CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2017

Second Reading

Resumed from 28 November 2017.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [5.48 pm]: I rise to indicate that I am the lead speaker on behalf of the Liberal opposition on the Corruption, Crime and Misconduct Amendment Bill 2017 and that we support the bill. I have some remarks to make about the history of the bill and some of the implications of it. I am aware that there is a supplementary notice paper with an amendment proposed by Hon Alison Xamon to introduce a section 27A into the substantive act, and I will come to that in due course.

By way of introduction, it is unquestionable that Western Australians are entitled to honest government and scrupulous integrity from those in public office. Fortunately, we have a social and political culture that demands that these high standards and any failings and shortcomings are treated seriously by not only our judicial system, but also the court of public opinion.

Parliament always has been jealous of its responsibilities and its authority to deal with members of Parliament being mischievous and departing from those standards. There are limits, of course, to what it can do and what it can achieve, and I will come to some of those in due course. However, Parliament by its very nature is not an investigative or prosecuting body. The chamber debates issues of moment to the community and formulates and passes laws. The Corruption and Crime Commission was established as a means of ensuring that public officers would be held to the high standards that we expect, and significant powers have been conferred on it to enable it to do its job. For some time now, there has been debate on whether its remit should be expanded to the more general investigation of organised crime and the identification and seizure of unexplained wealth. That has been extended to cases in which individuals, not necessarily public officers, who appear to live well beyond their means can be investigated and, if they cannot establish a legitimate source for their wealth, can have that property seized. The government introduced legislation to that effect, reflecting similar work that was proposed and undertaken by the former government several years ago, and the Liberal opposition supported that move.

However, as part of that bill, the government also proposed an amendment that it claimed would subject members of Parliament generally to the scrutiny of the Corruption and Crime Commission. The history of that bill and this one are linked. It is informative, I think, in respect of not only the pretensions of the government and its ministers, but also its arrogance and competence in managing some important legislation of this character. I accept that it was done in the early days of this government, but there was an element of hubris about it in how not to go about legislating. I make no criticism of any of the ministers in this place, but the Attorney General, who has carriage of this bill in the other place, is a classic example of it.

I refer to the starting point in the expectations that were built around this bill and how this important issue is managed. I would be surprised—frankly, I would be appalled—if a single member of this chamber thought that dishonesty and corruption were acceptable modes of behaviour for a member of Parliament. I would be astonished if that were the case. There was probably one exception to the rule in the other chamber, and I will come to that in a moment.

The starting point with this bill was a media release that came out of the government media office about 8.30 in the morning of Wednesday, 16 August, from the Attorney General, Hon John Quigley, MLA, with the bold heading "Bill to target unexplained wealth from organised crime". The teaser at the beginning is —

- Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 introduced into State Parliament

It was not at that stage because it was 8.30 in the morning. Leaving aside that little fudge, it continues —

> The McGowan Labor Government will today introduce new legislation which will provide the Corruption and Crime Commission (CCC) with important powers in the fight against corruption and organised crime in Western Australia.
>
> The Bill also restores the CCC's powers to investigate certain types of misconduct by Members of Parliament, closing a loophole created by the Liberal National Government in 2015.

Then the media release lists comments attributed to the Attorney General. Members will no doubt recall the famous we will "attack the head of the snake" analogy that he used and waxed lyrical on. After several paragraphs referring to his comments, the release concludes with —

> "The second purpose of this Bill is to restore the power of the Corruption and Crime Commission to investigate certain types of misconduct by Members of Parliament.
>
> "This will close a loophole created by the Liberal National Government which protects backbenchers from investigation."

Quite apart from the fact that much of this statement is repetitious, the implication by the Attorney General, for public consumption, is that the previous government created an anomaly or a loophole, calculated to protect backbenchers from investigation. There are a couple of argumentative things about the nature of that media release and although one does not read a media release like a statute, it is informative to see the tack that the government was taking in that regard. It would be the champion of probity and investigating members of Parliament who were up to no good, by closing off a loophole that had been created apparently to protect backbenchers, for reasons best explained by the Attorney General, by the previous government for some nefarious purpose. The bill was introduced later that afternoon. The media release referred to how the government had introduced the bill, but we will leave aside the reliability of the Attorney General in his media releases. The bill was introduced later that afternoon at 12.18 and was titled the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. The second reading speech repeated the refrain of the media statement, although somewhat more temperately, but went further in some respects. I quote —

> The second purpose of this bill is to restore the power and jurisdiction of other authorities, —

It refers to "other authorities" and not only the Corruption and Crime Commission. The Attorney General had already started to depart from the media release and attempted to confuse the issue. He continued —

> particularly the Corruption and Crime Commission, into misconduct by members of Parliament, which could constitute a breach of section 8 of the Parliamentary Privileges Act 1891 and a breach of the Criminal Code. The jurisdiction of the Corruption and Crime Commission to investigate members of Parliament for such breaches was removed by the Corruption and Crime Commission Amendment (Misconduct) Act 2014. The restoration of this power will be achieved by a minor amendment to the Corruption, Crime and Misconduct Act.

I take it that this "minor amendment" is not simply to correct a typographical error. It is characterised as a minor amendment, yet it is of some importance. It may be only the insertion of a word, but it seems odd to me to describe something that allows the restoration of powers and the investigation of members of Parliament as a minor amendment, but there we go. Presumably, the message that is to come across is that it is only a little bit of a tweak, but it is really important. Again, they are mixed messages. The second reading concludes —

> The proposed amendment leaves the powers and privileges of Parliament unaffected.

When this came out, I was far from convinced, and that was for a variety of reasons. Firstly, for such an important issue, albeit characterised as a minor amendment, it is curious that the closure of a loophole calculated to protect corrupt MPs was added as though it was an afterthought at the end of a long and relatively detailed second reading speech. What I have quoted is all that was said about it. There had been a page or so about the importance of conferring on the CCC the power to investigate and chase unexplained wealth and the like and organised crime, but this important, albeit minor, amendment occupied a paragraph. That was all that was explained about it. The explanatory memorandum did not have much detail either. I might come to that in a moment.

It is also curious that the long title of the bill neglected to mention this aspect of what the bill proposed. The long title of the bill referred to unexplained wealth and criminal property confiscation and things of that nature, but it made no mention of this. It is almost as though this was tacked on as an afterthought and a makeweight. The relevant amendment appeared as clause 5(3) of the bill and it involved inserting the word "exclusively" in section 3(2) of the act after the word "determinable". The explanatory memorandum did not say any more regarding this than the second reading speech did. It was utterly unhelpful for something that was very important for parliamentary sovereignty. We will see the significance of that when I come to a bit of the history of why it was removed in the first place, along with some other words in that particular section, back in 2014.

The government brought in to Parliament legislation that had ramifications on parliamentary sovereignty, with the worthy assertion that it would restore that power, but we can argue whether the CCC had that power in the first place in the way that the original section 3(2) was framed.

Sitting suspended from 6.00 to 7.30 pm

Hon MICHAEL MISCHIN: Before the dinner adjournment, I was commenting on what the amendment proposes and the lack of information provided by the government, through the Attorney General, about what was being proposed at the time that the original bill, of which this is a part, was introduced in the other place. By way of background, the Corruption and Crime Commission Bill 2003, the foundation to the current act, was introduced by then Attorney General Hon Jim McGinty. At one point it was split into two bills. One part, the Corruption and Crime Commission Act 2003, was passed in mid-2003. The second part, the Corruption and Crime Commission Amendment and Repeal Bill 2003, was the subject of a report by the Standing Committee on Legislation that was tabled on 9 December 2003, just before Parliament rose. The bill was passed by the Legislative Council on 12 December 2003 and by the Legislative Assembly on 16 December of that year. In the course of Committee of the Whole, a raft of amendments proposed by the standing committee was passed. One was the provision that was

the original section 3(2), which is the subject of current debate. That was drafted by that standing committee. Prior to the 2014 amendments that removed that particular wording, some of which is now being ought to be restored, section 3(2) of the act read —

> Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable exclusively by a House of Parliament, unless that House so resolves.

It was a conditional empowerment. The words "exclusively by a House of Parliament, unless that House so resolves" were deleted by section 6(5) of the 2014 act and replaced with the words "by a house of Parliament". That wording is being addressed by this bill.

The 2014 bill was introduced into the Legislative Assembly on 2 April 2014. It was debated on 25 September and 14 October, when it was second read. Consideration in detail in the Assembly occurred on 14 October. On that occasion, clauses 1 to 11 of that bill were put and passed without debate. However, after the clauses were put and passed, the then Premier, Hon Colin Barnett, MLA, who was managing the bill, delivered a statement concerning clause 6(5) explaining the rationale for its passage. It was a lengthy statement and I will not repeat all of it. It touched on the argument of implicit waiver of parliamentary privilege by the provisions of the Criminal Code and concluded with the following passages. I quote —

> The "implicit waiver" interpretation of section 57 —

That is of the Criminal Code and relates to giving false evidence to Parliament —

> 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.

There was no demur from any member. No-one criticised that, no-one complained, no-one asked for any further advice and no-one cavilled at it, so to claim that a loophole was created in order to protect members of Parliament and that it was created by the government towards that end, and to suggest that it was being done to protect backbench MPs, is the grubbiest of versions and something we have come to learn to expect from certain ministers, but is wholly unjustified and wholly mischievous. On the contrary, the then Premier was making it quite plain that we were clarifying the effect of a provision that, on the advice available, was not working effectively anyway and was ensuring that the Corruption and Crime Commission did not have concurrent jurisdiction with Parliament. The Premier did not have to draw attention to the issue after the clause had already been put and passed with the concurrence of the then shadow Attorney General and all the members of the then opposition. He did not have to draw attention to it and he did not have to make his statement at that point. Nevertheless, he did, and he did it out of respect for, and to assist, the Parliament—something the current Attorney General may one day be inspired to emulate. It was done openly before Parliament, and the then shadow Attorney General did not complain or even query it. That can be contrasted with the Attorney General's media statements and the nonsense he has put about in the other place about the then government's motives. Maybe he was complicit in the creation of the loophole, or maybe he—as did everyone else—considered the measure a reasonable one at the time. During the course of debate on this bill in the other place, he suggested that it had slipped by him because the word "exclusively" was not used. I will come to that argument in a moment. Nevertheless, the bill passed through and the amendments were made, without any complaint.

On 16 October 2014, when I introduced the 2014 bill in this chamber in my capacity as Attorney General and minister representing the Premier on this matter, I said in my second reading speech, and I quote —

> The CCC's jurisdiction with respect to serious misconduct remains unchanged with respect to public officers other than members of Parliament.

I made it quite plain what would happen. I did not have to use the word "exclusively". It was quite plain to everyone what I was talking about. I said also —

> The role of the CCC in relation to members of Parliament has been clarified to avoid any concurrent role for the CCC over matters in which the Parliament is able to exercise its authority pursuant to parliamentary privilege.

The explanatory memorandum that accompanied the bill went on to say —

> Subsection (2) is amended by deleting the words "exclusively" and "unless that House so resolves".

So much for the argument that the word "exclusively" could have turned up anywhere and confused, defeated and confounded the then shadow Attorney General. It continues —

> The existing provisions of subsection 3(2) of the Act have been virtually ineffectual in defining the scope of the CCC's jurisdiction with respect to allegations of misconduct against Members of Parliament. This is because, despite the *Parliamentary Privileges Act 1891* and the *Parliamentary Papers Act 1891*, there currently exists overlapping regulation of unacceptable activities in Parliament through various offences under the *Criminal Code*. The current provisions also wrongly imply that Parliament can waive all privileges by resolution.

On 2 December 2014, in my second reading response, I repeated the Premier's statement and explanation. Hon Lynn MacLaren, MLC, a former member of this place, and Hon Adele Farina, also expressed support for preserving the privileges of Parliament.

I do not have access to the advice upon which my statement was based. It might have been prepared by Mr Jim Thomson, SC, a senior legal officer in the State Solicitor's Office who was attached to my office at the time. He would be well known to many longstanding members of this place and in government. He has served under several governments and over many decades has had the confidence of successive Attorneys General and other ministers. However, I have a sense that it had its origins in Parliament. I know that I settled and refined the statement. The idea that it was some cunningly crafted loophole to protect members of Parliament is simply grotesque.

What has changed? All the available information supports this proposed amendment as having emerged from the Attorney General's office, not the CCC, and there having been no consultation wider than with the Solicitor-General of the time. The Attorney General contended that it was prompted by a speech delivered by Commissioner McKechnie. That might be right. However, unlike the unexplained wealth provisions that we have already dealt with, I do not understand it to specifically have been requested by Commissioner McKechnie. Anyway, since that time, we have received a copy of the advice from the then Solicitor-General, Mr Peter Quinlan, SC, to the Attorney General, dated 25 August 2017. It claims that reinserting the word "exclusively" will allow the CCC to exercise concurrent jurisdiction with the courts, the police and the Parliament.

Before I move on to that particular issue, earlier today, in the course of proceedings before the Committee of the Whole, I raised the inconsistent and rather arbitrary, it appears, approach that was taken by the Attorney General in the tabling of legal advice. Certainly, the advice of the Solicitor-General would ordinarily be regarded as having legal professional privilege. Nevertheless, the Attorney General chose to table that advice, and it has subsequently been incorporated into the second reading speeches in both this and the other place for this particularity iteration of the legislation. It appears that no hard and fast rule has been adopted by the government with regard to when it will present legal advice. As I have mentioned, it seems to be based on what is politically expedient at the time, rather than any particular principle. If the Attorney General thinks he can get away with saying, "I have legal advice on this, and I say X", that seems to suggest that the legal advice supports his opinions, conclusions and submissions. However, we never know whether that is in fact the case, because he refuses to table that advice. That is a cunning ploy and one that I am sure has been used on other occasions when a minister says, "I have taken legal advice on the subject, but, no, I will not present it."

Hon Nick Goiran: It may say the opposite.

Hon MICHAEL MISCHIN: Yes; it may in fact say the opposite. I suspect that is the case with much of what our Attorney General does. The Attorney General is very eager to table advice and refer to conclusions when it suits some of his purposes but then refuses to say what the effect of that advice was in others. However, that is for another day.

I now come back to concurrency of jurisdiction. That is a complex issue. The report of the Select Committee into the Appropriateness of Powers and Penalties for Breaches of Parliamentary Privilege and Contempts of Parliament, which was tabled in 2009, seemed to accept that there was concurrent jurisdiction between the Parliament and the courts in respect of Criminal Code offences, but that to the extent that they conflict with the privileges of Parliament, they should be repealed. Many other reports over the years—albeit they did not consider the issue directly—have firmly espoused that parliamentary privilege should be jealously protected and not circumscribed or qualified.

As I recall, the most recent consideration of the question of parliamentary privilege—up until the forty-eighth report of the current Standing Committee on Procedure and Privileges, which I will come to—was the privileges committee's forty-fourth report, dated November 2016, which was regarding "A Matter of Privilege Raised by Hon Sue Ellery MLC". Members might recall that that report concerned whether a Ms Rachael Turnseck and

a Mr Stephen Home had been guilty of contempt of Parliament in supplying incorrect information that founded answers to questions from the then Leader of the Opposition in this place, Hon Sue Ellery, about an incident that led to the resignation of the then Treasurer, Hon Troy Buswell. The CCC had investigated the matter and discovered all sorts of information but for its troubles was admonished for having trespassed on the privileges of Parliament. That report of the Standing Committee on Procedure and Privileges gave rise to Commissioner McKechnie's speech in March 2017 to Curtin University upon which the Attorney General, Mr Quigley, relies. The speech indicates that there is a legislative gap that cannot be filled other than by legislation on this subject. I mention also that Commissioner McKechnie notes that the problem of trespassing on Parliament's privileges is something to which even the courts may not be immune. In due course, that is one of the questions that I would like to explore with the government. It is all very well if we confer on the Corruption and Crime Commission an investigative role and the like, and it is all very well if the police can investigate. However, if the laying of charges and the presentation of an indictment in due course may trespass on Parliament's privileges, this amendment may not solve that problem. As I say, it is a complex area and I do not pretend to know the answer, but I would hope that the government does know the answer, because it has implications down the track as to whether this much-vaunted reform, which will fix all sorts of problems and expose corrupt members of Parliament to the full weight of the law, is going to make any difference. I would hope that it does, but I think we need to be reassured that this is not an exercise in publicity and futility.

I would suggest that we have not been assisted by the looseness of the language that Attorney General Quigley has employed in his pronouncements and his second reading speeches. That language has not been helpful in giving us an understanding of what this bill was meant to do and achieve. I have already illustrated the shortcomings of the first attempt to get it through. The fact that it was slipped in, without a reference even in the long title of that bill, is odd. It was not explained in what way the CCC was prohibited from investigating backbenchers as opposed to frontbenchers. For the purpose of legislative interpretation, what are "backbenchers"? Does it mean non-ministers? From the point of view of legislation, it is hardly a term of art. What is the type of misconduct investigation against which these backbenchers are allegedly protected? A lot of the rhetoric was imprecise, and inaccurate and concealed more than it revealed. The second reading speech was replete with similar vagaries, such as what particular privileges he was talking about and how the bill would restore the powers that Parliament arguably considered the CCC never had.

Two things became patently obvious. The first was that the subject of providing the CCC with power to investigate was a matter that called out for scrutiny by a parliamentary committee. The purpose of that would have been to ensure that the proposed solution was a proper one—that is, a workable solution that would achieve the end being claimed for it.

The second was that the bill should have been two bills—one discretely dealing with the area of confiscation of proceeds of crime and of unexplained wealth, and expanding the CCC's powers into areas other than the policing and investigation of corruption by officials and into dealing with crime on a broader level and by non–public officers—private citizens. The other bill would deal with this particular important and separate issue. It was only after some considerable time was spent in the consideration in detail stage in the other place that the Attorney General conceded that that should occur. He moved amendments to achieve that end by deleting the clause dealing with reinserting words into section 3(2) and proceeding with the unexplained wealth element of the bill—the bulk of the bill—and proposing that a separate bill be prepared to deal with this discrete area. A fresh and discrete bill—this one—was introduced on 18 October 2017. It is notable for a number of things. One of them is that the second reading speech that accompanied its introduction into the Assembly was far more comprehensive and informative than the original single paragraph that members of that place had been favoured with. In fact, it was based on the advice of Solicitor-General Quinlan of 23 August 2017 and covered some one and a half pages of *Hansard* rather than a single paragraph. By way of a curiosity, if members get a copy of his original advice, they will see that it is in a particular font that is the same font used in drafts of the second reading speech that were provided to Parliament and also the explanatory memorandum. I cannot think of the name of the font. I think it could be Garamond or something, but it is quite a distinct font.

Hon Alannah MacTiernan: What are you claiming there?

Hon MICHAEL MISCHIN: I am not claiming anything. I am just pointing out that the Solicitor-General seems to have written the second reading speech and the explanatory memorandum. There is nothing wrong with that. As I said, it was far more informative and comprehensive than the original offering to Parliament. There is nothing sinister about it. The minister can go back to sleep!

I had some doubts about the premises upon which that advice was based. I confess that I questioned whether, by passing certain provisions in the Criminal Code, Parliament had necessarily and sufficiently explicitly conceded its authority to deal with conduct of the character that would otherwise fall within Parliament's prerogatives, or there is concurrent jurisdiction. That is the effect of the advice. I do not pretend and have never pretended to have

the level of learning on constitutional issues that our successive Solicitors-General have. That is why we hire them. Fortunately, by having this matter referred to the Standing Committee on Procedure and Privileges, we now have the benefit of a comprehensive report that was carefully prepared and relies on not only the advice of the Solicitor-General of the time, but also the advice of another constitutional expert—one Bret Walker, SC. It is something that I suggest could and should have been done right from the beginning. It could have been done by the Legislative Assembly's Procedure and Privileges Committee. That might have saved a considerable amount of time.

Hon Martin Aldridge: They tried. There was a referral motion.

Hon MICHAEL MISCHIN: There was a referral motion, I am told by Hon Martin Aldridge. It did not seem to get anywhere, did it?

Hon Martin Aldridge: It was opposed by the government.

Hon MICHAEL MISCHIN: It was opposed by the government! Well, there we are—I cannot imagine why! It is presumably because it was really urgent to get this reform through to deal with corrupt MPs!

On 18 October we ended up with another bill being introduced—2017! I suppose that if it had simply been referred, the Attorney General would have been denied the opportunity to posture about it. Some of the commentary that then came out was not only false, but also quite offensive. A report in *The West Australian* implied that this initiative was opposed by the Liberal opposition. Of course, nothing could be further from the truth. It is true that in the course of the debate on the government's bill opposition members outlined several issues with the proposed legislation that needed to be addressed in order to make the legislation achieve its intended aims. It was the sort of exercise that we are going through now and the sort of exercise that the Standing Committee on Procedure and Privileges in this place has done in order to inform us rather than simply show off to us. It is the sort of thing that could have been done back in October 2017 if the government had been less bull-headed and stubborn and had been trying to assist the process. It was not the opposition that blocked passage of that amendment, something impossible for it to achieve, I should add, even with the support of the evil Nationals WA, which seems to be in combination with its masters, the Liberal Party, blocking pieces of legislation, using our immense numbers in this place and in the other place to stifle the government's mandate. After all, the 18 members of the combined parties against 41 members in the other place sounds like a pretty formidable number! We could not have blocked the legislation even if we wanted to, but this government likes playing the victim. The government removed that particular provision on the basis that it would reintroduce it in a separate bill, as it should have done in the first place.

I will give members an idea of the manner of the distortion that we had to deal with. It is regrettable that it took place, because this is doing a disservice to the public. There are two extracts from *The West Australian* of 12 September 2017. I will start with one on page 4 in a paid advertisement from no less a personage as Councillor Lynne Craigie, the president of the Western Australian Local Government Association, who tends to write columns—paid advertisements—putting the point of view of WALGA. This is what she had to say in a column entitled, "Fair for all not free for all rules for all State MPs". I do not understand what that means, but it seemed to have inspired her. She says —

> Tightening controls to combat corruption in public office should be demanded by politicians from all sectors of government.

By "politicians from all sectors of government", I presume she means Parliament. She continues —

> But as it turns out the majority of our State politicians are not subjected to the same scrutiny as even your local Councillor.
>
> In 2015 the Corruption and Crime Commission lost its jurisdiction over non-Cabinet members of State Parliament while Local Government Elected Members continue to be investigated.
>
> And alarmingly while the current State Government wants to close the loophole for backbenchers, the Opposition wants to drag out any change to legislation.

That is the level of insight and information from the president of the WA Local Government Association.

Hon Nick Goiran: We cannot debate the bill if they don't bring it on for debate.

Hon MICHAEL MISCHIN: No, but that does not seem to matter, it appears.

She goes on to applaud the Attorney General for wanting to legislate all state members of Parliament back under the jurisdiction of the Corruption and Crime Commission—and there we are. It seems as though the opposition is trying to stand in the way of the investigation of MPs, using our vast numbers in the Assembly, 18 to 41. Another article, on page 11, headlined "MPs extend immunity to CCC probes", states —

> MPs have voted to extend their immunity —

I do not know quite how that worked. It shows a profound misunderstanding of parliamentary process. "MPs have voted to extend their immunity"—all 18 Liberals and Nationals against 41 Labor people.

Hon Simon O'Brien: Isn't it 40 now?

Hon MICHAEL MISCHIN: It was 18 to 41 back then. Yes, there has been a change—a sea change. The article continues —

> from the Corruption and Crime Commission after Liberal and Nationals MPs rejected Government attempts to make them as accountable as other public officers.

I will get back to it. We are talking about informing the public, and *The West Australian* has told people that our then 18 members, and I am counting the Nationals as part of this criminal conspiracy, "extended immunity and rejected government attempts". I still do not understand how the numbers stack up, but I suppose each one of those 18 was worth something like three Labor members. The article continues —

> In farcical scenes played out in State Parliament as political journalists were locked up scrutinising last Thursday's Budget, Opposition MPs lined up to argue against measures designed by WA's top legal minds to keep politicians honest.
>
> CCC Commissioner John McKechnie has asked Attorney-General John Quigley for the power to pursue organised crime targets over unexplained wealth.

That is right. It was not opposed and it got through. The article continues —

> He has also pointed out that a word deleted from the CCC Act under Barnett government reforms in 2015 removed the watchdog's jurisdiction over MPs other than ministers.

It was a 2014 bill, but let us leave that bit aside. It was more than one word and I have already gone through the history of it. The article continues —

> Mr Quigley introduced legislation to the Lower House last month which dealt with both issues in the same Bill.
>
> But while Liberal and Nationals MPs agreed with the unexplained wealth powers, they baulked at an amendment returning the word "exclusively" to the CCC's jurisdiction.

That is right. But if the government wanted to barge it through, there was not much that could be done about it. As it happens, the government saw reason, and, for a change, acted on it. The article continues —

> Before 2015 the only restriction on the CCC investigating MPs was if their alleged transgression was a matter that was exclusively the jurisdiction of Parliament—such as giving incorrect responses to questions on notice or verbally abusing the Speaker.

I am not sure whether that is right —

> In those cases the procedure and privileges committee of either House would investigate.
>
> But by removing the word "exclusively", the CCC was blocked from pursuing non-Cabinet MPs for anything that Parliament could investigate under the Parliamentary Privileges Act 1891, which specifically includes bribery and corruption.

That is where that ended. Apart from not informing the public of anything, and the editorial comment in it, much of that is wrong. The journalist concerned, some might remember him, is one Daniel Emerson. I wonder where he is now. Is he not a government adviser? In fairness to Mr Emerson, after a complaint he alleged that the story had been somehow trimmed and that he was upset with it, but it was never corrected. Anyway, I mention this because it is the sort of ignorant nonsense promulgated by those who should know better. It is not only unfair, but also damaging to the body politic. People rely on people in authority such as the president of WALGA and our newspapers for information. Often they cannot help themselves and they want to offer opinions as information as well. That is regrettable. It does nothing to assist the public in understanding what is going on and it is regrettable that some in government like to jump on the bandwagon and exploit that. They should have known better. One expects better from the president of WALGA and from our daily newspaper. I hope that those pieces of misinformation will not be repeated. I hope and I have every confidence that *The West Australian* is now being far more careful and factual in its reporting and that that was simply a regrettable lapse.

The bill passed the Assembly and it was accompanied by the usual squeaks from the Attorney General about the importance of it becoming law at the earliest opportunity and it being held up by the Liberal and National Parties to ensure that that did not happen. The bill, in fact, was introduced to this place on 28 November 2017. There it rested until 20 March 2018, when it was referred on the government's motion—I congratulate the government for having taken that course—to the Standing Committee on Procedure and Privileges for consideration and report by 10 April. That reporting time was subsequently extended to 10 May. The forty-seventh report, as I recall, was the extension of time report; the forty-eighth report was duly tabled on 10 May.

The sad thing about all that is that for all the posturing about the urgency of this measure, it could have been done in November 2017. The Standing Committee on Procedure and Privileges could have dealt with it over the Christmas break and we could have been ready to deal with it when Parliament resumed in March. If the Assembly committee had been considering it, it would have been all solved down there, one would hope, but it was not. One can only wonder why the great corruption fighter went cold on the urgency of the legislation. Maybe another shiny new reform had attracted his attention and distracted him, or maybe it had something to do with the usefulness of this particular alleged loophole. As I recall, it was around November 2017 that one Barry Urban, MLA, a backbencher, ended up in a bit of trouble that embarrassed the government. Of course, the CCC could not investigate him using the powers proposed by the government—I may be wrong about that; no doubt we will hear about it—or maybe it was just a coincidence. But that is the last time we had any involvement with the bill. After the report was tabled, we did not hear anything about it, until now. What are we looking at more than a year after it came to this place?

We support the bill but we have a few questions about it and we need to satisfy ourselves that it will achieve the ends proposed. The privileges of Parliament have been developed over the whole of its history. Their purpose is not to ensure the immunity of MPs from being held accountable for crime and corruption, but to protect them so that they can do their job of representing their constituents without fear of persecution by governments that may be so minded as to stifle debate, and governments that may not agree with their views or find those MPs to be a nuisance. Numerous parliamentary reports have emphasised the importance of preserving such privileges; they have also emphasised that there is no clear line between what may fall within and outside Parliament's privileges. That some MPs are from time to time corrupt is an unfortunate fact. That is something we saw far too much of during some previous governments in this jurisdiction. It is that corruption, dishonesty and misbehaviour that prompted the creation of anti-corruption bodies in this country.

The Liberals are committed to ensuring that if an MP is investigated and a case of corruption is made, prosecuting that case should not be frustrated by a poorly considered, quick-fix amendment that is calculated to grab a headline but ultimately turns out to be flawed. Our concerns in the other place and in this place have always been to ensure that if we are going to tamper with it, it be done on the best advice available. It may be that back in 2014 an error was made based on the advice available. We are anxious that that not be repeated. That is why questions were asked to the inconvenience of the Attorney General in the other place and why it was very important that the bill be split and that this element of the reforms that are planned be considered by a parliamentary committee.

The government claims that what it proposes will fix the problem but history suggests otherwise. The government has the numbers to barge through this and almost everything in the lower house, and it has done so. However, we here are a house of review and non-government members take that function seriously. I am sure that some government members take that function seriously. We have a responsibility to alert the government and the public to deficiencies in proposed laws and suggest their improvement. The government can take or leave that advice. Often it is reluctant to accept it. To date we have not blocked any government bill, although we have on numerous occasions, I think, fixed them.

It is worth noting also that if the prospect of scrutiny by an upper house parliamentary committee comprised of all sides of politics was enough to cause the government to withdraw its proposed amendment, as was done in the Assembly, then the government itself was not confident that the amendment was going to do the job. Rather than ministers blaming others for their incompetence, the government should be welcoming the assistance that is available to ensure the quality of its legislation is maintained or improved. As it happens, we have been valuably assisted by the Standing Committee on Procedure and Privileges of this house. Although the report on the bill itself is a rather short one, the committee took the time to comprehensively set out the relevant law and practice of privilege. I think that will be a very valuable reference in the future. It consolidated the experiences of this house over a number of reports, collected the law, and it is an exemplary report. Many of the things I have mentioned are set out in one or other parts of the report. Some of what I have mentioned is not because it would not have been available to the committee at the time. It is probably not particularly important to the work that the committee was doing, although it may add colour and texture to the history of this matter. However, I commend, if I may, the members of that committee and the work that it has done. It has gone beyond the reliance on one legal officer of the Crown and has obtained other advice. All that advice points in one direction. I am reassured that what is proposed is as sound as it can be and preserves parliamentary privilege appropriately, but I do have a couple of questions of the government. Behind the Chair, I have already indicated one of those issues to the Leader of the House, who no doubt will respond in due course. One of them, as I have already mentioned, concerns the ability of the courts to prosecute matters in due course.

I have a copy of the speech that Hon John McKechnie, QC, gave to Curtin University as part of the Curtin Law School's Eminent Speaker Series, delivered on 7 March 2017. It canvasses the history and role of corruption commissions. On page 24 he raises the question about whether judicial power invoked by the presentation of an indictment is also constrained by article 9 of the United Kingdom Bill of Rights. He seems to think that it is. I would like to

know the implications of that and the ability to enforce, prosecute and punish any matters that the CCC might investigate or that the police might investigate in due course. The other is the issue of exclusivity. We are told that that will be the touchstone for the operation of section 3(2) of the Corruption, Crime and Misconduct Act. Who determines that? How is it to be determined? Will it be determined by a parliamentary committee or by the presiding officer of the house? Is the question justiciable at some point? I would like to know more about the practicalities of how the line is drawn and whether something falls within or falls without. It is very easy for us to pick a simple formula; however, one of the problems with the original provision was the workability of the formula in place at that time. I would like some further information about that.

I also note that Hon Alison Xamon proposes to move some amendments to control the Corruption and Crime Commission in a sense, or to at least guide or hold it accountable. It is one thing to have a body such as the CCC investigating and addressing corruption. There are checks and balances over the CCC's operations, and some are rather blunt ex post facto instruments. We have a parliamentary inspector and a committee of this Parliament, but those are for after the event. If something goes awry, the idea is that it can be corrected and the CCC held to account. But potential interference with parliamentary prerogatives has significant and immediate consequences. If used irresponsibly, investigative powers such as those vested in the CCC can compromise the workings of Parliament and the ability of members to do their job, and can interrupt, if not ruin, reputations and careers. We have had some unfortunate experiences of the effect on government and the operations of Parliament demonstrated by bodies such as the Independent Commission Against Corruption in New South Wales. It is something that I believe, with the current talk about setting up a national anti-corruption body, is exercising the mind of the commonwealth Attorney-General, Hon Christian Porter.

There is always a tension between public and private hearings. The media particularly likes public hearings because it is cheap copy, apart from anything else, and it is a legitimate right of the public to know what is going on. But that can involve—we have seen evidence of this in some of the matters this house has debated—the CCC getting it wrong. It can be too heavy-handed; it may do its job too zealously or not zealously enough. It is appropriate that there be checks on its performance. But if that investigation may involve the stifling of the ability of MPs to do their job on behalf of the community, it is particularly serious because there is no redress down the track. Certain initiatives were used some decades ago by a government to stifle criticism of that government; I am talking about the use of defamation proceedings by the then Burke government, threatening to sue MPs for comments and the like and using the weight of the law against them to stifle criticism and conceal its own misbehaviour.

Hon Alison Xamon will move amendments—there may be other reasons for it and underlying it, but those ones spring to mind for me—as a worthy means of keeping a check on the CCC. These are not perfect by any means and there may be a lot of reasons why they are unworkable, but I can understand where Hon Alison Xamon is coming from on this. With respect, we agree that there should be someone—hopefully, disinterested—who can at least know what is going on and hopefully be a brake on misconduct by the CCC itself; that is, to have the Parliamentary Inspector of the Corruption and Crime Commission informed of investigations.

Hon Alison Xamon also proposes a requirement that there be a memorandum of understanding and any other guidelines formulated and that those be adhered to in the way the CCC does its job. On the subject of the memorandum of understanding, I recall that as a consequence of the 2016 report into the matter that had been initiated by Hon Sue Ellery, there was a recommendation that a memorandum of understanding be crafted. I do not know whether one has; it appears not from a question asked earlier by Hon Alison Xamon. I do not know how far advanced it is yet. If one is being contemplated, there seems to have been an extraordinary delay in dealing with it—about two years. In any event, that does not offer much comfort.

That is broadly what Hon Alison Xamon proposes, and I understand that the government may not be enamoured of the proposals. In that case, I invite the government to give consideration to those issues and to take the opportunity, with the advice and resources available to it, to craft something more appropriate and acceptable that will achieve the same ends. I hope the government pursues that suggestion. It would be unfortunate if we had to thrash out this sort of thing on the floor of the house or take up the time of the Committee of the Whole House when some refined mechanism could be prepared by the government that we could consider.

On that note, I once again indicate our support for the bill. Some issues need to be explored, and I have posed some questions that I would like answered. In due course we will need to consider amendments, and I hope the government takes the opportunity to improve the legislation and satisfy the concerns of members on something that is of particular importance to not only eliminating and controlling corruption, should that arise, but also preserving the very important privileges of Parliament that have been developed and evolved over generations and ought not to be set aside lightly.

HON SIMON O'BRIEN (South Metropolitan) [8.27 pm]: This is a very serious matter, as reflected in the house's decision to refer it to the Standing Committee on Procedure and Privileges. I will refer to the forty-eighth report of that standing committee, of which I am the deputy chair, and commend it to the attention of all members.

The forty-eighth report deals with the referral of the Corruption, Crime and Misconduct Amendment Bill 2017. In so doing, members examining this report will note that it goes considerably beyond what they might have expected to receive. The procedure and privileges committee includes in its forty-eighth report a very detailed discussion of the nature and history of parliamentary privilege not only in this state but also throughout all jurisdictions in which we have antecedents. Therefore the report is a valuable guide for current and future members to the nature of parliamentary privilege, particularly on how some crimes should be dealt with. Examination of the report will help any member, whether they have been here for five minutes or substantially longer, to contemplate all range of matters of privilege and where the jurisdiction exists to contemplate infringements of privilege. I particularly bring this to the attention of all members by way of an opening remark.

The report goes way back into history, to contemplate the origins of privilege, so that we might understand it better. It also does so to enable us to understand the development of the whole question of privilege. Members would be interested to find that the laws relating to privilege have, because of the circumstances of the day, varied and, in effect, evolved. Privilege is sometimes interpreted by the general public as some sort of protection for members to enable them to say what they like without fear of defamation proceedings, for example. Indeed, within certain parameters, that is the case, and there is a great deal of discussion in the report about that. From where did this protection initially derive? It is not, in its genesis, a protection from someone down the road who wants to launch defamation proceedings against a member because of something they said in the house. Rather, it is a protection for members of Parliament who might be victimised by the Crown. When we review the history—there is reference in the report to some very old examples—we see that indeed in medieval times such a protection was not to be taken lightly, and was acquired through very hard, ruthless experience, when a king, for example, might seek to limit what a Parliament might do by taking action against certain of its members. It is about a monarch who might, from time to time, seek to take arbitrary action to arrest and imprison members who, in the king's mind, were speaking out against the king or defying the king's authority. A number of examples are given in the report about such incidents, particularly during the Tudor and Stuart periods. Charles I is one of the more well-known offenders and remains the only monarch in the English-speaking world who has been dealt with by having his head chopped off. That is the nature of the history of struggles between Parliament and the Crown.

We have moved a fair bit beyond that, of course, in this day and age, but does that mean that we do not require all the protections that have evolved over the years? In fact, we do not require all of them. Many of them have, again through evolution, fallen away, or been legislated out of existence and so on, as circumstances have changed. However, there still remains an inviolate principle that an essential part of our political landscape is parliamentary privilege. Therefore, my attention was aroused, as a private member, when I first became aware of the bill preceding the one that we are contemplating now. The issue now at stake was part of a larger bill introduced into another place and then divided into two bills, and we are dealing now with the second of those bills. As Hon Michael Mischin has pointed out, this matter could have been brought on earlier, but it is being brought on now, and we also have the benefit of the forty-eighth report of the Standing Committee on Procedure and Privileges to help guide our contemplation.

I have learnt to always be very circumspect when I hear the words "parliamentary privilege" being used by anybody outside of this place. No doubt some learned people in the legal profession understand the implications of parliamentary privilege, but a heck of a lot do not, and we have seen examples of that in the circumstances around this very Parliament over the years. A few examples of those incidents have been given in this report. Similarly, I do not think that people in government—that is, the Crown and its agents—have a particular affection for parliamentary privilege, and I think they are all too willing to wave it aside if it is inconvenient. When I see the Crown—the government, supported by its agents and bureaucrats—put up bills that refer specifically to parliamentary privilege, I become very interested and, as I indicated, I find it necessary to examine those proposals in a very circumspect and thorough way. I want to get over to all members the message that that particularly needs to be done. Again, the forty-eighth report gives a great deal of information about why that is necessarily so.

The specific matter that is the subject of this bill hinges on one word—"exclusively"—and a great deal of discussion is contained in the report on this very subject. As members go through the recent history of select and standing committees examining the questions related to parliamentary privilege, just in this Parliament, they will see that views have ebbed and flowed and sometimes varied with experience, and that is probably to be expected when we are dealing with something that is as hard to define as some of the concepts that are part and parcel of parliamentary privilege. The question that was put to the Standing Committee on Procedure and Privileges was, in effect, to examine this bill, which seeks to restore the term "exclusively" to section 3(2) of the Corruption, Crime and Misconduct Act 2003. Members might ask how much weight can be placed on one single word. The answer to that is a great deal, potentially. The word is used in the context of concurrent jurisdictions that exist in the legislation of this Parliament, whether it be the Parliamentary Privileges Act or the Criminal Code. The questions surrounding it are quite interesting, and, in essence, boil down to who is responsible for investigating and

prosecuting offences contained within either of those statutes, particularly when they are similar offences. In the case of the Parliamentary Privileges Act, there are behaviours that are also proscribed in the Criminal Code.

There is some contemplation in the report of whether these two sets of near identical offences can coexist. In the past, questions have been raised about whether some of these provisions should be deleted from the Parliamentary Privileges Act or, on another occasion, from the Criminal Code. The history of that debate is contained in the report. Where we have arrived at the current time is that there is a body of evidence and experience, which is relevant today, to indicate that matters that can be contemplated and adjudicated by the Parliament alone are rightfully placed in the Parliamentary Privileges Act, and they are there to be exercised at the discretion of the house. Similarly, like provisions and defences contained in the Criminal Code are rightfully the province of the police to examine and, when necessary, launch prosecutions.

It then comes down to the Corruption and Crime Commission's capacity to investigate. A number of changes were made to the act in 2014. One of the changes was to delete the word "exclusively" from the act, and because that is the focus of the current bill before us, members might be inclined to forget that there were other significant changes made in 2014. Those changes are very relevant to what we are contemplating now. One of the changes was that the CCC would no longer be the investigator of public officials in matters relating to what is defined as minor misconduct. However, the CCC retains a focus on and a relevance to investigating more serious matters. Should public officials who happen to be members of Parliament be exempt from being investigated by the CCC for bribery, for example, in relation to parliamentary matters? Should there be some special element in law that would quarantine them—us—from investigation for serious offences under the Criminal Code? I do not think so, and I do not think anyone would have that particular view. If any of those investigations compromised parliamentary privilege, it would become another matter, and that is where the matters that concern me have always resided.

In relation to the current question about this word "exclusively", the committee's finding is quite clear—that is, that it will not affect parliamentary privilege as it currently exists. The finding on page 7 states that the bill —

> … will not result in a diminution in the scope or operation of parliamentary privilege.

That finding is on an area that is hard to define. The Standing Committee on Procedure and Privileges wanted to provide a comprehensive report, with background information dating back 900 years, so it is quite some achievement to come up with that simple one-line finding, because that is what we needed to do. I am satisfied that that finding is correct, but it was not easy to arrive at and, as I have already indicated, it was the sort of thing that I particularly wanted to apply myself to. Indeed, if I were not already a member of the Standing Committee on Procedure and Privileges, I would have been watching even more closely than normal. I am a member of that committee and I want to vouch for the thoroughness of the committee's examination that went into producing this report.

In conclusion, I want to do a couple of things. Firstly, I want to again commend the forty-eighth report and bring it to the attention of members. I suggest members retain a copy of the report, and as the need arises, when matters of privilege are raised, they should get it out. Members will find it a very important resource that is easy to read. Most importantly, it is relevant to this Parliament, because it is a creation of this Parliament and, indeed, members will even recognise a number of the historical incidents used to give examples of the issues we are talking about. I thank the rest of the committee and commend the forty-eighth report to the house.

The second and final issue I want to emphasise is my commitment to the upholding of parliamentary privilege. It is something that I have always espoused, but the more I go through life and am exposed to the many and varied activities of Parliament, the more I see that parliamentary privilege is necessary. It is an absolute foundation stone for the type of parliamentary democracy that is to the community's benefit here in Western Australia, and the members of this place of the day have a very serious responsibility to ensure that on their watch parliamentary privilege is not diminished. We have seen lawyers, police investigators and even courts invite members to say that they will waive parliamentary privilege on a matter because they have said they have nothing to hide. No interrogator is entitled to ask that question and, more importantly, no member of Parliament can accede to that invitation. You have parliamentary privilege, as have I, whether you want it or not! It is not yours to waive or give away—ever! Members of Parliament simply cannot do that. Members could stand up in court, hand on a Bible or under affirmation—whatever they want to do—and say, "I waive parliamentary privilege." If that were to happen—it has happened before, and I am pretty sure it will happen again—that is when our Presiding Officer, with the Clerk, has to make sure that either they or someone acting on their behalf goes into that courtroom and says, "No, I am putting a stop to this part of those proceedings." That is what has to happen. Whenever members see a bill come before this place that contains advice by way of a second reading speech that touches on parliamentary privilege and states it will vary it or that it will not harm anything, they must look at it very, very carefully to make sure that they uphold the basic principles that we have inherited that have been carved out over hundreds of years of experience. I do not ever want to see members of Parliament being intimidated in the course of their responsibilities or being threatened with some sanction by the Crown because they chose to follow a particular course of action that the Crown does not like. That is the one thing that separates the people from

tyranny. Their one guarantee is that their members, or their representatives, can come into this place and say what must be said, ask the questions that must be asked, hold the government of the day to account, and pass, amend or repeal the statutes that must be so dealt with. If ever it gets to a stage where parliamentary privilege is ignored or is done away with, we are right back to the stage where members are being arrested and thrown in prison or made bankrupt by capricious representatives of the Crown at their convenience. That would be a very bad thing. I do not want to overcook it but —

Hon Alison Xamon: I thought that was excellent.

Hon SIMON O'BRIEN: Thank you. I hope that interjection was recorded for posterity!

Although this subject matter is very serious, in our times and in our healthy Parliament—we do have a healthy Parliament and a healthy system here in Western Australia—it is easy I suppose for people's eyes to glaze over when talking about this or when listening to someone else talk about it. But it was with all of those matters being contemplated and in that spirit that the Standing Committee on Procedure and Privileges on this occasion arrived at its finding. Again I commend the report to the house. I stand by the findings and I hope members are reassured that they too can do so with confidence.

HON ALISON XAMON (North Metropolitan) [8.52 pm]: I rise as the lead speaker on behalf of the Greens. I have quite a bit to say about the Corruption, Crime and Misconduct Amendment Bill 2017. As has already been alluded to by previous speakers, I do of course have an amendment on the notice paper as well. This bill is a pretty simple bill on the face of it. It inserts one word—"exclusively". It is intended that the act, when amended, will state —

> Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable exclusively by a House of Parliament.

Members would think that would make it a fairly innocuous change but I would maintain that it is quite significant. This bill is highlighting the tension between the expectation—I think a fair expectation—that crime and corruption can be investigated and, where appropriate, prosecuted, but also parliamentary privilege.

I listened intently to the comments of the previous speaker who I think well enunciated how important the principle of parliamentary privilege is. It aims to ensure that the representatives of the people—us—are not impeded in carrying out their duties. Much reference has been made to this excellent report, the forty-eight report of the Standing Committee on Procedure and Privileges, into the Corruption, Crime and Misconduct Amendment Bill 2017. I agree with the previous speaker that this report is well worth keeping on the shelf as a reference point to come back to over and over. The work that has been put into it is excellent. It does actually make for a very interesting read. One of the quotes that came out of the report that I was particularly enamoured with was the description by the Speaker in 1642 when talking about parliamentary privilege. I refer to what the Speaker told King Charles I in 1642, when the King and his soldiers came to Parliament to arrest five members for treason. He said, "I have neither eyes to see, nor tongue to speak but as this House is pleased to direct me." I do not know why but I really loved that! I thought that was most eloquent. I think we should be speaking like that more often in this place. But I digress.

Hon Michael Mischin: I will do my best!

Hon ALISON XAMON: In any event, going back to the inherent tension in this bill, we need to ensure we are uncovering corruption where it occurs at the same time as ensuring we are not inadvertently doing anything to lessen the importance of democracy. As it says in the report, there is no answer and no answer is perfect.

Quite a lot has been said about how we got to this point. Referring to the 2014 version of the bill, I was not in the Parliament in 2014 so I was not part of that debate but I have looked at what was said at the time. I note that the Corruption and Crime Commission Amendment (Misconduct) Act 2014 removed the word "exclusively" from section 3(2), thus ousting the CCC's jurisdiction where parliamentary privilege applied. There has been some suggestion that this ousting was inadvertent, but going by *Hansard* this is clearly incorrect. That was made clear in the speeches by then Attorney General Hon Michael Mischin as well as the speeches of Hon Adele Farina and my former colleague Hon Lynn MacLaren, who had carriage of the bill on behalf of the Greens. I note that the 2014 amendments also transferred minor misconduct away from the CCC, so consequently sections 27A and 27B were repealed because they were now redundant.

I want to make some comments about what has happened in at least one other state. It is pertinent in terms of learning the lessons of how things can get quite complicated in this space. I specifically note section 122(1) of New South Wales' Independent Commission Against Corruption Act, which states —

> Nothing in this Act shall be taken to affect the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

Yet in 2003 there was a dispute between Parliament and ICAC, after ICAC seized documents under a search warrant from an MP's office at Parliament House. The privileges committee confirmed that ICAC could investigate MPs but noted that was subject to section 122, which is also derived from article 9 of the Bill of Rights 1689, which is exactly what we are using. The committee resolved that article 9 is based on the need for Parliament to function effectively, otherwise MPs would be severely hampered in their ability to carry out their parliamentary duties, and the houses would be unable to properly scrutinise the actions of the executive. The committee at that point also resolved that representative democracy can flourish only when citizens can feel confident that they can communicate freely with a member of Parliament and in the knowledge that the actions of members in the conduct of their proceedings in Parliament will go unchallenged by outside interference or intimidation. The committee further went on to resolve that proceedings in Parliament will inevitably be hindered, impaired or impeded if documents forming part of the proceedings in Parliament are going to be vulnerable to compulsory seizure. Such documents were considered to be immune. The next step was to identify which of the seized documents related to the proceedings in Parliament because they needed to identify which documents were immune and which were not. In this instance, the procedure that was adopted was that the seized material had to be returned to the President and put into the Clerk's custody. The member of Parliament, the Clerk and an ICAC representative then went through those documents together. The documents that the member of Parliament and the Clerk identified as not privileged were returned to ICAC, and the documents that the member of Parliament and the Clerk identified as privileged were retained. ICAC was given the opportunity to dispute that privilege claim, but it had to do that in writing. ICAC disputed the status of some of the documents, and the house considered the views of both ICAC and the member of Parliament before determining whether the disputed documents were within the scope of proceedings in Parliament and therefore immune. This is a fraught space to try to legislate around and find a balance between these inherent tensions.

I now want to make some comments about this bill. I note in particular the Solicitor-General's briefing note dated 25 August 2017. The Attorney General in the other place took the unusual step of tabling the Solicitor-General's briefing note. That note advised that prior to removal of the word "exclusively", both the Corruption and Crime Commission and the house has jurisdiction over a member of Parliament's misconduct that was both a breach of privilege and a criminal offence. It advised also that removal of the word "exclusively" potentially ousted the CCC's jurisdiction, and that reinsertion of the word "exclusively" would restore the CCC's jurisdiction without ousting Parliament's jurisdiction, because the two jurisdictions would be operating concurrently. The briefing note advised also that the privileges committee can still investigate and determine any matter within its jurisdiction. It advised that parliamentary privilege will still play a role in the investigation and prosecution of criminal offences—for example, in relation to obtaining and adducing evidence. It advised that any parliamentary immunity will continue to apply, such as freedom of speech, and that debates and proceedings in Parliament will continue to not be able to be impeached or questioned in any court or place outside of Parliament. It advised also that how the CCC should investigate in these circumstances has not been resolved—for example, whether that needs to be done via a memorandum of understanding between the CCC and the privileges committee. I note that this question is still separate from the bill.

I now come back to the excellent report on the bill by the Standing Committee on Procedure and Privileges. The report mentions my proposed amendment but not the submission that I made to the initial inquiry. That submission is publicly available and I encourage members to look at ; it is an excellent submission and I am sure it will inform members greatly. Two legal opinions form the appendices to the report. The first is the opinion of the Solicitor-General that I referred to. The second is an opinion from Senior Counsel Mr Bret Walker that is dated 6 December 2017 and constitutes the summary of advice that he had given by telephone seven months prior. I mention that because the issues that were raised in my submission, and the issues that were raised in the other place, therefore were not considered by either of those senior counsel because they predate the raising of those matters. It would have been useful to have had a response to that, but we have not had that advantage. Nonetheless, the report confirms the validity of my concern that there is no procedure about how parliamentary privilege, the powers and functions of the CCC and any ensuing court proceedings will interact.

The committee found that the bill will not result in a diminution in the scope or operation of parliamentary privilege. However, the report also states, in what I think is a magnificent understatement, that the bill does not address the lack of clarity about the extent to which evidence arising from parliamentary proceedings may be used in prosecutions. The report also confirms that the bill does not address the timing of CCC notifications to Parliament when it starts to examine evidence that may be privileged. The committee noted that an MOU between the CCC and Parliament may go some way towards addressing evidence sharing and notifying Parliament, but it will not address broader issues such as the execution of CCC search warrants on parliamentary or electorate officers, or the use of proceedings in Parliament as evidence.

Unfortunately, the CCC habitually refuses to notify Parliament of its investigations, unless it needs something. Paragraph 6.19 of the report states that in 2007 and 2008, the CCC informed Parliament only when it needed Parliament's help to identify and obtain relevant evidence. It states in chapter 8 that in 2016, the CCC investigated,

formed an opinion and gave information to the then Premier without informing Parliament at all. It was only via the Premier, not via the CCC, that Parliament learnt of a possible contempt against it. That is outlined in the report if members have not had the opportunity to read it.

My proposed amendment would at least require the CCC to act in accordance with an MOU or other agreement with Parliament, and also to inform the Parliamentary Inspector of the Corruption and Crime Commission, which is a statutory position, of any investigation involving a member of Parliament. It is useful to talk about the most recent case that has occurred within the life of the fortieth Parliament. That is, of course, the evidence given to the committee inquiring into the matters pertaining to Barry Urban. The other place recently considered a request by the Commissioner of Police for evidence to be provided to its Procedure and Privileges Committee in the Barry Urban inquiry so that the police could determine whether a criminal act had taken place. The evidence in the committee's possession included evidence that had been provided by Mr Urban, evidence from witnesses, and documents, including the one that the committee had described as necessarily a forgery. Mr Urban had also requested that the committee return his purported academic qualifications, and his medals, photographs and other documents. Therefore, the house had to deal with competing claims regarding that evidence. That was followed by duelling opinions between the Clerk and George Tannin, SC, the state counsel who was advising the police commissioner. The Clerk's opinion was that the house should ascertain which offences were being investigated. If it was an offence under sections 57 to 61 of the Criminal Code, parliamentary privilege was abrogated and the house could, if it saw fit, direct the committee to provide to the commissioner all of Mr Urban's evidence that was relevant to that particular offence. If the offence was a different offence, such as forgery or fraud, the house could, if it saw fit, direct the committee to provide Mr Urban's non-privileged evidence, such as his purported academic qualifications, medals and photographs that had come into existence independent of parliamentary proceedings. The opinion was also that whatever the offence, parliamentary privilege was not abrogated with regard to the evidence of other witnesses. In addition, standing order 308 obliged the house to protect its witnesses. The Clerk's opinion also noted—I will make a few comments about this in future remarks—that providing the oral evidence of witnesses could have the effect of "chilling" cooperation from future potential witnesses with Parliament, who would not trust Parliament to keep their evidence secure. The opinion said also, most importantly, that Parliament cannot waive privilege.

Mr Tannin's opinion was that police should not disclose in advance what offences were being investigated because of concern that that could jeopardise the independence and integrity of the investigation, and that by generating publicity and speculation against Mr Urban, it could prejudice any future prosecution such that it might be permanently stayed. Two types of parliamentary privilege were involved. They were the privilege of the nondisclosure of documentary evidence that is compellable and discretionary, and the privilege of freedom of speech, which is an immunity from civil or criminal liability. The evidence and the materials were subject to the nondisclosure privilege; therefore, Mr Tannin's opinion was that disclosing them was within the house's discretion. As to whether it should disclose them, if the committee provided police with the actual transcripts and the exhibits of witness evidence—not reproductions, summaries or extractions—the privilege of free speech would apply to those documents and committee witnesses would continue to have immunity from civil or criminal liability and standing order 308 would not be contravened. He believed that chilling was unlikely and that witnesses who testify under oath are obliged to tell the whole truth anyway. The Legislative Assembly ended up resolving—I note that this was supported by all three parties as opposed to the glorious seven that are in this house—to direct the Procedure and Privileges Committee to confer with the Commissioner of Police and provide him with the evidence and documentation from the inquiry that the committee considered was relevant to the commissioner's investigations, did not breach parliamentary privilege and was consistent with the house's obligation to protect witnesses.

This differs from the procedure used in New South Wales that I described earlier. The decision was made on factors apart from parliamentary privilege, the member of Parliament was not involved, the decision was made by the committee and not by the Clerk, and there was no process for the police commissioner to dispute the decision and have the house make a determination.

The following views were expressed during the debate on that motion. One view was that the outcome of the inquiry and the request by the Commissioner of Police were unprecedented. I note that members of the other place were of the view that the motion was a sensible compromise and balanced the need to maintain parliamentary privilege, give the Commissioner of Police access to information to do his task, and protect committee witnesses. The comment was made that committee witnesses do not have the benefit of legal counsel to advise them not to answer questions that may incriminate them. In the other place the Attorney General warned against conflating privilege with confidentiality. It was also noted that committees can and do waive confidentiality and publish evidence from time to time and that the house can also direct a committee to waive confidentiality. It was also stated that privilege is about immunity from being held to account in any other forum unless abrogated by legislation. These are some of the most recent and pertinent examples of the ways in which the tensions inherent in this bill have played out in other jurisdictions and this Parliament itself.

I turn to the crux of the effect of the change before us. The CCC is currently able to exercise its powers, rights and functions against MPs, officers of Parliament and others involved in Parliament, but currently under section 3(2), not in relation to a matter that is determinable by Parliament. The bill will change that so that the CCC will be able to exercise its powers, rights and functions in those matters too, if the matter is determinable by another forum as well as by Parliament—in other words, when Parliament has concurrent jurisdiction and not exclusive jurisdiction. The committee report identifies those matters as criminal offences determinable in a court that corresponds to the contempt powers of Parliament contained in the Parliamentary Privileges Act. Matters within the contempt powers of Parliament under that act include the matters listed in section 8—such as assaulting a member coming to or going from the house or offering a bribe to a member—and the matters covered by section 1, which are those of the United Kingdom House of Commons as at 1 January 1989 which are not inconsistent with the act, such as an MP receiving a bribe or giving false evidence to Parliament. The committee report identifies some examples of criminal offences that correspond to those contempt powers.

At paragraph 2.57 the committee report states that double jeopardy does not apply and a person can be tried and punished both by Parliament for contempt and a court for an offence in respect of the same matter. This bill will not change that. I will say more about that in a moment.

There is a lack of clarity around the circumstances in which the bill will permit the CCC to exercise its powers, rights and functions in matters that are not criminal offences but are misconduct as defined in the Corruption, Crime and Misconduct Act that correspond to the contempt powers of Parliament. Example 3 in chapter 5 of the committee report seems to suggest that it may be possible. That is the example of providing false and misleading information in an answer to a parliamentary question. However, as I read the bill, if the matter is determinable exclusively by a house of Parliament, the CCC will be ousted from exercising its rights, powers and functions. For the CCC to have a role, it seems that the matter needs to be determinable by another forum as well as by Parliament. I note that the CCC forms opinions and not determinations. If the matter does not correspond to a criminal offence, it will not be determinable by a criminal court. Depending on the forum and the nature of the matter, this may be further complicated by the parliamentary privilege of exclusive cognisance, which will continue to apply.

I ask the minister to clarify for the record in what circumstances the bill will permit the CCC to exercise its powers, rights and functions in matters that are not criminal offences but are misconduct as defined in the Corruption, Crime and Misconduct Act 2003 that correspond to the contempt powers of Parliament.

The committee report found that the bill does not diminish the scope or operation of parliamentary privilege; therefore, parliamentary privilege will continue to apply. That means that the freedom of speech and debates or proceedings in Parliament cannot be impeached or questioned in court or any place outside of Parliament. My understanding, and I seek confirmation of this, is that this cannot be waived except via legislation. I understand that to be the case, but I want to have that confirmed. Unless abrogated by legislation, this imposes restrictions on the evidence that can be adduced in courts or forums other than Parliament. I noted intently the comments of Hon Simon O'Brien—that it is the responsibility of this Parliament to remain vigilant about any legislative changes that come to this place that may attempt to limit the scope of parliamentary privilege. I could not agree more!

There are some Criminal Code offences in relation to which it is arguable that parliamentary privilege has already been abrogated, but the committee report indicates that to date this has not been judicially determined. Aside from legislative abrogation, the committee report identifies one way to get the evidence into court, which is by Parliament directing the Attorney General under section 14 or section 15 of the Parliamentary Privileges Act to prosecute in court a contempt of Parliament that is also a criminal offence. However, the Attorney General has indicated in the other place that he believes that to do so would put him in disobedience with the Director of Public Prosecutions Act 1991. It would be good to hear whether there is an opinion that will clarify the matter.

At pages 20 and 21, the committee report also refers to another kind of parliamentary privilege, exclusive cognisance, which is the right of Parliament to regulate its own affairs. The report indicates that this privilege is not asserted in relation to criminal conduct and it is unlikely to be accepted by courts in contract or tort, and it also notes that it has already been eroded by statutes such as the Parliamentary and Electorate Staff (Employment) Act. As the committee noted again, in yet another magnificent understatement, the impact of the bill is not straightforward. This is one problem with the bill. Another issue with the bill is that no clear process has been prescribed to manage the relationship between the Corruption and Crime Commission and Parliament. As the committee report has made clear, there needs to be an effective relationship between the CCC and Parliament, and I would also add the Director of Public Prosecutions and Parliament, if a matter is referred by the CCC to the DPP for prosecution. This is because we need to ensure that parliamentary privilege is not breached. We need to ensure that evidence is shared with Parliament so that Parliament can respond to any contempt against it, or breach of privilege as appropriate, and it is Parliament's place to do that, to ensure that the business of Parliament is never impeded—for example, by requiring a member of Parliament to attend a court hearing when Parliament is sitting or seizing material that is needed for parliamentary proceedings—or, I would also add, to manage double jeopardy or double jeopardy–like issues. Again, I ask the minister to clarify, because I am not certain whether it is double

jeopardy when one of the forums trying the person is executive and the other is Parliament. Even if it is not technically double jeopardy, it is a matter that needs to be managed, because the penalties that Parliament can impose are very different from those that can be imposed by other workplaces. If a person does the wrong thing in another workplace, the penalty is that they will just lose their job. In this place, not only can a person lose their job, but also a penalty imposed by Parliament can be the sorts of penalties that are normally imposed only by the criminal courts—for example, imprisonment and fines. Conversely, for justice to be seen to be done, it is important that penalties are commensurate with the behaviour, and issues arising from the possibility of punishment by two forums need to be properly managed. The issue then is not that double jeopardy will ensure that nothing happens, but I think perversely it may result in people being doubly penalised, sometimes with quite serious penalties.

As is noted in chapters 6 and 8 of the committee report, the CCC has a history of leaving Parliament out of the loop to the extent that the CCC itself breaches parliamentary privilege. This should be setting off some alarm bells, because the bill in its current form does not address these issues. Previously, the now repealed sections 27A and 27B aimed to resolve the issue by enabling Parliament to use the CCC as its instrument to carry out investigations on Parliament's behalf. The committee report indicates this process was used twice in the other place, although I note it was never used in this place—probably because we have a higher standard of politician in the Legislative Council! The bill does not resurrect this process. Indeed, it reverses it, starting with the CCC and leaving it for the CCC to decide when to notify Parliament. That is notwithstanding the CCC's pretty poor history in this regard. One of the amendments that I will move aims to ameliorate this. I asked a question today about the status of the purported memorandum of understanding between the CCC and Parliament. It is clear that no draft MOU exists and I am not feeling particularly confident that one will occur any time soon, at least not in the form in which it was originally envisaged. I have an amendment on the supplementary notice paper that would seek to ameliorate this by requiring the CCC to act in accordance with any MOU or agreement that is developed between the CCC and the Standing Committee on Procedure and Privileges, but I also note from discussions behind the Chair that there are some suggestions of an amendment to my amendment that might alter the scope of what I have proposed somewhat, but does not undermine the intent of what I had hoped to achieve, which is to ensure that how it is intended to operate between Parliament and the CCC is crystal clear. In the absence of an explicit alternative amendment on the supplementary notice paper at this point, my amendment is still there. I note that even if we were to get an MOU finalised, and in my view I do not think the legislation should even commence operation until it has, this will not resolve the entire issue. The committee report states that the anticipated MOU will cover earlier notification of investigations and evidence sharing, but it will not cover wider issues relating to the execution of a CCC search warrant on parliamentary electorate offices, or the CCC's ability to use proceedings in Parliament as evidence.

I want to make some comments about the oversight of the CCC in relation to the proposed new function. There will be a special need for oversight of how the CCC conducts itself in matters involving Parliament, given that Parliament's proper functions include functions specifically related to the CCC. I understand that the comment that has been made, a little cavalierly, is: what is so different about members of Parliament? Funny they should ask. We are in a very different situation with our responsibilities in this place in oversighting the exceptional powers that exist within the CCC. We have a joint standing committee that oversights the CCC and its reports are sometimes very critical of the actions of the CCC. I remind members in this place of the ongoing discussion that will probably continue tomorrow about the CCC's appalling handling of the Cunningham and Atoms matter and its failure to appropriately investigate what happened to that couple and ensure that justice had been done. This is our role; this is our responsibility. Like other committees, the joint standing committee can also take evidence. I am particularly concerned that the CCC might be able to prematurely access the investigations, deliberations, documents, communications and witness evidence taken by that committee—the very committee that is charged with the oversight of the CCC. Maintaining the line between the CCC's powers, rights, functions and parliamentary privileges, immunities and powers, particularly by the clerks and the privileges committees in both houses, is absolutely essential. We pass laws that grant or remove the CCC's functions and we direct how it must exercise those functions through those legislative reforms. We inquire into the CCC's budget via estimates. The government determines the budget of the CCC. We inquire into the CCC's annual report via estimates. We have a very clear role and obligation to oversight the very agency that would then have the capacity to effectively investigate us. The act currently recognises the need to protect those who oversight the CCC. For example, the CCC cannot receive allegations against its own commissioner. The CCC cannot receive or initiate allegations against the parliamentary inspector in their capacity as the parliamentary inspector or their officers, nor exercise its powers against the parliamentary inspector. The CCC cannot receive or initiate allegations against a judicial office holder except in certain circumstances, and, if it does proceed, it must have proper regard for preserving the independence of judicial officers and also act in accordance with conditions and procedures formulated in continuing consultation with the Chief Justice.

The act itself has foreseen the need to afford some degree of accountability to those entities charged with the responsibility of being able to oversight the activities of this body with extraordinary power. Therefore, I will

move an amendment that facilitates the proposed new function of the CCC—it enables that to occur—but will at least be capable of shining a light should there be any overstepping on behalf of the CCC. We have already seen, and it is in the report, that this has occurred. We do not need to worry about this being mere speculation—it happens. Parliament has always striven for a system of checks and balances in the exercise of the CCC's extraordinary powers, and my proposed amendment will propose nothing different. It is an important safeguard for an important public interest. Importantly, that oversight could include monitoring of whether the CCC has complied with any process that has been set out in any memorandum of understanding or any other instrument that may be appropriately established—any other agreement between it and the privileges committee. I note that the amendment will not alert the Parliament or any MP under investigation that they are currently being investigated. It simply ensures that one entity is able to keep checks and balances on the way the CCC is undertaking that investigation to ensure that, firstly, it is not being exercised inappropriately or contrary to any agreements that may be made; and, secondly, it is not being used for political purposes, because, frankly, that is exactly what has happened in some of the deep, dark history of the CCC.

I also want to comment on my concerns about the redirection of resources. I am concerned that the bill redirects the CCC's finite time and resources from what I believe are its core business and other activities, bearing in mind that the police already have the capacity to investigate members of Parliament. The police can investigate criminal offences. Using the CCC, with its extraordinary powers, for exactly the same matters potentially circumvents the constraints that apply to those police investigations—those constraints being the rule of law. Those constraints have been developed over a long time and are there for good reason. Frankly, we need to stop trying to make the CCC the replacement for the police. Parliament, also, already has power to investigate matters. In fact, Parliament has very wide investigative powers. In addition, and unlike the CCC, it can make findings—noting that the CCC can only form opinions and not make findings—and it can impose penalties, and, although we need to get confirmation of this, perhaps it can direct the Attorney General to prosecute contempts that are punishable by law in court.

Under the standing orders, at paragraph (b) of schedule 4, before deciding to refer a possible contempt to its privileges committee, this house must consider the availability of other remedies. If the house refers a matter to the privileges committee, that committee in the course of its inquiry must consider alternatives to the house's contempt power. I note that Parliament has been criticised by former Chief Justice Wayne Martin for being procedurally unfair. I also note that the CCC has received similar criticism—in fact, it has been called a Star Chamber. The bill does not address this issue for either the Parliament or the CCC, but in light of the criticism of Parliament, it would be appropriate for this house, probably in the fullness of time, to review the fairness of its own procedures. I suggest that this issue is not unable to be resolved. In the meantime, if Parliament is able to direct the Attorney General to prosecute in a court contempts that are punishable by law, that might be one way that that could be addressed.

The other problem with redirecting the CCC's resources is that it takes away from the CCC's core function, which I believe is to oversight the police and to focus on fighting organised crime. I remind members again of the CCC's refusal to investigate the outrageous treatment of Dr Cunningham and Ms Atoms, which was reported to this house. The Parliamentary Inspector of the Corruption and Crime Commission's 2016–17 annual report said that during his term, noting that he was appointed in January 2013, he had become concerned about the commission's response to complaints of the use of excessive force by police officers. During the reporting period, a particular complaint had been made to him about an issue and that had increased his concern. His concern was that the CCC was simply not doing it properly. The CCC's annual report of that same year said that of the 2 636 allegations received about the police, 1 444 had resulted in no further action by the CCC; 1 126 were referred to the police, with the CCC to be advised of the outcome; 54 were referred to the police, with the CCC to monitor and review police handling of it; and nine were investigated by the CCC cooperatively. Only three were investigated independently by the CCC. I suggest that the CCC is already struggling to meet what should be its primary mandate, which is to make sure that it is oversighting the police.

I also remind members of a matter that the CCC subsequently investigated, and that is the very recent report I read on Friday regarding excessive police force, again used in Fremantle, in September 2017. I am going to suggest that the need for the CCC to be oversighting the police continues to be a very high priority. I am concerned that the bill will redirect the CCC's resources from oversighting police to investigating MPs, when both police and Parliament already have the power to do exactly that.

I am also concerned about this bill's inadvertent impact on whistleblowers. MPs are very often the recipients of public interest disclosures by whistleblowers. I think whistleblowers perform a very valuable public service, directly by revealing wrongdoing or wastage that is occurring or that information has been given to Parliament that is misleading, or indirectly if people refrain from wrongdoing for fear that there might be a whistleblower around. I seek confirmation that disclosure by a whistleblower to an MP, apart from the President if the disclosure is about an MLC or the Speaker of the other place if the disclosure is about an MLA, falls outside the Public Interest Disclosure Act 2003. I understand that it does. If that is correct, the whistleblower will not

have that act's protections and they will make disclosures at their peril. Disclosures by whistleblowers to MPs need to be encouraged. They lead to useful outcomes that serve the public interest. They lead to parliamentary inquiries, to better legislation and to tabled documents. The concern that the CCC, even if it is just having a bit of a forage around, may be listening in as part of an investigation may discourage whistleblowers from making disclosures to MPs or to their electorate office staff. This will become a more significant issue the more the CCC is able to clandestinely investigate MPs, particularly if no-one is oversighting them to ensure that it is not being done perhaps vexatiously or without proper foundation. That would be counterproductive, given that whistleblowers are one of our protections against crime and corruption. I say in conclusion to that point that I think the Public Interest Disclosure Act 2003 needs to be amended more broadly to ensure that whistleblowers are protected, not silenced.

In conclusion, I think that this bill raises a number of issues. I again commend the Standing Committee on Procedure and Privileges for a really interesting and excellent report. It is essential that if this bill proceeds—I have every reason to believe that it will—any MOUs or even decisions by this Parliament about how its proceedings will be impacted need to be absolutely prioritised.

I urge members to give due consideration to the substance of the effect of the two amendments that I have on the notice paper to ensure that we have appropriate oversight of the Corruption and Crime Commission to ensure that if it is exercising its powers, it does so appropriately, and also to ensure that it must be mindful of and have regard to any agreements made with the Parliament because parliamentary privilege is absolutely critical. We are in a different position from other people because we are given the onerous and I think incredibly important responsibility to make sure that we are keeping the extraordinary powers of the CCC under check. I do not for one second think that any member of Parliament should ever be above the law, but we have to ensure that should we decide to use these exceptional powers, instead of the police or the Parliament itself ensuring that members of Parliament are doing the right thing, that we do not effectively lose all control over an entity that has such extraordinary power over its citizens.

HON MARTIN ALDRIDGE (Agricultural) [9.40 pm]: I rise as the lead speaker on behalf of the Leader of the Nationals WA in this place on the Corruption, Crime and Misconduct Amendment Bill 2017. From the outset, I indicate that the National Party will in principle be supporting the bill before us.

Quite a lot has been said so far in the second reading debate. It was interesting to look at some of the history since the 2014 amendment to the act that gave rise to this issue of the word "exclusively". It is interesting to look back on a couple of the speeches that ignited the public debate on this matter, such as that by the then Corruption and Crime Commissioner, Hon John McKechnie, QC, initially when he delivered a speech to some 300 Western Australian public servants at a function on 9 December 2016 to mark International Anti-Corruption Day. A very small part of that speech, which I think went unnoticed at the time, reads —

> In Western Australia, amendments last year quietly removed jurisdiction over misconduct for Members of Parliament, though jurisdiction for serious misconduct by Ministers is retained.

That language was obviously strengthened when the commissioner, during the caretaker period—in fact only a few days out from the 2017 general election—on 7 March delivered an address to Curtin Law School. That address has been mentioned in some of the debate that has occurred tonight, but I want to quote from one section on page 23 of the speech that I found on the CCC's website. The speech states —

> The Commission was recently taken to task by a select committee for reporting on answers prepared by staff for the Minister to respond to a parliamentary question. Parliamentary privilege was held to extend to the preparation of those answers by public officers. The privilege was thus extended beyond members. There is no bright line limit to parliamentary privilege. In a particular case, the limit will not be known until a Privileges Committee declares it. The extension of parliamentary privilege to cover these answers, did not however in the committee's view extend to the drafting and preparation of the Commission's report to parliament, even though it exposed a matter about which parliament was hitherto unaware.

That is an extract from a quite lengthy speech, and a reasonable section in relation to Parliament. But I take interest in the view of the commissioner in this speech, in which he said that the parliamentary committee did not take exception to the report. I am not sure that is correct. I think the parliamentary committee made quite clear references in its forty-fourth report to the Parliament, with respect to the matter of privilege raised by Hon Sue Ellery, that these matters would not have been uncovered but for the fact that the report was provided to government by the commissioner of the CCC.

Earlier on in that speech, the commissioner said —

> In one sense, the Commission is parliament's agent in that the Commission might investigate a matter and is permitted to report directly to parliament, unlike a royal commission whose report is to the

> executive, formally to the governor. In the event of serious misconduct within the executive, the Commission's ability to report directly to parliament is an important aspect of its independence.

It is interesting to note with respect to the matter of privilege raised by Hon Sue Ellery that led to the forty-fourth report that the CCC report was not tabled in Parliament by the commissioner; in fact, it was provided to the then Premier of the state, Hon Colin Barnett, who tabled that report in Parliament. If I am not mistaken, the now Leader of the Opposition, who was the then Leader of the House, similarly and concurrently tabled that report in the Legislative Council. It was interesting that, in his speech on 7 March 2017, the commissioner spoke about how important it is that his role is to report to Parliament, investigate these matters and report directly, yet, regarding this matter, he actually reported to the executive, not directly to Parliament.

The PRESIDENT: As you draw breath, member, I will interrupt the debate to take members' statements.

Debate adjourned, pursuant to standing orders.