

**CORRUPTION AND CRIME COMMISSION AMENDMENT (MISCONDUCT) BILL 2014**

*Second Reading*

Resumed from 25 September.

**MR C.J. BARNETT (Cottesloe — Premier)** [4.11 pm] — in reply: I understand that opposition members have concluded their second reading comments on the Corruption and Crime Commission Amendment (Misconduct) Bill 2014, and I will make just a few remarks in response. Firstly, the opposition spokesperson for legal matters, the member for Butler, spoke at some length and, I have to say, made some good contributions and good suggestions. First, he indicated that the opposition will support this bill. The purpose of the bill is to transfer matters of minor misconduct from the Corruption and Crime Commission to the Public Sector Commissioner, with the exception of any matters of misconduct, whether they are major or minor, relating to police. He also pointed out the difficulties that there have been for a number of years regarding the Corruption and Crime Commissioner, and offered an explanation, which I agree with, that the lack of remuneration had been the issue. The current requirement is that the head of the CCC be a retired Supreme Court judge, or of that stature, and the pay is set at the level of that for a Supreme Court judge. However, a retired judge, whose pension is about 60 per cent of the salary, would get only a top-up of the remaining 40 per cent. That proved to be unattractive, and I think that has been the evidence. It is a demanding position, and a very public and controversial position in many cases, and that level of remuneration simply did not prove attractive. I agree with that.

The member for Butler also commented on, if you like, the track record of the CCC. I was interested that the member suggested that the CCC's role is primarily the oversight of police. He made some suggestions about how the CCC's powers could be used in conjunction with police to deal with organised crime—something that I agree with, but there has been quite a difference of opinion across parties and, indeed, within the Liberal Party about that. The member for Quigley made some suggestions. He also made the point that he thought —

**Mr M. McGowan:** Member for Butler.

**Mr C.J. BARNETT:** Member for Butler, yes; sorry.

**Mr J.R. Quigley:** I'll die soon and they might rename the seat!

**Mr C.J. BARNETT:** Sorry, member for Butler. I hope Hansard will correct that; I am sure it will. The member for Butler also —

**Mr M. McGowan:** The member for Quigley!

**Mr C.J. BARNETT:** Okay; it was a mistake. Calm down. It's childlike.

**Mr M. McGowan:** No, it's a good name for an electorate.

**The ACTING SPEAKER:** Members!

**Mr C.J. BARNETT:** It's so childish.

The member for Butler also made the point that, in his opinion, prison officers should stay under the jurisdiction of the CCC for both major and minor misconduct. That was also an interesting point that he made. He then went on to explain how he believed the CCC could play a role in investigating organised crime. He suggested that that should be at the request of the Commissioner of Police to ensure that there were not conflicts of interest. That is a vexed question, but I appreciate the comments.

In summary, as the lead spokesperson for the opposition, he agreed that minor misconduct matters should go to the Public Sector Commissioner. He argued that prison officers should remain under the supervision of the CCC for both major and minor misconduct. He said that if the police had some capacity to access CCC powers, that could be used effectively against organised crime, and he was of the view that it should be within the province of the Commissioner of Police to initiate that. I thank the member for Butler for his useful contribution.

The member for Armadale again indicated support for the objective of the bill in moving minor misconduct from the CCC to the Public Sector Commissioner. He had a differing view from that of the lead speaker for the opposition about how the CCC could become involved in investigating organised crime and argued that that would be a conflict of interest. I think that is the essence of the debate, to be honest. I believe that the CCC's powers and resources should be used to tackle organised crime, but there is always that accusation of conflict of interest. Although the government does not intend to do anything about that immediately, it will look at that issue again, because particularly in the area of drugs, and maybe to a lesser extent prostitution, organised crime is having a very damaging effect on our community.

The member for Warnbro again opposed, I think, if I am interpreting his comments correctly, the CCC becoming involved in organised crime. Again, he made the point about the need to have a full-time commissioner, which I agree with, and that is why the change is going to be made.

The member for Willagee again supported the legislation. He stressed the role of prevention, which is a CCC function. It is also a Public Sector Commission function. For minor misconduct, for most areas of the public sector it is probably very heavy-handed to have a CCC investigation, or even an interview or a notification, for what can be relatively minor misdemeanours. The member for Willagee praised the performance of Mike Silverstone, who is about to retire or has perhaps now retired. I agree with that, and I thank the member for raising that issue. It has been an outstanding contribution.

The member for Midland argued that the CCC should not be involved in investigating organised crime, so we have some differing opinions on the opposite side, and probably some on this side of the house.

I know these issues will probably come up as we go through the consideration in detail stage. I will make just two comments on the issues raised by the member for Butler in particular. Firstly, I will deal with the suggestion that the CCC should retain supervisory powers for all misconduct, both major and minor, by not only police, but also prison officers. I think there is merit in that, and I basically agree with the argument put. There are many similarities between misconduct by police and prison officers. I have discussed that briefly with the Public Sector Commissioner. He pointed out that some prison officers are public servants and some are not, and maybe there is a distinction between the administrative part of the Department of Corrective Services and the actual work within prisons. There are some issues. I have asked the Attorney General and the Minister for Corrective Services to sit down with the Public Sector Commissioner, and maybe with the CCC if that is appropriate, to look at that issue. So, I take the recommendation from the member for Butler seriously. If the government agrees and thinks it is a sensible way to proceed, I foreshadow that there may be an amendment along those lines in the upper house. The government is yet to make that decision, but I think it is a worthy suggestion and we are certainly going to consider it.

With respect to the salary of the Corruption and Crime Commissioner, cabinet had already made a decision along those lines that the salary of the commissioner should be the full salary of a Supreme Court judge and that a retired Supreme Court judge should also be able to retain their retirement payment. That will make it a more attractive position. Hopefully, that will give stability to the leadership of the CCC. Members will have noticed that there is an amendment on the notice paper to delete a section, which takes away that restriction. As I said, I am not trying to pre-empt what the member for Butler said, but cabinet had made that decision. I understood that that would probably be moved in the upper house, but it is a money matter because it will increase the salary of the Corruption and Crime Commissioner, so it has been added to the notice paper. It is not obvious, but deleting those couple of clauses removes that restriction and therefore allows the government of the day to pay a full judge's salary to the Corruption and Crime Commissioner without having to take into account his pension or retirement income. That, hopefully, will make it worthwhile for someone to take up the position and stay in it.

The second one has been dealt with, and the prison officers' issue is being examined by government. Presumably, once this bill passes this house and is in the upper house we will have formed a position, on advice, as to whether it is workable. I think it has merit, and that is why we are looking at it.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

*Consideration in Detail — Bill's Scope Extension — Motion*

**MR C.J. BARNETT (Cottesloe — Premier)** [4.21 pm]: I move —

That the scope of the Corruption and Crime Commission Amendment (Misconduct) Bill 2014 be extended to allow an amendment to be moved by the Premier to insert a new clause into the bill which will amend schedule 2, clause 3 of the Corruption and Crime Commission Act 2003 relating to the remuneration of the commissioner.

By way of explanation, I move that motion so that the house authorises a widening of the scope of the bill specifically to do with the issue of remuneration so that the Corruption and Crime Commissioner can be paid the equivalent of a full Supreme Court judge's salary and retain the retirement benefits he already has. Instead of just topping up the retirement benefits to the judge's salary, this will obviously make it significantly more attractive, and it was both raised and supported by members opposite.

**MR P. PAPALIA (Warnbro)** [4.23 pm]: I just want to clarify something. I am pretty certain that this will not preclude us from raising any other clauses prior to proposed new clause 31, where this is to be inserted. No? I thank the Premier.

Question put and passed.

*Consideration in Detail — Bill's Clauses*

**Clauses 1 to 11 put and passed.**

**Clause 12: Sections 21AA, 21AB and 21AC inserted —**

**MR P. PAPALIA:** I do not want to hold things up at all, but I want to try to draw a comment from the Premier with regard to the suggestion by the member for Butler in relation to the Department of Corrective Services and the response the Premier gave earlier —

**MR C.J. BARNETT:** Sorry, can I interject? We have a little problem here. I was proposing to make a statement about privilege at clause 6.

**THE ACTING SPEAKER (MR N.W. MORTON):** Premier, the advice I have received is that once this clause has been dealt with, you can make your statement about clause 6.

**MR P. PAPALIA:** The Premier made a comment in his response to the second reading debate about the member for Butler's suggestion regarding the Department of Corrective Services and the retention of some degree of oversight by the Corruption and Crime Commission. I may have misheard him, but did the Premier suggest some sort of splitting of the administrative component of the Department of Corrective Services from those operating in the field?

**MR C.J. BARNETT:** I raised that as one of the issues that would have to be looked at that may be impractical, and that's why I'm not saying the government's agreeing now to all matters of misconduct in the CCC. We just want to look at maybe that distinction and also the distinction between public servants and non-public servants. Those are some of the issues that are being looked at.

**MR P. PAPALIA:** Regardless, if there were to be some sort of amendment, we can discuss that at the time, but I would be concerned if the head office of the department were to be excluded somehow. If we altered things so that the CCC had oversight of Corrective Services, I would be concerned that some of the greatest opportunities for corruption might lie within the department's head office where the expenditure of large amounts of money is discussed and significant contracts are determined. I know that this is all hypothetical because we have not even reached that point yet, but I just want to put that comment out there. In the event that the legislation comes back from the other place, I look forward to discussing that matter anyway.

**MR C.J. BARNETT:** If I could just make this clear: serious misconduct will remain under the CCC regardless. All we are looking at is minor misconduct. At the moment, this bill moves minor misconduct in prisons or Corrective Services to the Public Sector Commissioner. I think there is a case, given the nature of its role, its job and the people it is dealing with, for leaving both serious and minor misconduct in Corrective Services with the CCC. That is probably my own view, but the Attorney General and the minister are looking at it, along with the necessary authorities. But I think it is a valid point. If we go down that path, an amendment will be moved in the upper house and will come back here.

**Clause put and passed.**

**THE ACTING SPEAKER:** Before I call for further clauses to be debated, the Premier may wish to make his statement in relation to clause 6.

*Parliamentary Privilege — Clause 6*

**MR C.J. BARNETT —** by leave: This statement relates to the legislation and the issue of parliamentary privilege, and I make it to place it on the public record for the purposes of clarification. It is a long statement, so I have sought leave to read the statement. It relates to clause 6. The amendments proposed by clause 6(5) to section 3(2) of the principal act are being made to further clarify and to confirm that parliamentary privilege is not affected by the operation of the Corruption and Crime Commission Act.

In brief, the law of parliamentary privilege in Western Australia is that which applied as at 1 January 1989 to the United Kingdom's House of Commons, its members and committees. Article 9 of the Bill of Rights 1689 is the relevant source of that privilege, and provides that proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament. A proceeding in Parliament therefore enjoys the protection afforded by parliamentary privilege. As a result, members of Parliament cannot be questioned on their motives or actions in undertaking work directly and immediately connected with the work of the house or a parliamentary committee. The same protection is afforded to witnesses before a house or a committee. A statute may make it

clear, either by express words or necessary implication, that parliamentary privilege does not apply. For example, there are offences under chapter VIII of the Criminal Code providing for offences against the legislature. Among them is section 57, which makes it an offence to give false evidence before Parliament. In order to mount a successful prosecution, it would be necessary to lead evidence of the proceedings in Parliament and expose that evidence to cross-examination and contradiction. Given that proceedings of Parliament are protected by parliamentary privilege and so cannot be impeached or questioned, it would be impossible to mount a successful prosecution unless section 57 indicated that parliamentary privilege does not apply to that section. Given this evidentiary position and the nature of the offence created by section 57, it is arguable that in enacting section 57, Parliament waived its privilege, given the impossibility of obtaining a conviction for such an offence without the prosecution leading evidence of what the accused had said before Parliament. Ordinarily, dealing with false evidence before Parliament or one of its committees is something Parliament would deal with. The “implicit waiver” interpretation of section 57 leaves it open for the police to make inquiries if a charge were being considered. However, it is not a matter for inquiry by any other body, such as the CCC. Its jurisdiction is confined to that provided for in the principal act. The act makes no express or implied waiver of parliamentary privilege. Indeed, the contrary intention is expressed in section 3(2), which provides that —

Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* ...

The amendments proposed by clause 6 to section 3(2) have two legal consequences. First, they further clarify and ensure that in relation to matters over which the Parliament has authority pursuant to its privileges, the CCC has no jurisdiction. Second, as a more general principle of statutory interpretation, they clearly place on the public record that this Parliament intends that its privileges are not to be affected by its legislation unless the Parliament itself decides to do so by express words or necessary implication. As honourable members will appreciate, this is very important because parliamentary privilege provides, for example, the capacity for members of Parliament and witnesses before Parliament to say what they think needs to be said in parliamentary proceedings without being questioned in any court or place out of Parliament. This is an essential element of our representative parliamentary democracy.

*Debate Resumed*

**Clauses 13 to 31 put and passed.**

**New clause 31A —**

**Mr C.J. BARNETT:** I move —

Page 44, before line 1 — To insert —

**31A. Schedule 2 clause 3 amended**

- (1) In Schedule 2 clause 3(4) delete “subclause (5) and”.
- (2) Delete Schedule 2 clause 3(5).

This simply removes the restriction on the remuneration of the Corruption and Crime Commissioner. As I just said, this allows a retired Supreme Court judge to get a full Supreme Court-equivalent salary to be the commissioner of the CCC and also to retain his judicial pension, which is about 66 per cent of the judicial salary. It basically makes it a salary of 1.6 times a Supreme Court judge salary, which is hopefully attractive enough to encourage a retired Supreme Court judge to take on this role and to retain the position for the expected period.

**Mr J.R. QUIGLEY:** Does this have any implications for the Judges’ Salaries and Pensions Act 1950, which I understood precluded a judge from taking income without the permission of the Attorney General, which did not exceed a certain sum?

**Mr C.J. BARNETT:** I am advised that that act would not apply to a retired judge. This restriction would not impact on that. The understanding is that it has no implication. If the member wants me to verify that later, we will check that and I will write to the member.

**Mr P. PAPALIA:** I know that we have been without a permanent commissioner for some time now, and I assume that a recruiting process is underway. Regardless of the passage of this bill, is it the case that this proposal for pay will apply so that we can appraise whoever the potential applicants are that they will be in receipt of remuneration? We will not oppose it, obviously.

**Mr C.J. BARNETT:** I think the member for Butler may have made the point that we have a restricted pool in which to look for a suitable person to take on the position of commissioner of the CCC. There are not that many retired Supreme Court judges either here or in other states. We also have to find someone who has an interest in this field. Once this is in place, it will hopefully be relatively easy to approach people who would fit this category. Obviously, it is not restricted to Western Australia. A limited number of people are likely to take on

these roles. They are demanding and controversial. It is not a soft retirement job by any means; it is perhaps harder than being a Supreme Court judge.

**New clause put and passed.**

**Clauses 32 to 38 put and passed.**

**Title put and passed.**