

**CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2017**

*Discharge of Order and Referral to Standing Committee on Procedure and Privileges — Motion*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [7.31 pm] — without notice: I move —

That the Corruption, Crime and Misconduct Amendment Bill 2017 be discharged and referred to the Standing Committee on Procedure and Privileges for consideration and report by no later than Tuesday, 10 April 2018.

**HON MARTIN ALDRIDGE (Agricultural)** [7.32 pm]: I rise on behalf of the Nationals WA to indicate our support for this motion that the Corruption, Crime and Misconduct Amendment Bill 2017 be discharged and referred to the Standing Committee on Procedure and Privileges. I understand that this motion arises from an agreement with all parties to refer this bill to the procedure and privileges committee to report. I want to make some brief remarks on our motivation to refer this bill to that committee. This bill was introduced into the Legislative Assembly in a form that is quite different from the form in which it now exists in the Legislative Council. Two bills have now been introduced in the Legislative Council to make amendments to the Corruption, Crime and Misconduct Act 2003, this bill being one of them. This bill deals with offences that arise under both the Criminal Code and the Parliamentary Privileges Act 1891, over which the Parliament and the courts have concurrent jurisdiction.

The reasons for the National Party's support for this motion are simple. This bill goes to the privileges and sovereignty of the Parliament. Anything that sniffs of that to any degree should be properly investigated and inquired into by the appropriate committee of this Parliament, which in this case is the Standing Committee on Procedure and Privileges of the Legislative Council. The Leader of the House representing the Attorney General gave some assurances in her second reading speech that the reinsertion of the word "exclusively" would not impact on the privileges of the Parliament as outlined in the Parliamentary Privileges Act 1891. In a further briefing on the bill, the National Party sought assurances from both the Corruption and Crime Commission and the Solicitor-General, and they have provided advice that, in their view, this bill will not impact on the privileges of the Parliament. Having said that, we believe this bill is worthy of referral to ensure that the privileges of the Parliament are not unknowingly eroded by the passage of this bill.

The forty-fourth report of the Standing Committee on Procedure and Privileges of the thirty-ninth Parliament deals with an issue of privilege that was raised by Hon Sue Ellery, MLC. That report was tabled in this house in November 2016. I am sure members do not need reminding of that report. The report found that a number of breaches of privileges had been committed by individuals and also by the Corruption and Crime Commission itself. The committee recommends in recommendation 5 that a memorandum of understanding be developed between the houses of the Parliament of Western Australia and the Corruption and Crime Commission. Therefore, we need to ensure that in amending the Corruption, Crime and Misconduct Act, we deal with that unresolved matter. The report also pointed out that the lines of delineation between the Parliament and investigatory bodies such as the Corruption and Crime Commission, the WA Police Force and other state agencies, and potentially also federal agencies, are not black and white. Obviously, in investigating crimes under the Criminal Code or other statutes, there could be a requirement from time to time to access privileged material. The report found that in the issue of privilege raised by Hon Sue Ellery, the privileges of the Parliament were not adhered to by the Corruption and Crime Commission.

Although that is somewhat unrelated to the intent of this bill, it raises significant concerns. From my perspective and from the perspective of the National Party, this bill should be referred to the Standing Committee on Procedure and Privileges for report by the date stated in the motion moved by the Leader of the House. The National Party will be supporting the referral of this bill.

**HON ALISON XAMON (North Metropolitan)** [7.36 pm]: I rise on behalf of the Greens to indicate that we are also supportive of the discharge and referral of the Corruption, Crime and Misconduct Amendment Bill 2017 to the Standing Committee on Procedure and Privileges. I am very pleased that this bill will be referred to that committee. I note that in the other place, the motion to refer this bill to that committee was lost. However, there was an assumption that this house would scrutinise that bill very closely. That is probably an accurate assumption, because that is what we do.

I want to put a few brief points on the record that I hope the committee will take into account when it considers this legislation. Clearly, we are trying to balance the tension between parliamentary privilege—which is to ensure that the people's representatives are not impeded in carrying out their duties—and the reasonable expectation that crime and corruption will be investigated and prosecuted appropriately. We need to look at the necessity for this bill. There is a reason that Parliament is given powers, privileges and immunities and has had a history of self-regulation. It is to protect the constitutional functions of the Parliament, not those of members of Parliament

per se. I hope that will be looked at. The value had resided in the exclusivity of the Parliament. It is important that we look at examples in the past when we have not had a tripartite system of power.

The Corruption, Crime and Misconduct Amendment Bill 2017 will deliver new powers of investigation to the Corruption and Crime Commission in relation to members of Parliament in cases in which parliamentary jurisdiction does not apply. Parliament already has some wide investigative powers. Obviously, Parliament cannot conduct clandestine investigations, but it can make findings, impose penalties and do a range of other things.

I really hope that we can review the committee's procedures, because I am aware that the Chief Justice has made some important points and criticisms around procedural unfairness in the way that those investigations can be unpicked. It is useful to explore that. Where Parliament has already exceeded its exclusive jurisdiction, I note that the police and the courts already have their usual powers. I hope the committee can look at the practical effect of the bill on Parliament's functions, because the Greens are concerned that seizure and compelling attendance for an investigation could affect parliamentary functions, especially the seizure of hard drives and papers of a member of Parliament, Clerk or committee; or we could have a situation in which the Corruption and Crime Commission has premature access to evidence that has been taken by the Joint Standing Committee on the Corruption and Crime Commission. One of the things that I am particularly concerned about is that it may hinder the information flow to MPs, including from whistleblowers or potential whistleblowers. I have also put on the notice paper a proposed amendment around oversight of the CCC in relation to these functions and I would welcome the committee looking at that particular amendment or at least the policy behind why I have put that amendment forward.

The act has always contained a system of checks and balances because of the extraordinary powers of the CCC, and Parliament is one of those that traditionally had the capacity to oversight the CCC. Already within the Corruption, Crime and Misconduct Act 2003, section 27 contains safeguards for other oversight bodies like the Corruption and Crime Commissioner, the parliamentary inspector and judicial office holders. I note that in previous versions of the act, when the CCC had the power to investigate MPs, the act also contained safeguards in regard to members of Parliament. Those were sections 27A and 27B, which have now been repealed. The first part of my proposed amendment does not restrict the CCC in any way. It provides a capacity to shine a light on it if there is any chance that the CCC is overstepping its jurisdiction. I would welcome the committee looking at that and indicating whether it thinks it is a path that is worthwhile going down. It does not have to be my amendment of course, but something that at least addresses the issue of oversight.

I hope that the CCC can look at what is going to happen with information that is obtained incidentally in the course of investigating an MP, for example if a public servant is heard making an unrelated or unauthorised disclosure to a member of Parliament. What does it mean for parliamentary immunity to continue to apply in respect of an MP or a whistleblower whose disclosure is closely connected to the MP's work, such as if they have asked questions in Parliament or motions for inquiry? We need to remember that the CCC's core function is meant to be fighting organised crime by the oversight of the police not as an alternative to police, but I recognise that over time it seems to have become muddled. There needs to be some examination about whether this is further directing CCC resources away from the oversight of police. Those are just a few comments that I wanted to make. It is really good that the committee will be looking at this and I look forward to getting the report.

**HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition)** [7.43 pm]: The opposition supports this move, indeed it is something that the opposition considered ought to have been done right from the very beginning with the Corruption, Crime and Misconduct Amendment Bill 2017. Members will recall that the word that has been the focus of this particular bill was removed some years ago. It is my recollection that it was done on the basis of advice from Clerks of this house because of the redundancy of that terminology and the clash between what was proposed as one of the powers of the Corruption and Crime Commission and parliamentary privileges. Nevertheless, the restoration of the term has been the subject of a bill that was introduced in the other place as part of an omnibus bill. I do not use that in a technical sense, but one that embraced a number of other matters, particularly the conferment on the Corruption and Crime Commission of the power to do further work on organised crime. This was sort of an afterthought as part of that bill. When it was pointed out that this particular element was of a distinct nature, unrelated to the remainder of that rather more comprehensive bill focused on the seizure and confiscation of property, the Attorney General split the bill into two, hiving off this particular piece. But it did not stop him from saying at the time that our concerns about the manner in which it had been brought forward was some kind of an indication that we were trying to protect corrupt members of Parliament. That is the sort of juvenile comment that we have learned to expect from him. The opposition's position right from the very beginning was that because this involves the privileges of Parliament—because of the doubt surrounding that—the powers of the Corruption and Crime Commission, the potential infringement of it, the history of reports from this place that have cast doubt on investigations of the Corruption and Crime Commission and others and its ability to prosecute matters involving members of Parliament when they may infringe on parliamentary privilege, the proper way to deal with this is and was that it be looked at as a discrete matter by the procedure and privileges committee of either this house, the other place or both to ensure that parliamentary privilege was preserved to the

maximum possible while also permitting the Corruption and Crime Commission to do its job and weed out corruption if that happens to be the case with members of Parliament.

Frankly, I am very keen that the procedure and privileges committee give advice on this matter because there are a number of members of Parliament that I would like to have looked at by the Corruption and Crime Commission over a number of matters—perhaps they are just a whim on my part. If it does investigate members of Parliament, I would want to make sure that not only is the investigation sound, but also the commissioner is not brought up and admonished—as happened in the past as the result of a particular action that he took for exceeding his powers and infringing upon Parliament’s privileges—and that anything that emerges from that, by way of a prosecution and court proceedings, will stick. It goes further than simply allowing the Corruption and Crime Commission to investigate public officers and members of Parliament. If there is an infringement upon parliamentary privileges, if those are encroached upon and if the evidence that is necessary to establish a case is subject to the privileges of Parliament, that can derail and frustrate a prosecution of the matter. That is the element that is not being explicitly dealt with in this legislation. On the basis of the briefings that I have received from the Solicitor-General and others, it is an area that has not been specifically addressed because that is outside the brief that was given to those involved in drafting this bill. I hope that that issue can be overcome and attended to, but the proper way, it seems to me—the prudent way—is not a rubber stamp, rushing into it and being able to trumpet what a great activist Attorney General he is, but at the end of the day to end up with a bill that is sound and with some legislation that will properly address the question of whether privileges are being affected and encroached upon. We will end up with something that will allow the authorities to do their job and to supervise, oversee, investigate and ultimately prosecute public officers who are falling short of their obligations.

The opposition supports this referral. I wonder whether 10 April may not be a bit of a short time frame, but we will see. It certainly could have saved an enormous amount of time if the bill had been referred at the end of last year. The bill was one of many that was sitting on the notice paper, not regarded by the government as sufficiently urgent to be dealt with before we rose. Having said that, it could easily have been referred by the government to the Standing Committee on Procedure and Privileges of this place or even a joint arrangements so that both houses could properly consider the implications of this on their privileges and come up with a solution that would address the public interest, but also preserve, to the extent possible, the important privileges of the Parliament. We support the referral and look forward to the report of the committee in due course.

Question put and passed.