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

Committee

Resumed from 27 June. The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR: I might remind members that last evening when we concluded, Hon Aaron Stonehouse had just asked a question and we were waiting on a response from the minister.

Hon AARON STONEHOUSE: Last night I asked a question about the second reading speech, which refers to criminal property confiscation around crime-used property, crime-derived property and drug trafficker declarations remaining within the exclusive jurisdiction of the Director of Public Prosecutions. The minister clarified for me the incidence of crime-used and crime-derived property, and that it would technically be possible for the Corruption and Crime Commission to make applications to the court for a freezing order—thank you for that.

Last night before we rose, I was leading in to clarifying the amendments to section 43(5), which deals with drug trafficker freezing orders and will be amended to refer simply to the "applicant for the freezing order". If we look at section 41(1), this would seem to include the CCC and empower it to make freezing orders also. I understand that would be highly unusual, I imagine, as drug trafficker freezing orders are usually sought as part of criminal proceedings for some kind of drug-related charge. Is my understanding correct that the CCC would technically be empowered to apply for freezing orders in the instance of drug trafficker declarations?

Hon SUE ELLERY: We think that the member may have been looking at the earlier version of the blue, which is the marked-up copy of the bill. The marked-up copy has not been reproduced. However, the bill on the parliamentary website is the most up-to-date one. The reference to "and (5)(a)" was deleted from clause 37(2) of the bill by amendment in the other place on 7 September 2017. It was inadvertently placed in the bill by the drafters. It was never intended that the CCC would seek a freezing order on drug trafficker grounds or would have any role in drug trafficking matters.

Hon AARON STONEHOUSE: I thank the minister for clarifying that for me. I do not have a background in law so forgive me if this is a silly question. I am wondering whether evidence obtained by the CCC through an examination order, a production order, a moratorium order, a freezing order or what have you, can then be used in either a criminal or a civil case separate from the property confiscation proceedings; is that possible?

Hon SUE ELLERY: If I take the member to clause 15, he will see that it inserts some provisions into the Corruption, Crime and Misconduct Act 2003. Evidence of an examinee in an unexplained wealth investigation may be used for the following purposes: to assist in the investigation of serious misconduct, so that is a derivative use; to provide information to another body when a matter is referred for prosecution or disciplinary action, a derivative use; to prosecute contempt or other offences under the Corruption, Crime and Misconduct Act in limited circumstances in which a person is cross-examined on an inconsistent statement in criminal proceedings; and as evidenced in proceedings under the Criminal Property Confiscation Act and any civil proceeding. The effect of that is it applies the same admissibility rules for the use of a witness's evidence under compulsory examination as applied to serious misconduct functions and it extends to use in civil proceedings or under the Criminal Property Confiscation Act.

Hon AARON STONEHOUSE: I thank the minister for clarifying that for me. That is somewhat of concern to me given the CCC's power to compel people to give evidence. Maybe the minister can clarify this for me too. My understanding is that the CCC has the power to compel someone to give evidence and legal professional privilege cannot be used in those instances. The CCC's power overrides legal professional privilege; is that true?

Hon SUE ELLERY: I preface the technical answer by, if you like, a policy answer, which is that there is always a judgement to be made about getting the balance right between protecting the civil rights of individual citizens and acting in the greater good of the whole community. When we are dealing with matters that the community deems to be of such seriousness that we ought tip that balance in favour of one versus another, that is the kind of scenario we are talking about here.

To provide the member with the technical response, the purpose of the amendment is to achieve consistency between the provisions relating to legal professional privilege under both acts. Under section 139 of the Criminal Property Confiscation Act, legal professional privilege is, in essence, abrogated in relation to any order such as an examination order, information or property-tracking document. Section 139 of the Criminal Property

Confiscation Act will apply to the Corruption and Crime Commission. Section 144 of the Corruption, Crime and Misconduct Act will apply in relation to unexplained wealth for actions taken by the commission under that act, which is limited to issuing notices under that act at sections 94 and 95. The only change is for non-public officers who are issued with a notice under sections 94 and 95 of the Corruption, Crime and Misconduct Act in an unexplained wealth investigation. They will not be able to claim legal professional privilege as a reason for noncompliance, whereas the previous position under the Corruption, Crime and Misconduct Act was that non-public officers could claim legal professional privilege, which they still will be able to in the case of a serious misconduct investigation. Public officers now cannot claim legal professional privilege in respect of any of its coercive powers.

Hon AARON STONEHOUSE: I thank the minister for clarifying that for me. One aspect of this bill is that it empowers the CCC to make examination orders, rather than the current process in which the DPP would apply to the court for an examination order and then the court may issue an examination order. My understanding is that the process is that the DPP will apply for an examination order or it may apply for a production order or something like that, but whether it has been approved yet or not, an examination order application is the basis on which the courts issue a freezing order. Can the minister clarify whether that is the case currently, because that leads to another question I have around examinations?

Hon SUE ELLERY: It is not the only grounds, but if a freezing application is underway —

Hon Aaron Stonehouse: If an examination order is underway.

Hon SUE ELLERY: If an examination order is underway, that can be one of the grounds for applying. It does not have to be and it will not necessarily be, but it can be.

Hon AARON STONEHOUSE: It was put to me that an examination order being underway was one of the major factors. The minister has now said that it is merely only one of the factors considered.

Hon Sue Ellery: That's correct.

Hon AARON STONEHOUSE: Given that it is one of the factors considered, I wonder how the courts will handle the process of approving a freezing order that has been sought by the Corruption and Crime Commission. The CCC will be empowered to make its own examination order, and when considering a freezing order, an examination order is one of the considerations. I raised this in my contribution to the second reading debate: with regard to an application for property confiscation, an examination order, a freezing order and subsequent proceedings, how do we ensure that the courts will not become merely institutions that rubberstamp these applications and that they still exercise their discretion throughout the process? I understand that the policy of the bill is to remove judicial discretion for the examination order, but my concern is that that in turn will remove judicial discretion for freezing orders as well, given that one of the considerations for a freezing order is the examination order. Can the minister tell me how the courts will handle this?

Hon SUE ELLERY: I will preface my remarks by saying that I am not in a position to tell the member how the courts are going to respond. However, when it comes to looking at policy intent, the second reading speech is always the first point of reference that the court will use if it is in any doubt, and then it will go to the debate. If I recall correctly, the government's policy position on this was made clear in the explanatory memorandum and the second reading speech. Those are the signals that the Parliament sends to the courts about our expectations for how the court will respond. Judicial discretion, as with other judicial powers, must always be exercised appropriately; otherwise it may be subject to challenge on administrative law grounds. That is why I made the point: if in doubt, the court will look to the policy intent that was set out when the matter was dealt with in Parliament.

Hon AARON STONEHOUSE: I thank the minister for that answer. I suppose time will tell, and once these powers are enacted we will see how the courts respond and what level of discretion they exercise when freezing orders are applied for. The CCC's ability to make examination orders on its own was of great concern to me, given its power to compel people to give evidence and testimony. This may in some way enable the CCC to go fishing for evidence by applying its own examination orders at a whim and finding evidence that it could use in other cases, whether they are property confiscation cases or something else.

Hon Sue Ellery: I guess I'll just make this point, if you'll take an interjection: "whim" is not a word that I would necessarily associate with the CCC.

Hon AARON STONEHOUSE: Sure, perhaps.

I have just one last question. The Director of Public Prosecutions and the Western Australia Police Force currently have a target for criminal property confiscation, and I think it is in a dollar amount. The Auditor General recently conducted an audit of property confiscation within the state and referred to these targets. He specifically mentioned that if the DPP achieves its target, it is paid a bonus—through the Department of Justice, I suppose—as an

incentive for it to pursue property confiscations. Is it the government's intention to implement a similar target for the CCC for property confiscation, and what might that target be?

Hon SUE ELLERY: First things first, I am not aware of the description the member says applies to the DPP. I am not suggesting that he is wrong or that the reference he made to the Auditor General is wrong, but I am not aware of it, I do not have any evidence of it, and I do not have any advice on it here. However, in response to the member's question about whether there is such a target for the CCC, I can tell him that the answer is no.

Hon MICHAEL MISCHIN: I will pursue the line I was taking before Hon Aaron Stonehouse made his contribution. I turn to the letter from the Director of Public Prosecutions to the Corruption and Crime Commissioner dated 14 March 2017, and the then director's preliminary comments on what was at that stage a draft cabinet submission. She raised a number of issues. She did not comment on an appropriate model by which unexplained wealth proceedings are to be investigated, commenced and litigated because she considered that a matter of policy. She had difficulty addressing some of the issues that were flagged by the commissioner and she questioned the role contemplated for the DPP in these matters. She expressed a preference for unexplained wealth functions not being conferred on another agency to the exclusion of her office because—if I understand this rightly—they may usefully be an adjunct to confiscation actions under other provisions of the act that her office handles.

Her correspondence also raised a number of questions about the interaction between the Director of Public Prosecutions, the Western Australia Police Force and the Corruption and Crime Commission, given that they will have parallel, if not overlapping, roles. Before we go into specifics—I know this matter was touched on during the course of the minister's reply to the second reading debate—I have concerns that there will be a need for careful delineation and cooperation between those agencies. At the moment, for example, WA police are meant to investigate unexplained wealth—whether they do so or not is another matter, but that is their function, along with other functions, under the Criminal Property Confiscation Act—and hand the legal work to the Director of Public Prosecutions, as one of the director's functions. We seem here to be looking at a model under which part of that is to be done by the Corruption and Crime Commission; but who acts for the Corruption and Crime Commission? Will it be doing all its legal work in-house, or will it rely on the Office of the Director of Public Prosecutions for any of that? In situations in which there are overlapping cases, who will take conduct of them and how will they be managed? The previous director ultimately advocated that being relieved of much of the confiscation action and it being devolved onto a standalone agency would be an ideal situation. As I understand it, the director was concerned about the potential problems of compromising investigations being conducted by one agency or another, and the need for early advice and cooperation between investigative and applying agencies, as it were, and the like. I am also concerned in that regard by the comments made by the Chief Judge of the District Court, who flagged the question of discovery. The Director of Public Prosecutions, as a prosecuting agency, experiences continuing problems with relying on police to provide disclosure in criminal matters.

I would like to have an idea of whether these issues have been considered, to what degree they have been considered, and how far they have been resolved so that we can make sure that what is being proposed by the government is practicable, workable and will be implemented. Given the high hopes that have been established by the Attorney General in his media releases about how important this legislation is, how quickly it needs to be enacted and got underway, and how targets are being scoped, I would hate to think that once we got to that stage, things fell apart because insufficient thought has been given to the mechanics of how this will work.

Hon SUE ELLERY: I will deal with a couple of things first. The honourable member began by making reference to the letter from the then acting Director of Public Prosecutions, Ms Forrester, about conferral of the unexplained wealth functions to another agency. Her view was that that should not be to the exclusion of her office, and, of course, in the bill that is before us, it is not.

The member also raised the matter of who will act, and whose in-house counsel will be utilised in unexplained wealth matters. I am advised it is anticipated that most of the legal work associated with that function will be conducted in-house. The Corruption and Crime Commission is well equipped with in-house lawyers experienced in criminal and civil litigation. External legal assistance will be sought if and as required. Thought has been given to the relationships between the respective agencies. I did touch a bit on this in my second reading reply, but I am able to add to it. The commission has already established a strong working relationship with the WA Police Force proceeds of crime squad. The commission and the WA police proceeds of crime squad have already agreed in principle to hold fortnightly meetings for the purpose of discussing investigations and de-conflicting those investigations and targets to ensure there is no conflict between the commission and WA Police Force investigations. It is anticipated that the majority of referrals for unexplained wealth investigations will in fact come from the WA Police Force. The focus of WA police has been on crime-used and crime-derived and drug-trafficker matters. Its role in unexplained wealth has been limited. Therefore, it is not anticipated that there will be any difficulty in defining the roles between the police and the commission, and WA police has been highly supportive of the commission working in the unexplained wealth area. 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 proceeds of crime squad.

In respect to the member's further question about the workings of the relationship between WA police and the CCC in the exercise of unexplained wealth investigations, it is anticipated that the majority of referrals will come from the WA 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 with a WA Police Force investigation. A memorandum of understanding exists between WA police and the commission that can be amended to include agreements in relation to unexplained wealth. Information will be exchanged under proposed section 21AD to the Corruption, Crime and Misconduct Act 2003, which provides the commission with a broad power to exchange information with appropriate authorities, including WA police.

Under the concurrent powers of the DPP, it is correct to say that the unexplained wealth provisions can be exercised concurrently. However, historically speaking, the DPP has not utilised its unexplained wealth powers, and, indeed, it called a moratorium on exercising those powers. There is no MOU between the DPP and the commission; nonetheless, they regularly meet and consult on serious misconduct. There is a strong working relationship between the two agencies, which will continue, in conducting unexplained wealth investigations and proceedings. Continuing consultation with both the DPP and WA Police Force will ensure that any potential for conflict over common functions is easily identified and resolved.

I think the final matter the member raised was discovery. I touched on this last night. The issue arose out of a letter from the Chief Judge of the District Court. His Honour was reluctant to make any submissions on the proposal, given the independent position of the courts. However, His Honour flagged, I guess, that one issue that might require consideration was a possible obligation to give discovery in civil proceedings and the extent to which that might create awkwardness in view of the commission's functions and powers. The commission has given considerable and careful consideration to the possible obligation to give discovery. Confiscation proceedings are civil proceedings, so the rules of discovery apply, and the commission will comply with those rules. Where appropriate, the commission will make applications for public interest immunity on discoverable material and suppression orders.

Hon MICHAEL MISCHIN: I thank the minister for that detailed and comprehensive response; I appreciate the minister's information. Just to touch on the correspondence that has been tabled from the various agencies, plainly there was consultation at least with the Supreme Court, the District Court, WA Police Force and the DPP at a relatively early stage. However, have they been provided with the final form of this legislation to comment on, and have they indicated any difficulties or cavilled at any of the matters that have been raised in the legislation? They seemed to be broadly supportive of the idea at a very early stage, but most of them made the point that they have not seen the final version; they have seen only the draft cabinet submission and have not been able to see the final detail. Also, has there has been any input from the Solicitor-General on the drafting of this legislation?

I also ask the minister to advise whether there has been any consultation with the Parliamentary Inspector of the Corruption and Crime Commission. I ask that particularly in light of his function of supervising the operations of the CCC. This will be an extra layer of responsibility for the inspector, particularly with regard to negotiating settlements. I understand the pragmatism of reaching a settlement on proceeds of crime matters. However, I am concerned that the power to target people for what is believed to be unexplained wealth, and then negotiating with someone whom the Attorney General has categorised as the "head of a snake" and "an evil drug dealer" in order to achieve some kind of commercial settlement may compromise the integrity of the CCC and its operations without adequate supervision to ensure that is done within very strict guidelines. I say that for two reasons. The first is the powers of the CCC and the risk that it is a government-supported and statutorily supported extortion if that power is misused. The second is that if the aim is to deter criminals who are behind the scenes of these massive drug and organised crime operations, but they are allowed to buy their way out of trouble by way of a commercial settlement for commercial reasons, that would not only detract from the deterrent element, but also put a stain on the reputation of the law enforcement agency in dealing with that level of criminal activity. I would like to get some assurances about whether the Inspector of the Corruption and Crime Commission has been consulted, and what resources will be provided to him, if necessary, so that he can do his job of ensuring the integrity of that agency.

I note that in the past there has been comment from the Joint Standing Committee on the Corruption and Crime Commission about the risks of the Corruption and Crime Commission working too closely in association with the Western Australia Police Force, which is one of the agencies for which the Corruption and Crime Commission has a function of ensuring integrity. I recall the minister mentioning in her second reading reply that there would be a sequestration—a Chinese Wall, as it were—or some separation of responsibilities within the CCC to ensure that there is no conflict. I ask the minister whether she could expand on that. It is very important that the Parliament, the joint standing committee, the Parliamentary Inspector of the Corruption and Crime Commission and the public

know that this has been considered and that safeguards are being proposed to ensure that difficulties do not arise and that these agencies do not compromise or misuse their powers.

Hon SUE ELLERY: I did touch on most of those things in my second reading reply, but nevertheless. The first issue that Hon Michael Mischin raised was around any further consultation with the DPP. Yes, I am advised that there was further consultation with the DPP. In respect of the Solicitor-General, the Solicitor-General was involved and consulted before the bill was split.

Hon Michael Mischin: But that was one particular part of it, not this.

Hon SUE ELLERY: Correct. The Solicitor-General's involvement was around that other bit that went to parliamentary privilege, not the bit that went to the policy matters that we are dealing with today.

Hon Michael Mischin: Was that the scrutiny or investigation of members of Parliament?

Hon SUE ELLERY: That is correct. As I referred to in my second reading reply, informal consultation between the commission and the parliamentary inspector did occur. The primary functions of the parliamentary inspector under this act will not be affected by this bill, because the parliamentary inspector has primarily an audit function of the CCC. Nevertheless, I get the point the honourable member was making. The commission looks forward to reporting to the parliamentary inspector, as required by the Corruption, Crime and Misconduct Act, on all aspects of its function, and to continuing dialogue on the effectiveness of the commission's procedures and its compliance with these laws.

The member raised the issue around the parliamentary inspector, particularly in relation to settlements. The essence of the question, I guess, was about the extent to which the commission would be negotiating with criminals, and that there was a risk that there would be a compromise that is not in the public interest. Confiscation proceedings are civil proceedings. The Supreme Court Act provides a system for the mediation of civil proceedings. Supreme Court practice direction 4.2 states —

1. 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 obviously 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 unexplained wealth function, including the conduct of any negotiated settlements, will be conducted under the oversight of both the parliamentary inspector and the joint standing committee. The parliamentary inspector will continue in that oversight role. In particular, under section 197 of the Corruption, Crime and Misconduct Act, the parliamentary inspector has the power to make or hold an inquiry for the purpose of his functions. The parliamentary inspector may utilise this power if he sees fit in relation to any aspect of the commission's unexplained wealth function, including any settlements. I note that in the chairman's foreword to the first report of 2013 of the Joint Standing Committee on the Corruption and Crime Commission, Hon Nick Goiran noted —

> It appeared to that Committee that the investigation of criminal wealth may be an avenue by which the CCC could aid WA Police in the fight against organised crime without compromising its ability to oversight the operations of WA Police.

Hon MICHAEL MISCHIN: Just in respect of the DPP's views, the minister mentioned that the Director of Public Prosecutions has since seen the final version of the legislation. Is that right?

Hon Sue Ellery: Yes.

Hon MICHAEL MISCHIN: Did the director make any comment regarding it?

Hon SUE ELLERY: I am advised that those consultations resulted in the form of the bill that was introduced into the Assembly. We are not aware of any other issues that were not taken into account.

Hon MICHAEL MISCHIN: Just so I understand it correctly, was the Director of Public Prosecutions, after seeing the final version of the bill that was introduced in the Assembly, content with that?

Hon Sue Ellery: Can I take you back? It was the final version before it went into the Assembly. What went into the Assembly reflected the views of the DPP.

Hon MICHAEL MISCHIN: Okay. Likewise, with the Western Australia Police Force?

Hon SUE ELLERY: I am not able to give an answer as to whether WA police saw the final version before it went into the Assembly; however, I can advise that no issues were raised by police in its preparation. I am not in a position to say which final version they saw, but I can say that no issues have been raised.

Hon MICHAEL MISCHIN: I presume that the Corruption and Crime Commissioner saw that version of the legislation and was happy that it met his expectations.

Hon SUE ELLERY: Indeed.

Hon MICHAEL MISCHIN: Was the parliamentary inspector consulted on the legislation in the course of its drafting, and did he get to see the final version?

Hon SUE ELLERY: The parliamentary inspector was certainly consulted informally, which is the answer I gave about five minutes ago. I am not in a position to provide an answer on whether the parliamentary inspector saw a final version of the bill, because the advisers are not aware of that. However, there was informal consultation with the parliamentary inspector. I have already set out to the chamber the issues that were canvassed.

Hon MICHAEL MISCHIN: I am not having a go at you, minister, because you are acting as the proxy for the Attorney General in this respect, so you are not aware of what he may or may not have done. Is the minister able to explain, firstly, what informal consultation is? Was it over a cup of coffee? Was there some passing of the legislation through or some liaison between the Attorney General's ministerial advisers and the inspector? Did it take the form of a written response? I am just not sure what it means. Please understand that I am not having a go at you, minister; I just do not understand what it means.

Hon SUE ELLERY: The informal consultation was not between the Attorney General and the parliamentary inspector; it was between the commissioner and the parliamentary inspector. I have already canvassed the issues that were ventilated in that consultation.

Hon MICHAEL MISCHIN: But the fruits of that consultation were communicated to the Attorney General, presumably, before he crafted the final version of this legislation. Is the minister able to say what comments the parliamentary inspector made to the commissioner? It seems odd to me that legislation of this character is being introduced into the Parliament when an integral part of the supervision of the activities of the CCC on a day-to-day basis is through the parliamentary inspector, and the Attorney General has not directly consulted with the parliamentary inspector but allowed it to be done through the commissioner, who—this is not a reflection on his integrity—has an interest and has sought to gain these powers. The commissioner has been "informally" consulting with the person who has oversight, and we do not know the outcome and nature of that consultation.

Hon SUE ELLERY: I can advise that the commissioner, in dealing with the advisers at the table who are the ones who put the bill together, did pass on the results of consultation, formal and informal, that he had regarding things that he asked the people who are providing me with advice to put into the bill. They cannot give me advice and I cannot give the member advice about whether a direct, personal conversation happened between the commissioner and the Attorney General.

Hon MICHAEL MISCHIN: To make that plain, was there no correspondence seeking the parliamentary inspector's input into this legislation between the Attorney General's office and the parliamentary inspector?

Hon SUE ELLERY: I am advised that, to the knowledge of the advisers who are with me today, there was not.

Hon MICHAEL MISCHIN: Are the advisers able to say, from the information that they have had access to, whether the parliamentary inspector made any comment about what was being proposed, about the resources the parliamentary inspector may require to discharge his function, and whether he made any criticisms of or suggestions about the form of the legislation?

Hon SUE ELLERY: No. No further information is available, other than what I have already responded with, about any issues that might have arisen in the course of that informal consultation. I have already indicated the outcome of the informal consultation with the parliamentary inspector in my second reading reply and in response to the member's question this morning.

Hon MICHAEL MISCHIN: Was there any consultation, formal or informal, with the Law Society of Western Australia?

Hon SUE ELLERY: Honourable member, no. I specifically listed the organisations that the member asked about in his contribution to the second reading debate when I replied and I indicated there was not.

Hon MICHAEL MISCHIN: The reason I ask is: why not?

Hon SUE ELLERY: I am not able to give the member an answer to that question.

Hon MICHAEL MISCHIN: I know that the minister ran through a list, so there is no need to remind me of that, but just to confirm: I take it that there was no consultation, formal or informal, between the Attorney General's office and the Criminal Lawyers' Association of Western Australia?

Hon SUE ELLERY: No.

Hon MICHAEL MISCHIN: Is there any reason why not?

Hon SUE ELLERY: No. What the honourable member asked me in the second reading debate was whether there had been consultation with a range of external organisations. I replied that there had not been. I have no further information about why not with each of those organisations. I am also not aware of any consultation with any other external organisations that may not have been referred to in the list that the member relied upon in his second reading contribution.

Hon MICHAEL MISCHIN: I asked this a little earlier, but I do not think it was addressed: has there been any indication, to the minister's knowledge or to her advisers' knowledge, whether the parliamentary inspector has flagged the need for additional resources in order to discharge his function?

Hon SUE ELLERY: Not that I am aware of.

Hon MICHAEL MISCHIN: I have mentioned my worries about the mediation process. These are civil proceedings; they are not common or garden civil proceedings. It is neither the state nor a private individual suing someone over a breach of right or a failure to comply with an obligation. This is an inquisitorial process, leading to orders to hand over property, or its value, in what may be a significant sum. We are hopefully looking at significant sums, given the talk about how this is to deal with organised crime and significant amounts of unexplained wealth. Has any thought been given to the propriety or appropriateness of the ordinary civil processes applying in the case of these quasi-criminal processes in which the whole point is to deter criminal activity? Are things like a mediation process through the courts and haggling over amounts with criminals considered an appropriate way to go? The idea that the courts have their rules in civil matters is all very well, but it strikes me as being odd. In a quasi-criminal process of trying to seize unexplained wealth—not because someone has happened to have a windfall, but because underlying criminal activity is suspected to have given rise to that benefit and, from what the Attorney General has been telling us publicly, it is cutting heads off snakes and trampling wildlife and the like; it is undermining society—are the usual civil processes appropriate? Ought the mediation process be changed in some way through this legislation?

Hon Sue Ellery: Sorry, I do not want to ask the member to repeat himself, but can he just repeat the last bit?

Hon MICHAEL MISCHIN: I think there is a weighty argument here about whether the usual civil processes of mediation should apply in those sorts of cases, given that they are quasi-criminal. They may strictly be civil cases, but they have a deterrent element—that is, the use of the state's power to compel people to reveal evidence that is not in their interests about their financial and private affairs with a view to seizing ill-gotten gains and deterring criminal activity. Has consideration been given by the Attorney General that it is all very well to have civil proceedings in the case of a party-to-party dispute over a breach of right, obligation or contract, but this is a very different sort of proceeding, so some things like mediation ought not to apply and a different process ought to be crafted?

Hon SUE ELLERY: I understand the point that the honourable member is making, which is essentially whether due weight has been given to the fact that we are relying on the civil proceedings rules for something that we might deem to be far more serious than a contractual dispute. I understand the question. As I understand it from the policy development, the starting point was to put into the statute as simply as possible the practice, if you like, around unexplained wealth. If there is a need to readdress that policy, it would affect the overall scheme of the Criminal Property Confiscation Act, and that is a much bigger issue than just the conferral of existing unexplained wealth powers under the CPC act onto the commission. It is a bigger policy issue. The member may have the view that it is a bigger policy issue and that government should do it, but the government's decision at this point is not to take that bigger step but, rather, to focus on just, if I can use the expression, conferring those existing unexplained wealth powers under the CPC act onto the commission.

Hon MICHAEL MISCHIN: I thank the minister. As I say, I understand that she is not the minister who is sponsoring the bill and she can work only with what she has. But the sense that I have received is that a great reform has been touted and the government is going to give the Corruption and Crime Commission the power to do this, that and the other and it will have wonderful effects on the deterrence of criminal activity and the like, but it has not entirely been thought through. Rather than the Attorney General rushing this bill into Parliament last year and saying that organised crime had better shiver in its boots, he might have profited from a little bit of thought about the implications of what is being sought and whether the mechanisms that will be used are really geared to what is proper, as well as what is achievable. I have a concern that a commission with the powers of this one is fitting into a civil process that is not suited to and not designed for this kind of activity on the part of the state. The courts are setting the rules for mediation and negotiation in order to save the courts the trouble of litigation and there is incentive for the authorities to cut costs, resources and time and to achieve a settlement, yet we are not simply dealing with an argument between private parties or between the state and some private citizen over what might be due as damages; we are saying that they have unexplained wealth that is presumed to come from unlawful purposes and we are going to haggle over how much they need to pay to buy their way out of us investigating them further and seizing all that wealth from them. That strikes me as being a very different situation and one that needs

some careful thought. Nevertheless, the government has chosen this approach and tried to fit itself into the general civil scheme that has been dictated by the courts through their rules of court. I would have hoped that there would have been a little more thought to it because it is one of the things that needs to be addressed in due course. I note that the Attorney General has announced a more general review of the proceeds of crime regime in Western Australia. Can the minister tell us whether this element will be looked at as part of that inquiry?

Hon SUE ELLERY: I cannot really add anything further to what I have already said. I note that the member has expressed a point of view and he is entitled to it. I understand his point of view. In respect to the last bit, it would be inappropriate in dealing with this bill, and I am not in a position in any event, to tell him about the government's future plans on other bills.

Hon MICHAEL MISCHIN: Turning to a couple of other things, and I mentioned this in the context of the national cooperative scheme over unexplained wealth, I understand from what the minister has told me that in about May last year, Western Australia disengaged from that process on the recommendation of the Western Australia Police Force, but that is all for another day. Part of the package that was being negotiated under two different federal governments, and certainly under the last one, as a quid pro quo for Western Australia's participation was to obtain greater access to information that is not ordinarily readily available yet is integral to determining whether someone has unexplained wealth—namely, information from the Australian Taxation Office, the Department of Social Services and various commonwealth agencies that compile data on citizens across borders. Have any arrangements been reached to gain access to that information so that the CCC can do its job, rather than simply relying on testimony and what it can squeeze out of someone in Western Australia who falls under its jurisdiction and whom it can grab as a witness, and counter the sorts of defences that might be put up and the explanations that might be canvassed by people of interest to the commission in exploring their wealth and how it was obtained?

Hon SUE ELLERY: The powers under the Corruption, Crime and Misconduct Act are fairly broad to enable the commission to seek support and assistance from, or consult or exchange information with, any relevant body, including commonwealth agencies. That empowers the commission to not only receive, but also transmit information. The commission is not restricted in whom it may ask for information. The commission may, and already does, obtain information from commonwealth agencies such as the Australian Taxation Office and the Australian Transaction Reports and Analysis Centre in accordance with their respective legislative information exchange requirements. The commission has established strong connections and a working relationship with the Australian Federal Police's Criminal Assets Confiscation Taskforce. I have already said that the commission has established quarterly meetings of the interagency financial investigators. That meeting is attended by commonwealth agencies, including the Australian Criminal Intelligence Commission, the AFP, AUSTRAC, the Australian Securities and Investments Commission, the Commonwealth Director of Public Prosecutions and the ATO. The purpose of those meetings is to foster and facilitate cross-border and interagency cooperation. Those powers already exist, the relationships already exist, and the arrangements are already in place. I do not have any information about whether the Attorney General has entered into any further agreements or understandings with his commonwealth counterpart. I just do not have access to that information.

Hon NICK GOIRAN: It is close to midday on the final sitting day before the winter recess—I assume it will be the final sitting day before the winter recess—and this is the first opportunity I have had to ask any questions on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. We are dealing with clause 1 of a bill that was introduced by the government in this place on 14 September last year. The government has brought forward this substantial bill of some 77 clauses on the last day of the autumn sittings with, I understand, the expectation of it being passed today, and apparently the expectation of passing another two pieces of legislation today. I will quickly remind the chamber that when we get to the Tobacco Products Control Amendment Bill 2017, we will be going through that bill clause by clause. I find it amazing that we are in this situation. Had the government had the foresight to refer this bill to the Standing Committee on Legislation in September last year—nine months ago—we would not be in this situation now in which multiple members have to ask multiple questions on the clauses before us. I hasten to add, for the benefit of the Leader of the House, that I have a number of questions on clause 1, but can I also foreshadow that I will also have questions to ask on clauses 2, 4, 14, 15 and 65. I note that there is also a supplementary notice paper on which other members will contribute.

To get things started, yesterday the Leader of the House responded to the questions asked by the shadow Attorney General about the Chief Judge's letter dated 7 March 2017 and his reference to the discovery process in civil proceedings and the possibility of awkwardness in view of the Corruption and Crime Commission's functions and powers. The Leader of the House has responded to that by indicating that the commission will, as needed, seek suppression orders. Is that the only awkwardness that the Chief Judge is referring to? I know that the Leader of the House said earlier that she cannot go into the mind of the Chief Judge, but has somebody checked with the Chief Judge to ensure that the suppression orders are the awkwardness that he is referring to?

Hon SUE ELLERY: The honourable member's understanding is correct. I cannot go in the mind of the Chief Judge, quite frankly, and neither can anybody else. The letter states —

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

As I read the ordinary English in that letter, the Chief Judge referred to one issue.

Hon NICK GOIRAN: That one issue has been interpreted by the commission and the government in such a way that they will now apply for suppression orders as required. My question is: has that been checked with the Chief Judge?

Hon SUE ELLERY: No, it has not. If the member reads the first sentence of the letter from the Chief Judge, he will see that it states —

> Thank you for your letter dated 28 February 2017 providing me with the opportunity to give feedback on the proposal of assigning to the Corruption and Crime Commission …

He was asked for feedback on the proposal of assigning to the Corruption and Crime Commission the functions and powers currently held by the Director of Public Prosecutions and Western Australia police. His response to that in the letter states, firstly, "I am reluctant …", given the independent position of the courts. He then states, "However, one issue …", and he refers to the consideration of X and sets that out. He was given the opportunity to provide feedback and that is the feedback he provided. The feedback he provided was taken into account with the explanation that I have already provided to the chamber.

Hon NICK GOIRAN: These civil confiscation proceedings at the moment are capable of being conducted and have been conducted from time to time by the DPP and the WA Police Force. When the DPP and WA police conduct these civil confiscation proceedings, do they have an obligation to give discovery?

Hon SUE ELLERY: The answer is yes. The DPP and the commission, as set out in the bill, are obliged to comply with discovery provisions.

Hon NICK GOIRAN: When the DPP and WA police provide discovery in civil proceedings, do they have any awkwardness in doing so?

Hon SUE ELLERY: I am absolutely not in a position to provide an answer to that. I do not have police advisers sitting with me, so I am not in a position to provide an answer.

Hon NICK GOIRAN: If I got a letter like this from the Chief Judge, I would find out what the DPP and WA police do at the moment in their civil proceedings. If they do not have any awkwardness, then I would conclude: why would the CCC have any awkwardness unless there is a difference between the two? Has anyone considered that?

Hon SUE ELLERY: The difference is the secrecy provisions that apply in the act and that govern the commission, which is why the commission has the option—I think I said it in the second reading speech—of seeking a suppression order if it is appropriate in those particular circumstances.

Hon NICK GOIRAN: Is it the government's position that when the DPP and WA police make these civil confiscation proceedings, they have to disclose all their evidence under the discovery provisions, whereas the commission, because of the secrecy provisions, may not need to disclose all its evidence?

Hon SUE ELLERY: I am not in a position to provide advice about what the DPP or WA police do now or may do in the future. I do not have that advice. I can give the member advice about what the commission will do with the new powers that it is being granted in this legislation. I have already responded to that issue around discovery, but I am not in a position to provide the member with advice about what the DPP and the police do.

Hon NICK GOIRAN: We will move on and we will just hope that the government has it right and there will be no problems with the provision of discovery in these proceedings and these new powers that the government will give to the CCC, albeit after a nine-month delay to the passage of this bill.

We will move to the letter from WA police dated 7 April 2017, which states that the draft cabinet submission states —

> … the CCC has adequate staff to carry out these types of investigations and sufficient resources to carry out hearings as deemed necessary.

How many full-time equivalent staff have been earmarked to carry out these investigations?

Hon SUE ELLERY: There is a financial investigations team, and other investigators can be drawn in if and as required. The final number of full-time equivalents has not been set and will not be set until the commission can get a sense of the demand. There is a financial investigations team and other investigators can be called in. The

advice I have been provided is that the commission's view is that it should wait to see what the demand is before it settles on the final allocation.

Hon NICK GOIRAN: I recall when we were last considering this matter, not yesterday but probably a couple of weeks ago, the minister indicated to the chamber that this would be operational on 1 July 2018.

Hon SUE ELLERY: Correct; I did. The financial investigations team is in place and it will exercise this function. In addition, other investigators can be called upon to exercise this function. It is not that there are no FTEs sitting there ready to commence this work. They are there. On the question of what the final allocation will be, the commission's view is that it wants to wait to see what the demand is. It is ready to go on 1 July with its financial investigations team and its capacity to draw in other investigators.

Hon NICK GOIRAN: How many FTEs are in this financial investigations team?

Hon SUE ELLERY: I am advised that it has three FTEs.

Hon NICK GOIRAN: On Sunday, when these laws take effect and we start tackling the Mr Bigs, we have three full-time equivalent staff in the financial investigation team who will be ready to go. That is terrific to know. I am sure that the Mr Bigs in Western Australia are shaking in their boots at the thought that three full-time equivalent staff will be targeting them after Sunday. Be that as it may, what is the role of these three full-time equivalent staff in the financial investigation team at the moment? What type of investigations do they do today when the laws are not yet in place?

Hon SUE ELLERY: They deal with serious misconduct matters that are financially linked. It is the financial investigations team, so it deals with the functions of the commission in respect of financial matters.

Hon NICK GOIRAN: Will those three full-time equivalent positions still do that from Sunday onwards?

Hon SUE ELLERY: Yes. As I explained and as I am advised, the commission has determined that the best way to use its resources is to allocate this work to the financial investigations team, knowing that if the need is there, it has the capacity to draw in other investigators. It wants—it sounds prudent to me—the ability to make a judgement on what the demand will be before settling on the final number.

Hon NICK GOIRAN: I understand that. But the three full-time equivalent people in the financial investigations team who are doing investigations into serious misconduct are not twiddling their thumbs. They have been very busy, no doubt, being conscientious workers of the state, undertaking financial investigations on serious misconduct. My concern is that as of Sunday we are now giving these three individuals the additional task of taking down the Mr Bigs of Western Australia. We are giving them no extra resources. We are just giving them extra work to do. Only a few things can happen in that situation. First, the people are completely overworked and overstressed and leave. Second, they do not do the job properly because they have too much to do with too little resources. Third, something has to go. Have these three full-time equivalent staff been advised whether to prioritise investigations under the confiscation provisions as of Sunday or have they been asked to continue to prioritise serious misconduct investigations?

Hon SUE ELLERY: I am advised that all the work that arises out of serious misconduct matters will continue to be assessed. The commission regularly assigns priorities and, if necessary, suspends or terminates an investigation if resources need to be committed to a more important investigation, whatever that investigation is, and that practice will continue. The proposed unexplained wealth power is deemed an important one and if the public interest is better served from time to time by particular serious misconduct investigations, resources will be reallocated accordingly. The commission is aware of that and the way that it organises its work now is a balancing exercise, with reallocating resources from time to time if necessary. The commission's advice to me is that it will continue to do the same practice it does now. It will judge the requirements that are coming through the door and reallocate resources accordingly.

Hon MICHAEL MISCHIN: There must be some idea, minister, of how much additional workload will be undertaken, because we heard on several occasions from the Attorney General—including when he was trying to hurry up Parliament in the other place and trying to use his comments to send a message up here not to stall this bill, even though it has been brought on only very, very recently—that people within the organised crime squad have been scoping targets for the CCC, that the CCC is ready to go and that it had a whole bunch of people from January this year whom it was ready to look into in order to give effect to this announcement he made last year about cutting the heads off snakes and dealing with organised crime. Can the minister tell us how many potential targets are ready to go and that the CCC will commence investigating next week?

Hon SUE ELLERY: No, I am unable to give the member a precise number.

Hon Michael Mischin: Even just a ballpark.

Hon SUE ELLERY: I am unable to give the member a number. The commission is going to allocate its resources according to need. The advice I have from the commission is that that is what it does now. That management practice will continue and it will adjust how it allocates people according to the need.

Hon MICHAEL MISCHIN: Is there more than one? Does it have a target that it is planning to give priority to?

Hon SUE ELLERY: As I said, I cannot actually provide the member with a number.

Hon NICK GOIRAN: In the same letter from the Office of the Commissioner of Police, the then commissioner states —

> The draft states the CCC has adequate staff to carry out these types of investigations —

We have dealt with that, and I thank the minister for her assistance, but the letter then goes on to state —

> and sufficient resources to carry out hearings as deemed necessary.

What are those other resources deemed necessary to carry out hearings?

Hon SUE ELLERY: I am advised that those other resources include the covert capability—surveillance teams and equipment—in-house legal teams, financial investigators and in-house hearing room capacity.

Hon NICK GOIRAN: The minister has also referred to a letter from the Director of Public Prosecutions dated 14 March 2017, which states —

> … the feedback I do have at this stage should be regarded as preliminary only.

Was any subsequent feedback obtained from the DPP after that time?

Hon SUE ELLERY: I am advised that no further issues have been raised. The DPP was provided with a copy of the draft bill and consultation on the amendments and the like followed. There is no further information on what other issues have been ventilated.

Hon NICK GOIRAN: Just to be clear, the DPP was provided with a draft of the bill, and presumably when the DPP was provided with a copy, the DPP was invited to comment. Did the DPP provide comment?

Hon SUE ELLERY: I canvassed the answer to this question earlier, honourable member, but I will say it again; perhaps the member was out of the chamber on urgent parliamentary business. There were discussions about the issues from the DPP's point of view. The things that were raised in those discussions were taken into account in the bill that was introduced into the Legislative Assembly. I am advised that no further issues have been raised by the DPP.

Hon NICK GOIRAN: At the risk of this having already been addressed earlier, has the chamber been provided with a list of the issues that the DPP raised and that were addressed in the consultation on the bill?

Hon SUE ELLERY: No, and there is no list.

Hon NICK GOIRAN: Right. On what basis can we be confident that issues were raised by the DPP?

Hon Sue Ellery: Because I told you.

Hon NICK GOIRAN: Okay; but the minister did not do the consultation with the DPP. Someone has obviously done some kind of consultation—bear with me—on the bill. Presumably, there must be a record of this consultation, which is why the minister is able to inform the chamber now that this consultation took place. It was not this minister, but there has to be a record of it somewhere. There is not a list, but what is the record upon which we can base confidence in this information?

Hon SUE ELLERY: As I said earlier, there were discussions. There is no document that I have or that I can gain access to. I am advised that there is no list. Discussions were held. The issues that were raised were taken into account, and they are reflected in the bill that was introduced into the Assembly.

Hon NICK GOIRAN: So discussions took place, but not discussions between the minister and the DPP and, I think I heard earlier, also not between the Attorney General and the DPP. There were discussions —

Hon Sue Ellery: Between the commission and the DPP.

Hon NICK GOIRAN: Maybe the commissioner, or the commission. In any event, whether it is the commissioner or the commission, someone had some discussions with the DPP, and we are being informed that that is the case. On what basis can we say that? Surely someone must have a memo. In order to be able to say to the chamber that discussions took place, someone must know this. Who is providing the information to the chamber that discussions took place? It has to be someone who was part of the discussions. Who is that person?

Hon SUE ELLERY: I am really not trying to be obtuse here, but the honourable member knows well how these matters run. The advisers sitting at the table provide me with advice, which I then relay to honourable members when they ask me questions. When the member asks me how do I know, it is in the same way that I know anything

when I give answers in this place: I ask the advisers, and they provide me with the information. That is the information that I have been provided with.

Hon NICK GOIRAN: I am just testing the advice that has been given to the minister, which is my responsibility. There are two scenarios here. Either the advisers giving the minister this advice now were part of the consultation and so are delivering the minister this information from their own personal knowledge and experience, in which case it would put this thing to bed once and for all, or, alternatively, they know by some other form, and if it is another form, I would like to know what it is.

Hon SUE ELLERY: I am advised that both the advisers sitting at the table were at the meeting when the issues were raised.

Hon NICK GOIRAN: To close this off, who else was at that meeting?

Hon SUE ELLERY: I am advised, to the best of the recollection of the advisers sitting with me, who were at the meeting: the DPP, the two advisers sitting with me, the parliamentary drafter and Jim Thomson from the Attorney General's office.

Hon NICK GOIRAN: For the benefit of advisers, whether present or elsewhere in the public sector in Western Australia, my own advice is that if they are at a meeting, they should keep a record or memo of it. If it were me, that is what I would do. I find it odd that there is no document in the possession of the government of Western Australia about a meeting that took place between the Director of Public Prosecutions, two advisers and two other individuals about a consultation process on a draft bill to address issues that the DPP might have had. I find it odd that no document in the whole of Western Australia can be provided to us to confirm the date of the meeting and the issues that were raised—very odd. But if that is what we are being told, and no document is in existence, so be it. I hope a freedom of information process does not indicate that a document exists.

The minister dealt with the business of the informal consultation undertaken with the parliamentary inspector. My learned friend the shadow Attorney General raised this earlier, but he did not actually get a response: what is meant by the phrase "informal consultation"? I do not understand that phrase; either there has been consultation or there has not. Does the government have some form of definition that it is using for "formal consultation" and "informal consultation"?

Hon SUE ELLERY: We have not gone down the path of trying to define what we mean by "informal" and "formal" consultation. It is the ordinary English use of those words. I have already advised the chamber that the consultation took place person-to-person, in conversation.

Hon NICK GOIRAN: In line with the question I asked earlier about consultation with the DPP, at this consultation, which is characterised as "informal"—whatever that is intended to mean—and which was person-to-person, was it just between the commissioner and the parliamentary inspector, or did it involve other individuals as well?

Hon SUE ELLERY: I am advised it was just the commissioner and the parliamentary inspector. If there is something in particular that the member wants to ask, I will be happy to provide it, if I am able, but I did answer that question probably about half an hour ago.

Hon NICK GOIRAN: Okay. It is often the case that the minister does say these things, but it does not necessarily mean that it is correct. Yes, the minister had an exchange with my learned friend the shadow Attorney General, but she did not answer the question of what is the difference between "informal" and "formal" consultation.

Hon Sue Ellery: You are right, but I did say it was between the commissioner and the parliamentary inspector.

Hon NICK GOIRAN: Yes, and I was just checking whether anyone else was present. We are now told that nobody else was present, and that is fine—that closes off that matter and we can move along speedily and facilitate the passage of this bill.

Earlier in the debate on clause 1, Hon Aaron Stonehouse raised some important concerns. Minister, am I left to understand that what this bill does in part is give the Corruption and Crime Commission the power to apply for something that it does not have the power to investigate?

While the minister is considering that, I hasten to add that I did hear the minister indicate to Hon Aaron Stonehouse that some amendments are before the Legislative Assembly to deal with part of those concerns. I want to be clear about this. Has the point that was raised by Hon Aaron Stonehouse been addressed by those Legislative Assembly amendments so that it is now redundant? In other words, although the earlier version of the bill might have had the technical situation in which the CCC had the power to apply but not investigate, does the CCC now not have the ability to apply or investigate?

Hon SUE ELLERY: I will start with what I explained earlier to Hon Aaron Stonehouse. In September last year, an amendment was made in the other place to proposed section 43(5)(e). The reference was to the applicant for the order. That was deleted from the bill by that amendment. It had inadvertently been placed in the bill by the drafters. It was never intended that the CCC would seek a freezing order on drug trafficker grounds. In Committee of the Whole, I also addressed this issue when I referred back to section 41(1), which empowers the court to make a crime-used or crime-derived freezing order upon application by the Corruption and Crime Commission. What I said was —

> Although the member is right in having identified that it is technically possible for the commission to apply for an order, it does not have the power to do the investigation. That would need to be done in order for it to apply for the order.

I said also —

> … given that it does not have the power to do the work that would lead to having the material it needs to make the application for the order, in a practical sense it is not going to happen.

Hon NICK GOIRAN: I recall the minister saying that last night. However, this morning, the minister has referred to the amendments that were made in the Assembly. It is not clear to me whether the amendments made in the Assembly therefore make last night's comments redundant. It sounds to me as though they are both still relevant, and that although part of the issue has been addressed in the Assembly, it remains the case that what Hon Aaron Stonehouse has identified is correct—namely, that we have the peculiar situation that this bill will give the CCC the power to make an application but not the power to investigate matters that would lead to an application. Why would we do that? Why would we not simply remove the ability for the CCC to make these applications if it cannot investigate anyway? The reason I labour this point somewhat, minister, is that the CCC has had quite a tortuous history. If ever someone wanted to find a loophole and make an application or appeal or say a body is acting outside of its statutory grounds, this is the body that would cop that type of scrutiny and attention. Therefore, I think it is preferable in this piece of legislation, and in any legislation dealing with the Corruption and Crime Commission, that the Parliament is crystal clear about what it expects and intends the commission to do, rather than have technical loopholes hanging in abeyance.

Hon SUE ELLERY: Part of the issue is a drafting one. I am advised that the drafters took the view that it is pretty difficult to disentangle the criteria by which each of the three different organisations might seek an order. Therefore, it was better to draft it in the terms that appear before us in the bill, knowing that the commission could never meet the first part, which is the investigative part, and that to try and disentangle, if you like, and have different sets of criteria, was from the drafting point of view fairly difficult to do without impinging on other elements of it. The estimation is as I gave, although I appreciate that perhaps I did not make it as clear as I am now, in the sense that the drafters took the view that, ultimately, no harm could be done, if I can use that expression, because the commission cannot do the first bit that it would need to do to establish or have the grounds to seek an order.

Clause put and passed.

Clause 2: Commencement —

Hon MICHAEL MISCHIN: My question regarding clause 2 is about the commencement of the rest of the act. I know that part 1 of the bill, which is the preliminary bit—the short title and commencement provisions—comes into effect on the day on which the act receives royal assent. Paragraph (b) tells us that the rest of the act will come into effect on a day fixed by proclamation, and that different parts can come into effect on different dates. I have two questions, really. Firstly, why is there a separate provision for the rest of the act? Are there any regulations that need to be proclaimed or any other work that needs to be done? I understand from Hon Nick Goiran, and I think it was confirmed to a large extent by the minister, that it is intended that the legislation come into effect this Sunday. How is that going to work? Is there going to be a special Executive Council meeting to give the royal assent between now and Sunday? There are amendments on the notice paper, so the bill will have to be referred to the Assembly if those are passed. What is the timetable for its enactment, given that the Attorney General has lectured the Assembly and us in the other place about how he hoped to have all this in operation by 1 January this year?

Hon SUE ELLERY: I am advised that there are no regulations. The commission has not commissioned or instructed the drafting of any regulations as there are no regulations under the Corruption, Crime and Misconduct Act 2003. Under the Criminal Property Confiscation Act 2000, regulations relate to enforcement and recognition of interstate orders and therefore require no amendment. The commencement clause is as advised by parliamentary counsel. I do not know, but there may well be a special meeting of Exco to give effect to the legislation.

Hon NICK GOIRAN: To borrow the minister's earlier phrase about no harm done, would there be any harm done if the entire act came into operation at the same time as identified in clause 2(a), that being on the day on which it receives the royal assent?

Hon Sue Ellery: No.

Hon NICK GOIRAN: There would be no harm done?

Hon Sue Ellery: No.

Hon NICK GOIRAN: It is a shame that we are not doing it, then. Does the minister not want to move an amendment?

Hon Sue Ellery: No; I have too many to move already.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Long title amended —

Hon NICK GOIRAN: Clause 4 seeks to amend the long title, which includes the words "organised crime". Did the government give any consideration to amending the definition of "organised crime", obviously not with respect to the long title, but in terms of the definition of "organised crime" in the act? The definition in section 3 of the Corruption, Crime and Misconduct Act 2003 reads —

> ***organised crime*** means activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences are committed, the commission of each of which involves substantial planning and organisation;

If that is going to be the case, I do hope that the answer given is different from the one in the minister's second reading reply.

Hon SUE ELLERY: To the extent that I referred to a report from the committee, if that is what the honourable member is asking me not to refer to —

Hon Nick Goiran: No.

Hon SUE ELLERY: I am advised that the tenth report of 2014 of the Joint Standing Committee on the Corruption and Crime Commission found that an amended definition of "organised crime" within the Corruption, Crime and Misconduct Act would or could encourage WA police to make greater use of part 4 powers in the Corruption, Crime and Misconduct Act. Those powers, though, have nothing to do with investigating unexplained wealth. They can only be enlivened on application by the Commissioner of Police and they do not empower the commission to investigate organised crime. The commission's part 4 powers are limited to authorising WA police to use exceptional powers and obtain fortification warning notices. The narrow definition of "organised crime" in the Corruption, Crime and Misconduct Act at section 3 is directly referable to the power set out in part 4. It is not relevant to the investigation of unexplained wealth as proposed by the bill.

Hon NICK GOIRAN: Yes, but is not the purpose of this bill to send a message to those involved in organised crime? I quote specifically from the minister's second reading speech, in which the minister said —

> This bill sends a clear message to those involved in organised crime at the upper levels that they are not untouchable and that, in fact, the Corruption and Crime Commission stands ready to engage them.

If that is the government's intended purpose, why would it not take this opportunity to also amend the definition of "organised crime"? The minister is plainly aware of the tenth report, to which she has just referred.

Hon SUE ELLERY: I suppose the honourable member has an arguable point. The long title of the bill does indeed refer to organised crime. In any event, the purpose of the bill is to deal with unexplained wealth. The provisions of the bill are narrowly focused on unexplained wealth; the bill was not necessarily seen as an opportunity to address other matters.

Hon NICK GOIRAN: I will simply make this point: it is most unfortunate that the government has failed to properly take into account not only the tenth report from April 2014, to which the minister has referred, but also the other report to which the minister regularly referred during debate on clause 1. The minister referred to the first report from 2013. I do not have a copy of that report in front of me, but I understand it is the follow-up report to the originating report, which was the twenty-eighth report from June 2012. The minister has today enjoyed quoting from my chairman's foreword.

Hon Sue Ellery: I do not know about "enjoy".

Hon NICK GOIRAN: The portion that the minister enjoyed quoting is —

> The fact that the WA Police have preferred in the past to have the Office of the DPP conduct what are resource-intensive financial investigations—work for which the Office of the DPP is not properly or adequately resourced—indicates, in part, that investigations of this nature are a low priority for the WA Police.

Of course, what the minister does not then quote is the very next paragraph of the chairman's foreword, which states —

> The JSCCCC 38th believed that any problems were unlikely to be rectified solely by expanding the jurisdiction of the CCC. Noted deficiencies in the present *Corruption and Crime Commission Act 2003* would need to be addressed if the CCC is to prove more effective than the current model.

That is, the current WA police and office of the DPP model.

It is as black and white as that in the twenty-eighth report from June 2013, which the government selectively quotes from. It is one thing to give the CCC this expanded jurisdiction and there are arguments for and against that—the opposition has already indicated we will support it—but it is another thing to completely ignore or fail to read the warnings in the report about noted deficiencies in the present CCC act. If it is not working at the moment with the DPP and the WA police, it is not going to be able to work with the CCC unless these deficiencies are addressed. Some of those deficiencies have been outlined repeatedly by the Joint Standing Committee on the Corruption and Crime Commission. I draw to members' attention the first six findings from the committee's tenth report. This shows how long this issue has remained a problem. I quote the findings —

> **Finding 1**
>
> The Joint Standing Committee in both the 37th and 38th Parliaments recommended that the definition of organised crime in the *Corruption and Crime Commission Act 2003* should be amended.
>
> **Finding 2**
>
> The statutory review of the *Corruption and Crime Commission Act 2003* (the CCC Act) by Ms Gail Archer SC in February 2008 recommended that the CCC Act's definition of organised crime be amended as proposed in the JSCCCC's Report 31 in the 37th Parliament.

The first two findings indicate that there was a statutory review by Gail Archer, SC. She recommended that the definition be amended. The committee in the thirty-seventh Parliament recommended it. The committee in the thirty-eighth Parliament recommended it. I will move to the next findings —

> **Finding 3**
>
> The previous State Government introduced a Bill to Parliament in 2012 to amend the *Corruption and Crime Commission Act 2003* (the CCC Act) which included an amendment to the definition of organised crime that had been developed with the assistance of the Commissioner of Police and the Commissioner of the Corruption and Crime Commission. This proposed amendment would have implemented the recommendations of this Joint Standing Committee in the previous two Parliaments, and the Archer statutory review of the CCC Act.
>
> **Finding 4**
>
> The Corruption and Crime Commission has received no applications from WA Police for the use of the exceptional powers provisions contained within the *Corruption and Crime Commission Act 2003* in this and the previous two financial years.

I hasten to add that that was in April 2014. I will not ask the minister how many applications have been made in the subsequent financial years but I suspect it will be either nil or a figure very close to that. The report continues, and I quote —

> **Finding 5**
>
> The Police Commissioner provided evidence to the Committee that the chief impediments to the regular, efficient and effective use by WA Police (WAPOL) of the Part 4 powers contained in the *Corruption and Crime Commission Act 2003* (the CCC Act) were:
>
> - the definition of organised crime in the CCC Act;
> - the application process required by the Corruption and Crime Commission for WAPOL to follow; and
> - the cost to WAPOL of using the current Commission process.

The final finding I will refer to, which is finding 6 of the 14 findings in this report, states —

> **Finding 6**

> An amended definition of organised crime within the *Corruption and Crime Commission Act 2003* … would encourage WA Police to make greater use of the Part 4 powers in the CCC Act.

That leads to recommendation 1 in the report, which states —

> The Attorney General should amend the definition of organised crime within the *Corruption and Crime Commission Act 2003*. A new definition should allow WA Police to apply for Part 4 powers to include suspected crime or a crime that is likely to occur.

This has been going on ever since I was involved in this committee, so more than eight years. The current government selectively quotes from my chairman's foreword when it suits it but then ignores, in the same chairman's foreword, where it states there are noted deficiencies in the present CCC act and that these would need to be addressed. I am disappointed that the government has done that. It makes me wonder what the point is of being on these joint standing committees, or any committee for that matter, when that number of hours are invested, including the hours put in by research officers and the like, to put these comprehensive reports together and the government has a bill before the house and seemingly intentionally has chosen not to address those particular parts. Instead, it has selected other parts that it will address. As I said, I am disappointed by that, but it is clearly not going to change today. It is clear to me that the government will not be amending the bill to amend the definition of "organised crime", despite the fact that Gail Archer, Senior Counsel as she was then, recommended it during her statutory review and despite the fact that the joint standing committee in the thirty-seventh, thirty-eighth and thirty-ninth Parliaments has suggested the same thing.

The DEPUTY CHAIR (Hon Robin Chapple): Members, there is a little bit of audible conversation going on, which I think is affecting the ability of Hansard to record properly, so could we keep conversation down, please.

Hon NICK GOIRAN: I will conclude on this point about clause 4 since we are talking about organised crime. In that same report, mention is made in finding 11 of fortification notices. I quote —

> **Finding 11**
>
> Fortification warning notices in Part 4 Division 6 of the Corruption and *Crime Commission Act 2003* are a useful power for WA Police actions against organised crime groups.
>
> **Finding 12**
>
> It is a shortcoming of the *Corruption and Crime Commission Act 2003* that it fails to discourage organised crime groups from re-fortifiying premises previously dismantled by WA Police.
>
> **Recommendation 2**
>
> The Attorney General amend the *Corruption and Crime Commission Act 2003* to prevent the re-fortification of premises previously dismantled by WA Police.

Again, I simply make the point that I am disappointed that the government has chosen to ignore recommendations 1 and 2 in the sense of not addressing them in this bill. Of course, that does not prevent the government from bringing in a bill to do exactly those things on the first sitting day when we return in August. That would still be possible. It would be welcomed and encouraged by me. However, it is very disappointing that this has not happened given that this bill has been in the Legislative Council for nine months. Had the bill been referred to the Joint Standing Committee on the Corruption and Crime Commission nine months ago, this would be the type of thing that the committee could have identified and could have encouraged the government to amend it. The fight against organised crime would have been better for it.

The DEPUTY CHAIR: Minister?

Hon Sue Ellery: No.

The DEPUTY CHAIR: No commentary.

Clause put and passed.

Clauses 5 to 8 put and passed.

Clause 9: Section 91 amended —

Hon ALISON XAMON: I rise to explain the nature of the amendment proposed on the notice paper, which I will move in a moment. As I mentioned in my contribution to the second reading debate, this new power that is being proposed to be given to the Corruption and Crime Commission is significant and, as such, I think it is important that Parliament is kept apprised of the full impact of the way this provision is being employed. What is currently in the legislation before us is that "a description of the Commission's activities during that year in relation to its unexplained wealth functions" will be incorporated within an annual report. It does not spell out the level of detail that potentially should be reported to Parliament in that report. My proposed amendment attempts to prescribe the level of detail that would be given to Parliament so that Parliament can feel satisfied that it has more comprehensive

information. Of course, the level of information being requested does not limit the capacity for additional information to also be provided. The intention is to ensure that we can be guaranteed that there will be a bare minimum of information to help satisfy Parliament that it is being given sufficient information about what is happening with this new regime. I move —

Page 6, line 5 — To delete "functions." and insert —

functions including but not limited to:

(i) the number of cases in which the confiscable property was subject to a secured or unsecured debt;

(ii) in relation to each such debt:

(A) the particulars of the debt;

(B) the nature of the creditor;

(C) whether and if so how the debt was taken into account in the exercise of the Commission's functions; and

(D) whether the creditor used the objection process under Part 6 of the *Criminal Property Confiscation Act 2000* and if so the outcome of that process;

(iii) excluding creditors referred to in (i) above, the number of cases in which a person apart from the person the subject of the confiscation proceedings had or claimed to have a legal or equitable interest in the confiscable property;

(iv) in relation to each such interest:

(A) the particulars of the interest;

(B) whether and if so how the interest was taken into account in the exercise of the Commission's functions; and

(C) whether the person used the objection process under Part 6 of the *Criminal Property Confiscation Act 2000* and if so the outcome of that process.

Hon SUE ELLERY: The government will not support this amendment. It proposes to insert in the commission's annual reporting to Parliament as part of the proposed unexplained wealth powers a requirement to include information pertaining to interests in confiscable property. The information required to be reported on includes whether the property was subject to any debt or mortgage, the particulars of the creditor, how this was taken into account in the commission's exercise of these functions and whether the objection process under section 6 of the Criminal Property Confiscation Act was utilised in the outcome of that process. This is an additional reporting requirement that is not placed upon either the Western Australia Police Force or the Director of Public Prosecutions and it is our view that this is unnecessary and onerous. In addition, there is oversight of the commission by the Joint Standing Committee on the Corruption and Crime Commission. As part of its oversight function, it is able to request information of this kind from the commission if it requires it and, accordingly, to report to Parliament. On that basis, the government will not support the amendment.

Hon MICHAEL MISCHIN: I understand the point that Hon Alison Xamon is making with the amendment. In drawing on my previous experience with these matters, I think it is drilling down to a level of information that is probably too onerous for an annual report. I note that although this may impose a particular obligation on the Corruption and Crime Commission, it does not do so for the Office of the Director of Public Prosecutions or the Western Australia Police Force, which will exercise very similar functions and, in the confiscation and forfeiture of property, are probably more likely to encounter these sorts of difficulties. In any event, the opposition does not support the proposed amendment for the reasons that have been outlined by the minister. The levels of oversight, including not only the annual report, but also the ability to seek answers in estimates hearings and oversight from the Joint Standing Committee on the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission, will provide sufficient avenues to obtain the sorts of information that might be relevant to that sort of inquiry.

Amendment put and negatived.

Clause put and passed.

Clauses 10 to 13 put and passed.

Clause 14: Section 144 amended —

Hon NICK GOIRAN: Clause 14 of the bill seeks to amend section 144 of the Corruption, Crime and Misconduct Act 2003. This section of the act deals with the important issue of legal professional privilege. I ask the minister

whether the government gave any consideration to the twenty-first report of the Joint Standing Committee on the Corruption and Crime Commission of 2011 in the thirty-eighth Parliament.

Hon SUE ELLERY: Although the advisers are confident that the commission would have considered that report at the time it was released, it was not relied upon for the drafting of this bill.

Hon NICK GOIRAN: The twenty-first report of the Joint Standing Committee on the Corruption and Crime Commission is titled "Parliamentary Inspector's Report Concerning Telecommunication Interceptions and Legal Professional Privilege". It is a shame that this was not dealt with during the informal consultations that took place with the current parliamentary inspector. Perhaps, once again, it is a lesson on why there ought to be formal consultation, albeit I reiterate my earlier point that I cannot see the difference between the two, because either the government has consulted or it has not. I find the term "informal consultation" ambiguous to say the least. Nevertheless, this particular report highlighted some serious concerns by the then parliamentary inspector, Hon Chris Steytler, QC. It troubles me that the government has given no consideration to this report when looking at the issue of legal professional privilege and deciding to amend the provision under section 144 of the act.

Sitting suspended from 1.00 to 2.00 pm

Hon NICK GOIRAN: Prior to the interruption of proceedings, we were considering clause 14 of the bill, which seeks to amend section 144 of the Corruption, Crime and Misconduct Act 2003. That particular section deals with the important issue of legal professional privilege. The government has delayed the passage of this bill for nine months. It has been languishing on the table in the Council for nine months, for reasons known only to the government, when it could have been referred to the Standing Committee on Legislation or some other committee that would have facilitated the passage of this legislation. Prior to the interruption in proceedings, we learnt that the government, in all the time it has had, including this delayed nine-month period, has not considered the "Parliamentary Inspector's Report Concerning Telecommunication Interceptions and Legal Professional Privilege". That is what we were told prior to the interruption. I would like to know from the minister whether the procedures outlined in that report have been reviewed. By way of explanation, I ask that because recommendation 4, by the then parliamentary inspector, was that those procedures should be reviewed after they have been in operation for 12 months. This report is, as I mentioned earlier, from 2011.

Hon SUE ELLERY: I need to do two things: I need to correct the record for something I said earlier. I will do that in a minute, but first I will answer the honourable member's question. The tenth report by the Joint Standing Committee on the Corruption and Crime Commission of 2011 recommended that the commission deal with intercepted telephone calls that may contain material that is subject to legal professional privilege. The commission adopted the recommended practice and went further. Now intercepted telephone calls are initially marked "possibly privileged" by monitors, and secondly, a dedicated senior lawyer assesses the legal professional status. If legal professional privilege is identified, the call is quarantined and never comes to the knowledge of the investigator. If not, it is released.

There was an earlier exchange about a meeting between the Director of Public Prosecutions, the commission, the parliamentary drafting office and Jim Thomson. There was an exchange about whether a list of issues had been identified and whether notes were kept of that meeting. I have now been advised that there is no list; however, file notes were kept of the meeting. I do not have access to those; however, notes were taken.

Hon NICK GOIRAN: I thank the minister for the correction. It is amazing what can be uncovered when we have short interruptions in proceedings.

The minister indicates that the commission not only accepted the recommendations outlined by the parliamentary inspector but went further, so I thank the minister for that advice. My question was: were these procedures reviewed after they had been in operation for 12 months, as per recommendation 4 by the parliamentary inspector?

Hon SUE ELLERY: I am not able to provide that information. None of the advisers here were employed at the commission before 2014; none of them are able to tell me what occurred between 2011 and 2014. From the point that they were employed, nobody is aware of a review. One may have happened earlier, but these officers would not know.

Hon NICK GOIRAN: It is an excellent thing that in the chamber this afternoon we have the Deputy Chair of the Joint Standing Committee on the Corruption and Crime Commission and also his colleague Hon Alison Xamon because this is precisely the type of issue that the Joint Standing Committee on the Corruption and Crime Commission might like to explore in due course, because we have a very serious matter to do with legal professional privilege. It is being tampered with by the government in the sense that section 144 of the act is being amended. We know two things: that the government has had informal consultation with the current parliamentary inspector—whatever that is supposed to mean, to the extent that we know anything about this so-called informal consultation—and that a conversation took place between the current commissioner and the current parliamentary inspector. We know nothing else about that particular process. We certainly do not know whether the issue of legal

professional privilege was discussed between those two esteemed gentlemen. We do not know whether any file notes were kept of that particular informal consultation, but what we also know is that the government has given zero consideration to the twenty-first report during the thirty-eighth Parliament for this particular provision. We do not know whether there has been any review of the procedures, despite the fact that Hon Chris Steytler, QC, said that those procedures should be reviewed after they had been in operation for 12 months. I would encourage those members to take up this matter, because plainly that is not going to be taken up now.

The only reason it will not be taken up now, so that the record is clear, is that two things have happened. Firstly, the government has delayed the passage of this legislation for nine months. It has control of the agenda of the house and it has chosen not to bring on this matter. Secondly, the government insists that this bill pass today so that the Mr Bigs can be tackled from Sunday, 1 July this year. Remember, we already know that the government supposedly had these people lined up for hearings from 1 January, so of course it is very distressed that it is taking another six months. The government is certainly not interested in any further delay, or proper scrutiny of legislation, despite the fact it has not even considered some of the key reports. This is the kind of fiasco that we are in. It leaves members like us, who are trying to do the job of the Legislative Council properly, in the unenviable position of simply having to let this go through to the keeper. That is totally unacceptable. The blame for this rests solely at the feet of the government. I am very disappointed that the important work of Hon Chris Steytler, QC, has been ignored by this government. I urge the two honourable members of this place who represent this chamber on the Joint Standing Committee on the Corruption and Crime Commission to take a close look at this to ensure that it has no further problems. Having been a member of that committee at that time, I recall that Hon Chris Steytler was very concerned about how the Corruption and Crime Commission was dealing with legal professional privilege. He was so concerned that he decided to draft this report and bring it to the committee's attention. The committee concurred with him and tabled it in this place. For this government to show no regard whatsoever to that report is poor and I am disturbed that we are unable to get any information about this issue.

Unfortunately, the government is ill-prepared for today's Committee of the Whole proceedings, telling us that the respective advisers were not the relevant advisers at the time. That is not the fault of those individuals, but it is the fault of the government for not being adequately prepared for today's proceedings. How are we supposed to make simple progress through this bill this afternoon if basic questions are unable to be answered, other than to simply say, "Sorry, none of us were there at that time"? That is not going to be helpful to the passage of the legislation or provide us with any answers to the questions that we have on the serious matter of legal professional privilege. I note that Hon Aaron Stonehouse raised concerns about this issue in his earlier contribution, and quite rightly so.

I had intended to also ask questions about similar aspects of clause 15, which is the next clause that will be before the house, but I can see that there will be absolutely no point in asking those questions because the government is ill-prepared today to deal with this legislation, despite the fact that it has had nine months to prepare for today. I do not know what has been happening in the last nine months. Maybe the government has been so busy campaigning in Darling Range that it has not had time to prepare for today's proceedings. What an absolute waste of time that was! Not only was the Darling Range campaign a complete failure, but, in addition, the government is not prepared for today's proceedings. The poor old Legislative Council gets the worst of both worlds because of the attitude of this government. I am very disappointed and I can see no point in continuing to ask questions to scrutinise this legislation because the government is not ready today and the responsibility will now shift from this chamber to the Joint Standing Committee on the Corruption and Crime Commission. Thank goodness there is a joint standing committee that will be able to provide rigour and oversight of all the activities of the Corruption and Crime Commission, including these new provisions, which will become law when the government hastily brings them into effect on Sunday and the committee starts tackling the Mr Bigs with its three full-time equivalent staff, who will have to shift their focus away from serious misconduct. Supposedly, the three of them will tackle the Mr Bigs. Of course, members should keep in mind that the individuals the government wants to tackle have been sufficiently competent to outwit the Western Australia Police Force and the Director of Public Prosecutions, which currently has the capacity to make these applications. The government thinks that three full-time equivalent staff from the CCC will be enough to tackle organised crime in Western Australia. I am very disappointed. This is a missed opportunity by this government. It could have built upon the work of the Joint Standing Committee on the Corruption and Crime Commission's eight years of work in this space. It could have brought in a new definition of "organised crime", which multiple reports and multiple individuals have said could be the best thing the government could do. It did not do that! It could have considered these other reports. It has not done that either! It could have been well prepared for today's debate. It did not do that either! Instead, its members are too busy doorknocking in Darling Range and reminding everybody about Barry Urban and other things. I cannot underscore enough my disappointment that a matter of this gravity and seriousness is being treated in this fashion by this government.

Be that as it may, I understand that the government has an agenda that it would like to achieve. Far be it for the opposition to be obstructive on such a thing. Far be it for us to take the approach that members opposite do when they so-called answer questions from members of the opposition. Far be it for us to take that type of obstructive

and evasive approach. We will facilitate the passage of this legislation despite the fact that the government is ill-prepared after nine months of delay. We have never really been provided with an explanation about why it was delayed for nine months. Despite all that, I can see that there is no point in me asking any further questions about clause 14 or clause 15 and, most probably, any other clause. I had indicated to the Leader of the House that I might ask questions about clause 65. When I cool off in a moment, I will give some consideration to whether I will do that still.

Clause put and passed.

Hon SUE ELLERY: In respect of the supplementary notice paper, I would like to perhaps provide some assistance to the house by advising that there have been some discussions behind the Chair. On page 2 of the supplementary notice paper in my name is a new clause 24A. I seek the Deputy Chair's advice because I do not want to move that. I indicated to the house that agreement has been reached behind the Chair that the review clause that we will all agree to is that in the name of Hon Michael Mischin. The review clauses in my name and in the name of Hon Aaron Stonehouse will either fall away or not be moved, whatever the process we need to follow is.

The DEPUTY CHAIR (Hon Matthew Swinbourn): You just do not move that clause.

Clauses 15 to 24 put and passed.

New clause 24A —

Hon MICHAEL MISCHIN: I thank the Leader of the House for her indication of support for the proposed new clause 24A, which will insert after section 226A of the Corruption, Crime and Misconduct Act 2003 a section titled, "Review of 2018 amendments to Act". I will not read the proposed amendment out, but suffice it to say, it proposes that the minister carry out a review of the operation and effectiveness of the amendments proposed in the bill as soon as practicable after every fifth anniversary of the date on which they come into effect, prepare a report based on the review and table a report in each house of Parliament not later than one year after that fifth anniversary. A similar review clause is proposed for later in the bill to deal with amendments to the Criminal Property Confiscation Act in similar terms. I think its purpose is self-evident. Apart from other things, the Corruption and Crime Commissioner has indicated that he has the resources to deal with what is proposed under the bill, but would suggest a review of those resources after three years. Five years seems to be a reasonable period of time for an assessment of whether what is being proposed by the government has been effective or needs to be addressed in some fashion, or has revealed problems that need to be solved. I am sure that, in any event, if any difficulties come to light before then that are of a sufficiently urgent nature, they will be dealt with as necessary. A proper, holistic review of the scheme of giving the Corruption and Crime Commission these specific powers under the Criminal Property Confiscation Act is a sensible course to take, quite independent of any other review or annual reporting done by the Corruption and Crime Commission or by the Director of Public Prosecutions in respect of their particular function under the Criminal Property Confiscation Act. I move —

Page 14, after line 21 — To insert —

24A. Section 226A inserted

After section 226 insert:

226A. Review of 2018 amendments to Act

(1) The Minister must carry out a review of the operation and effectiveness of the amendments made to this Act by the *Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Act 2017* as soon as is practicable after every 5th anniversary of the date on which the *Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Act 2017* section 8 comes into operation.

(2) The Minister must prepare a report based on each review and cause it to be laid before each House of Parliament —

(a) as soon as practicable after the review is completed; but

(b) not later than 1 year after each 5 year anniversary.

Hon SUE ELLERY: As I indicated earlier, the government will support the amendment moved by Hon Michael Mischin. It reflects agreements reached behind the Chair. We originally started with two points of difference between the three versions of review. One was about whether it would be a recurring review and the second was whether it would be after five years or after three years. The government has conceded on both of those issues, and we are happy to support the amendment moved by Hon Michael Mischin.

Hon AARON STONEHOUSE: I indicate that I will also be supporting this amendment, and as agreement has been reached behind the Chair, I will be withdrawing my amendment after this one is passed. There are some serious unanswered questions about this bill, such as the impact on legal professional privilege, as we have just

heard, and also about the potential perverse incentives around targets for property confiscation. I also have many broad questions about criminal property confiscation in the act. Although this will not address my concerns with the act, it will at least ensure that the new provisions and the powers extended to the CCC are reviewed in a timely manner and on an ongoing basis, so I am happy to support this form of review clause in lieu of my own.

Hon NICK GOIRAN: I think I just heard the minister say that there were two points of difference. One was the recurring nature of the review, and the second was whether it would be three or five years, and that the government has conceded both points. I note that the amendment before the house mentions a five-year review clause, not a three-year clause.

Hon Sue Ellery: Yes.

Hon NICK GOIRAN: I just seek clarification; that does not make sense.

Hon SUE ELLERY: The member is right. Originally, we did not want a review at all. We have agreed to a review after five years and that it be recurring. I do not think anything turns on it, but there was discussion about whether there was a review at all, a recurring review, and whether a review at all and/or a recurring review would occur after three years or five years.

Hon NICK GOIRAN: I thank Hon Michael Mischin for moving this amendment and for fixing up the work of the government. I note that the government was choosing a far more shifty amendment that would have seen only one review taking place, rather than a regular ongoing review, but, more importantly, if members cared to cast their eyes over the amendment that was originally drafted by the government, they would have seen a review done, the report of which could be tabled at some indefinite period of time, including never, whereas Hon Michael Mischin has had the foresight to see that it would be much more appropriate to ensure that the report is tabled no later than one year after the conclusion of the review. I thank him for doing that, and it is quite right that this amendment be supported, particularly because of the comments I made earlier that we have now had to rush this legislation through on the final sitting afternoon before the winter recess because of the government's insistence on leaving it languishing on the table for nine months. As I have indicated earlier, we are not able to get satisfactory answers to questions, so this review that gets done in five years' time will be very important. The other point I make is that I would ask the two honourable members who represent this chamber on the Joint Standing Committee on the Corruption and Crime Commission to ensure that there is keen scrutiny of these provisions within this five-year period, because five years is a very long time for a review of these provisions. It no doubt suits the government to wait five years, when many of the government members may no longer be here. However, for those of us who intend to still be here at that time, that is a long way away, and I would ask those two members to ensure that these provisions receive proper scrutiny and that there is formal consultation with the parliamentary inspector.

New clause put and passed.

Clause 25 put and passed.

New clause 25A —

Hon ALISON XAMON: I have already spoken on this matter in my second reading contribution, so I do not feel that I need to go over it at length. To refresh the memories of members, I reiterate that the Greens continue to be concerned about the scope of this new provision, particularly because the criminal property confiscation laws, as they currently exist in this state, run the risk of being inherently unjust. As such, this provision seeks to ensure that, should the Corruption and Crime Commission use its extraordinary powers in these matters, it should be satisfied that the matter it is investigating is substantially connected with organised crime, rather than being waylaid by fairly minor matters in which the greatest injustices of the criminal property confiscation laws have been highlighted. People who grow marijuana in their own homes, for example, for their own purposes run the risk of potentially losing their homes. This motion attempts to limit the scope, so that the extraordinary powers of the CCC are focused on the crime that we would anticipate it should be used for—that is, to deal with substantive matters limited to organised crime, and not those matters that would otherwise be more appropriately dealt with by the police. I move —

Page 15, after line 4 — To insert —

25A. Section 5A inserted

After section 5 insert:

5A. Application of Act to CCC

Where this Act confers functions on the CCC, the exercise of those functions is subject to the CCC being satisfied that there are reasonable grounds for suspecting that the matter is substantially connected to organised crime as defined in the *Corruption, Crime and Misconduct Act 2003* section 3.

Hon AARON STONEHOUSE: I wholeheartedly support this amendment. It seems the intent of the bill we are dealing with is to tackle organised crime. The Attorney General has spoken in vivid detail about cutting the heads off snakes, the gates of hell and all other kinds of strange biblical references. If this bill is indeed intended to cut the head off the snake, further clarifying that these powers should be exercised only when there is a substantial connection to organised crime makes sense and will help avoid some of the situations I mentioned in my contribution to the second reading debate in which people who are using drugs for own personal consumption, but are not necessarily traffickers and not involved in organised crime, are losing their property. I wholeheartedly support this amendment. I do not see how it interferes with the policy intent of the bill and I believe that the powers extended to the CCC should still be able to be exercised effectively in targeting organised crime with this amendment included.

Hon SUE ELLERY: As Hon Alison Xamon indicated, we canvassed this debate a little earlier. The proposed amendment would insert a requirement for the commission to satisfy a test of reasonable grounds in its exercise of unexplained wealth powers under the Criminal Property Confiscation Act 2000. This test would be in addition to the existing civil standard on the balance of probabilities that the court must be satisfied of within all confiscations proceedings. The amendment proposes to define the circumstances in which the commission can undertake unexplained wealth investigations and link them to the commission's functions under its act. The government does not support the amendment. The commission does not support the amendment, as the exercise of unexplained wealth powers is not intended to be derived from the commission's functions and definitions regarding organised crime. As I indicated in our earlier debate, the powers under part 4 of the Corruption, Crime and Misconduct Act relating to organised crime have nothing to do with investigating unexplained wealth. They can only be enlivened on an application by the Commissioner of Police and do not empower the commission to investigate organised crime. The commission's powers under part 4 are limited to authorising the WA police to use exceptional powers and obtain fortification warning notices. The narrow definition of organised crime in section 3 of the Corruption, Crime and Misconduct Act is directly referable to the powers set out in part 4. It is in no way relevant to the investigation of unexplained wealth proposed by the bill before us.

Hon MICHAEL MISCHIN: I indicate that the opposition will not support the amendment, partly for the reasons that have been explained by the minister, but it also seems to me that in practical terms it is not workable. If one is talking about the functions in a very broad sense—that is, the powers that can be exercised by the CCC—it may or may not be possible at a very early stage of identifying a potential target that we are able to be satisfied one way or another whether there are reasonable grounds for suspecting that there is organised crime involved. As Hon Aaron Stonehouse has reminded us, there has been a lot of large talk about this power to investigate and seize unexplained wealth being devoted to destroying organised crime and cutting heads off snakes, but it may very well be that there is only the head and not much of a snake, and there is someone who has managed through a variety of innocent agents to accumulate unlawfully obtained wealth that is not within the very narrow and precise definition contained in the relevant legislation of what organised crime might be. Some further refinement of this in order to limit the CCC's powers may be warranted, but I do not think one can accept the amendment as it currently stands, and it would need some specific inquiry by the government about whether as a matter of policy it is practicable to limit the CCC's powers in this fashion. I also think that given that there is a significant overlap in the relationship between the CCC and its functions, the Western Australia Police Force and the Office of the Director of Public Prosecutions, to start putting in artificial distinctions and refinements will create more problems than it solves and will allow those who are able to do so to try to slip out of the oversight and investigation that is hoped for in this bill. The opposition cannot support the proposed amendment.

New clause put and negatived.

Clauses 26 to 76 put and passed.

Hon AARON STONEHOUSE: Bearing in mind that Hon Michael Mischin's amendment earlier in Committee of the Whole was successful, I will not move my new clause 76A and will instead be supporting Hon Michael Mischin's new clause 76A.

New clause 76A —

Hon MICHAEL MISCHIN: I move —

Page 36, after line 23 — To insert —

76A. Section 140A inserted

After section 140 insert:

140A. Review of 2018 amendments to Act

(1) The Minister must carry out a review of the operation and effectiveness of the amendments made to this Act by the *Corruption, Crime and Misconduct and Criminal*

Property Confiscation Amendment Act 2017 as soon as is practicable after every 5th anniversary of the date on which the *Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Act 2017* section 27 comes into operation.

(2) The Minister must prepare a report based on each review and cause it to be laid before each House of Parliament —

(a) as soon as practicable after the review is completed; but

(b) not later than 1 year after each 5 year anniversary.

I thank Hon Aaron Stonehouse and the Leader of the House. For the reasons explained earlier about the proposed insertion of a new clause 24A, I have moved to insert the amendment standing in my name, which inserts a new clause 76A, which in turn inserts a new section 140A into the principal act, which in this case is the Criminal Property Confiscation Act 2000. It is effectively a review clause requiring a review by the minister of the operation of the amendments effected by this bill on every fifth anniversary of the date on which these amendments come into effect and that a report based on the review be tabled as soon as practicable in each house of Parliament after that review is completed and not more than one year after that fifth anniversary.

Hon SUE ELLERY: For the same reasons that we outlined when the chamber dealt with the earlier review provisions, I indicate that the government will support this amendment.

New clause put and passed.

The DEPUTY CHAIR (Hon Matthew Swinbourn): Hon Aaron Stonehouse has indicated that he does not wish to pursue his amendment on the supplementary notice paper.

Clause 77 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

As to Third Reading — Standing Orders Suspension — Motion

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

Third Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.44 pm]: I move —

That the bill be now read a third time.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.45 pm]: I do not propose to take up very much time other than to observe that it remains to be seen whether the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 and the changes it effects will be effective. It has been revealed in the course of the debate—this is not a criticism of the minister but is based on the information she has been provided by her instructing minister, the Attorney General—that a lot of the questions we have sought to have answered have not been answered or could not be answered. It is apparent that the government cannot even say, despite the rhetoric in the other place and in the Attorney General's media releases from time to time, whether the Corruption and Crime Commission has even one target in its sights, let alone how many it might have. It is apparent that no extra resources or expansion of the financial investigations team are contemplated. It is apparent that although investigations will have to be prioritised in the usual way, they will involve sacrificing some of the other core business of the Corruption and Crime Commission to look into serious misconduct in favour of looking at unexplained wealth. It is apparent that rather than deterring organised crime, there are serious risks that the Corruption and Crime Commission might be compromised by being limited by the current civil proceedings regime, to which it will be subject in the courts where criminals might potentially buy their way out of losing their wealth by negotiations with the CCC simply to save court time and to avoid expensive and lengthy litigation.

Once again, it seems to be a case of an Attorney General who wants to be seen as a man of action—get out there and puff himself up like a blowfish—and claim that he has introduced 15 bills in the last year, as if that is a sign of success, but he would rather do things quickly than do things properly. Some of the questioning that has been conducted over the two occasions that this bill has been before the chamber have indicated that some of the implications of what is proposed have not been fully explored and that this is a cheap and quick way of trying to achieve something that may be a worthy end, but without proper consideration of whether there are better ways of doing it. It is an idea that appears to have arisen from the Corruption and Crime Commissioner proposing it to the Attorney General and him leaping onto it, having all the consultation, formal or informal—whatever that might

mean—being done by the Corruption and Crime Commissioner without the Attorney General having any control over the process and being able to assist through his representative in this place about what is being done, what he has considered and how he has considered it. This is an example of something that seems to have been driven by the agency with an interest in obtaining the powers to achieve an end, rather than the Attorney General taking control of the process, using his judgement and trying to take credit for having done something rather than doing something properly. I hope it does succeed and there are no unforeseen or undesirable consequences from what is proposed. We will see how quickly it gets up and running.

I wish the government luck with this but I have a feeling that within the next couple of years, we may have to come back to try to fix some of the problems that could have been anticipated with proper consultation with, say, the Law Society of Western Australia, the Criminal Lawyers' Association and others to see the implications of the extension of these powers to this very powerful commission. Good luck to the government. I look forward to seeing a bag of heads of organised crime snakes being delivered to Parliament and brandished by the Attorney General in the other place so that we can gauge the success of this measure!

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.