety of other things to protect state interests. Again, Western Australia has not been involved in any negotiations regarding this matter since May 2017. I am not sure that I can add anything further to that.

Another question was asked, but I think the answer is pretty much the same, about the national unexplained wealth cooperative scheme and the expected relationship to unexplained wealth powers proposed in this bill. No commonwealth legislation has been based on a New South Wales referral enacted to begin the process of trying to establish a national unexplained wealth scheme—that is, a scheme involving other states in addition to New South Wales. I am advised that Western Australia gave an indication in May—I think it was May 2017, but I will have to check it because one line in my notes says 2017 and another says 2018—that Western Australia would no longer participate in the referral negotiations based on objections from the WA Police. WA Police was not supportive of the scheme and raised a number of objections, including that the proposed sharing arrangements would create a burdensome regime of recording confiscation actions, that the proposed equitable sharing arrangements would capture all confiscation actions, and that other jurisdictions do not have similar drug trafficker declarations. The scheme was likely to oblige Western Australia to share the proceeds of its forfeitures, with little assurance that there would be a corresponding return. No business case was made that the formal scheme proposed would offer any net benefit over the existing operational opportunities for joint operations between the state and commonwealth agencies. I am advised that the date on which Western Australia advised it would no longer be participating in those negotiations was 19 May 2017, not 2018.

I will explain to the house that I am going to give as many detailed answers as I can in my second reading reply. Members should note that if we get chance to go into committee before seven o'clock—I hope we will—I will seek to come out of committee at five minutes past seven so that we can deal with the disallowance matter.

Hon Peter Collier: We will take one minute on this side.

Hon SUE ELLERY: Yes. I am trying to get through the second reading reply so that we can get into committee, but I am conscious of the time.

Other matters were raised in the second reading debate. Hon Aaron Stonehouse raised a question about whether there would be additional resources for the Corruption and Crime Commission. If I can paraphrase the member, he said that without an additional allocation of resources to the commission, these additional functions would either not be carried out or the Attorney General would water down the existing functions of the commission, limiting its ability to validly carry out its oversight function. I have touched on that a little bit already but I will add some more. In letters between the Attorney General and the Corruption and Crime Commissioner dated 7 September 2017, the commissioner was asked whether he considers that the commission has sufficient resources to be able to undertake the unexplained wealth functions proposed by the bill in addition to its existing functions. The commissioner's response was —

> 1. Yes. The Commission has undertaken to exercise the proposed function within existing resources and review after three years. The scourge of the illicit drug trade and serious misconduct both impact on the state. The Commission will manage the priorities as to deal with what is regarded as most urgent from time to time.

The Attorney General then asked whether the commissioner considers that the unexplained wealth functions proposed by the bill will or could in any way distract the commission from fulfilling its existing functions in relation to potential serious misconduct and corruption by public officers. The commissioner responded —

> 2. No. Under the CCM Act all allegation of serious misconduct must be assessed. This will continue.
>
> The Commission regularly assigns priorities and if necessary suspends or terminates an investigation if resources should be committed to a more important investigation.
>
> This practice will continue.
>
> The proposed unexplained wealth power is an important State tool in the disruption of criminal activity, particularly the illicit methamphetamine trade.
>
> However if the public interest is better served from to time by a particular serious misconduct investigation, resources will be diverted accordingly.

One of the benefits of conferring the unexplained wealth functions of the Director of Public Prosecutions on the commission includes removing from the DPP the requirement to act as investigators and prosecutors, which would eliminate the compromise to the DPP's independence identified by the then DPP.

The underutilisation of the unexplained wealth provision was raised by a couple of honourable members. I can provide some response to that. I am not able to provide any information on whether there was underutilisation in 2011. Obviously, we were not in government at that time and honourable members interested would need to ask those who were. Since the commencement of the Criminal Property Confiscation Act, the DPP has paid over $101 million into the confiscation proceeds account. A significant proportion of confiscated property arises from the conviction of an accused person for a serious drug-related offence and the subsequent declaration that the person is a drug trafficker. Although the recovery of proceeds of crime under the provisions of the act are functions that the Western Australia police and the DPP perform, the provisions related to the investigation and confiscation of unexplained wealth are seldom used. I think the following point was also referred to by members. In the 16 years since the commencement of the act, the DPP has made a total of 28 applications for unexplained wealth declaration. Of those applications, 27 were made before 2011. In early 2011—I think this will help Hon Nick Goiran—the DPP placed a moratorium on making any further applications under section 11 of the act for the following reasons. The DPP has experienced a number of issues that have made it, by its own admission, ineffective in the area of unexplained wealth. The DPP is required to be both investigator and prosecutor, and this position serves to compromise the independence of the Office of the DPP for Western Australia. A second difficulty was noted by the former DPP, Mr McGrath, SC, in his evidence to the Joint Standing Committee on the Corruption and Crime Commission, which states —

> … what we do not have in this state is a multidisciplinary approach to the Office of the Director of Public Prosecutions—the prosecution agency for serious crime.

The reality is that the successful confiscation of unexplained wealth requires more than just simply asking a criminal target to explain their financial situation. The DPP is required to conduct what are resource-intensive financial investigations, work for which the DPP is not properly or adequately resourced. Mr McGrath, SC, expressed the view to the joint standing committee that an immersion of civil legal staff with investigators and forensic officers is required to properly conduct unexplained wealth investigations.

Another difficulty experienced by the DPP is the settlement of proceedings. The joint standing committee inquiry found that examinations in support of unexplained wealth investigations under the provisions of the act are regarded as ineffective by the DPP owing to the need for these examination to be conducted as part of a court process. The DPP's experience is that it has conducted a number of examinations during unexplained wealth investigations that have largely been limited in their effectiveness compared with bodies that conduct their examinations outside the purview of the court process. The process appears to the DPP to motivate persons of interest to come to the party and talk, which ultimately leads to a settlement. That evidence was given before the joint standing committee on 2 May 2012.

Hon Nick Goiran interjected.

The PRESIDENT: That is not always helpful. I think the Leader of the House is trying to finish her remarks.

Hon SUE ELLERY: I am trying to canvass everything. We are going into committee so the member knows he will have the opportunity to ask me questions.

I have letters containing feedback from stakeholders. I think Hon Nick Goiran asked about what we heard back from stakeholders. I have those letters and I have permission from the commissioner to table those.

[See paper 1424.]

Hon SUE ELLERY: I was asked if the government has considered the finding 10 of the 2012 report, which states —

> The optimum model for conducting investigations of unexplained wealth in Western Australia under the provisions of the *Criminal Property Confiscation Act 2000* would require the creation of a new "confiscations agency," which would operate independently from both the WA Police and the Office of the Director of Public Prosecutions.

The view was taken that that is a resource-intensive and expensive model. Although it is proposed as the optimal model, the commission is best placed as a multidisciplinary agency that is already well equipped.

An issue was raised by Hon Charles Smith, I think, about freezing notices and that there can be delays in banks complying with requests that in effect impede on criminal matters. The bill proposes amendments to section 94 of the Corruption, Crime and Misconduct Act. That and the commission's power to compel the provision of information under section 95 of the CCM act will work together to facilitate the commission being in a position to obtain information more quickly from institutions such as banks and the commission will not have to solely rely on court-ordered production orders, which will likely reduce delays.

Hon Nick Goiran had a question about the definition of organised crime. I am advised that unexplained wealth laws do not require proof that the asset owner has committed a criminal offence. I think Hon Nick Goiran mentioned this in a broader sense as well, but in respect of this bill to link the unexplained wealth function to a definition of organised crime would defeat the intention of the unexplained wealth provisions under the Criminal Property Confiscation Act. Under the CPC act, the objective of the bill —

Hon Nick Goiran: Just leave it.

Hon SUE ELLERY: Yes, I am sorry.

The commission's organised crime function under part 4 is only enlivened upon an application by the Western Australian Commissioner of Police. The commission's power on organised crime is limited to authorising the WA Police Force to use exceptional powers and to obtain fortification warning notices.

A question was asked about consultation with the Parliamentary Inspector of the Corruption and Crime Commission. Informal consultation between the commissioner and the parliamentary inspector has occurred; however, the primary functions of the parliamentary inspector under the CCM act will not be affected by the bill. The parliamentary inspector has primarily an audit function of the CCC. If the bill passes, the commissioner looks forward to reporting to the parliamentary inspector, as required by the CCM act, on all aspects of his function and to continue dialogue as to the effectiveness of commission procedures and its compliance with these laws if they are passed.

When will the commission be ready to commence the new function? The commission will be operational in relation to unexplained wealth from 1 July 2018.

I think that might be it. With that, Madam President, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon MICHAEL MISCHIN: I have a number of questions on the matter. I thank the Leader of the House for attempting to address the rather wide variety of questions that I posed during the course of my second reading address. I would like to get some more specific information on some of those matters. The Leader of the House mentioned that the Attorney General in the other place moved to delete subclause (5)(a), which had been included as a drafting oversight. That was the way that it was put. Can the Leader of the House explain what that clause was about? I have a copy of the original bill that was in the Assembly and under consideration, but I am not sure what it was that the Leader of the House was referring to that had to be deleted as a result of a drafting oversight.

Hon SUE ELLERY: I might ask to sit when I next answer questions.

The DEPUTY CHAIR (Hon Robin Chapple): Yes, certainly.

Hon SUE ELLERY: I take the honourable member to the *Hansard* of 7 September last year. But for ease of reference, because I assume that the member does not have that in front of him, I will read the page on which the Attorney General moved at page 18, line 7 of the bill to delete "and (5)(a)". The Attorney General said —

> This was a little oversight in the drafting of the bill, which was picked up by an eagle-eyed officer; actually, it was picked up by the Director of Public Prosecutions during consultation. This amendment to delete "and (5)(a)" will ensure that there is no confusion about which agency may seek a freezing order in drug trafficker matters. To be declared a drug trafficker, a person must be in possession of drugs over the prescribed amount. From memory, it is over 28 grams for amphetamines, for example. A person convicted of or found in possession of over 28 grams of amphetamines would be a declared drug trafficker …

Hon Michael Mischin: Can the Leader of the House make reference to the page in the original bill?

Hon SUE ELLERY: The extract I have in front of me is from the Assembly *Hansard* of Thursday, 7 September 2017. I assume it is consideration in detail of the bill. I referred to pages 6 and 7 of the *Hansard* copy that I have.

Hon MICHAEL MISCHIN: Can the Leader of the House point me to the pages of the bill?

Hon SUE ELLERY: In the bill before the Assembly, the reference was page 18, line 7 to delete —

Hon MICHAEL MISCHIN: The bill originally read —

> In section 43(3)(c) and (5)(a) delete "DPP" and insert:

Did the amendment delete the reference to (5)(a)?

Hon SUE ELLERY: It was delete "and (5)(a)".

Hon MICHAEL MISCHIN: Thank you.

I am considering the documents the Leader of the House tabled, which consist of four letters. One letter is from the Chief Justice of Western Australia dated 7 March 2017 to the Corruption and Crime Commissioner and refers to his letter of 28 February 2017 and the invitation to comment on the draft cabinet proposal enclosed with that letter. I will come to that in a moment.

Is it fair to summarise the effect of the Chief Justice's correspondence as being that he denies having any ability to express a view on whether the CCC should be conferred this power? He states —

> The question of which agency of Executive Government is best placed to undertake the efficient discharge of the function of investigating and prosecuting proceedings relating to unexplained wealth is in my view essentially a matter for Executive Government and is not a matter upon which I wish to comment. Viewed from the perspective of the exercise of the jurisdiction conferred upon the court I can see no basis for any suggestion that the Commission is any less able or less appropriate an organisation to undertake the function to which I have referred, especially given that the Commission enjoys the same independence from executive direction as the Director of Public Prosecutions and, in the event the court proceedings are commenced, would no doubt act through legal practitioners who are subject to the same professional obligations as members of the Office of the Director of Public Prosecutions.

Then he made some comment about the potential need for additional resources in the Supreme Court. There are no surprises there. He is not making any comment about the practicality and he is not in a position to comment on whether it is a good idea for the use of resources or otherwise. Would that be a fair summary of his comments?

Hon SUE ELLERY: The honourable member probably had five more minutes than I have to read the letters, so I ask him to give me a minute. That would be accurate.

Hon MICHAEL MISCHIN: Secondly, there is a letter dated 7 March 2017, again referring to the Corruption and Crime Commissioner's letter—I presume the same one or in similar terms—dated 28 February 2017. This letter is from the Chief Judge of the District Court, commenting on the proposal to assign to the CCC the functions and powers currently held by the DPP and WA police. That is a little equivocal because it is not clear whether the proposal is about assignment of those powers to the exclusion of the DPP and WA police or in parallel with the WA DPP and WA police—the same powers or the powers. In any event, he states —

> I am reluctant to make any submissions on the proposal given the independent position of the courts.

Is it fair to say that that is not an endorsement of the proposal?

Hon SUE ELLERY: The honourable member should remember the context. Hon Nick Goiran said, "I don't want the minister to be telling me that she won't tell us what the result of that consultation was." I make no comment on the degree or otherwise to which they expressed a point of view. I was asked—some might even suggest that I was directed—not to provide the house with an answer, which was, "I cannot tell you what they said", so I tabled the letters.

Hon MICHAEL MISCHIN: The minister should not get me wrong; I am not criticising her. I am simply clarifying the extent of the consultation and what feedback has been received from those agencies. It seems to me that the Chief Judge of the District Court is not particularly able, like the Chief Justice of the Supreme Court, to comment on the merits of the proposal other than how it may affect the jurisdiction of their courts and the resources that may or may not be necessary in order to accommodate this additional responsibility on the part of the CCC.

I turn now to what the Chief Judge said in the final paragraph of his letter. It might be useful to get some comment on this in due course. He said —

> However, one issue that might require consideration is the possible obligation to give discovery in civil proceedings and the extent that may create awkwardness in view of the Commission's functions and powers.

Before I go to any of the other feedback from those who were consulted by the commissioner —

Hon Sue Ellery: Member, will you take an interjection? I am conscious of the time. Would you mind if I did not respond to you now and ask the Chair whether we may report progress?

Hon MICHAEL MISCHIN: That is no problem at all, minister.

Hon Sue Ellery: Thank you.

Hon MICHAEL MISCHIN: Presumably we will not finish this today, so if the minister would be good enough to use this opportunity to take some advice on the elements of the letters that she handed up, I would appreciate it, because the minister would then be in a better position to respond when we return to our consideration of this matter.

Progress reported and leave granted to sit again, on motion by Hon Sue Ellery (Leader of the House).