

CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2017

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.37 pm]: I move —

That the bill be now read a second time.

The Corruption, Crime and Misconduct Amendment Bill 2017 proposes an amendment to the Western Australian Corruption, Crime and Misconduct Act 2003 to restore the power and jurisdiction of other authorities, particularly the Corruption and Crime Commission, over misconduct by members of Parliament that could constitute a breach of the Criminal Code. The proposed amendment was previously put before Parliament in the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017, which was debated in the September sittings of the Legislative Assembly. In the course of the debate on that bill, it became clear that the proposed amendment, which now forms the current bill, was required to be considered in greater detail than the more substantive sections of the bill dealing with powers in relation to unexplained wealth. For that reason, on Wednesday, 7 September 2017, I moved to split the bill in order that the most pressing amendments could be passed without referral to a committee, on the understanding that the amendment now before the house would be introduced in a separate bill.

The Corruption, Crime and Misconduct Amendment Bill 2017 introduces the amendment to Parliament as proposed in September. The rationale for the amendment remains the same as at its introduction in the prior bill. Section 3(2) of the CCM act was originally inserted into the Corruption and Crime Commission Act 2003, as it was then known, by the Corruption and Crime Commission Amendment and Repeal Act 2003. The subsection, in its original form, reads —

- (2) 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.

An amendment to section 3(2) of the CCM act by the Corruption and Crime Commission Amendment (Misconduct) Act 2014 removed the word “exclusively” from that subsection. That amendment had the effect of ousting the jurisdiction and powers of the CCC in relation to all conduct that is covered by section 8 of the Parliamentary Privileges Act 1891. In its current form, the section has the result that the CCC’s jurisdiction would not extend to any conduct or matter that gives rise to an offence under section 8 of the Parliamentary Privileges Act 1891.

The effect of the proposed amendment rests on the significance of the word “exclusively”. Prior to the removal of the word “exclusively”, section 3(2) did not prevent the CCC from exercising powers on a range of misconduct by members of Parliament. This was because a range of conduct constituted both breaches of the Parliamentary Privileges Act 1891 and criminal offences. For example, certain misconduct by members of Parliament under section 8 of the Parliamentary Privileges Act 1891 could also amount to offences under the Criminal Code. This is particularly so with respect to sections 55 to 61 of the Criminal Code, which cover offences involving interference with the proper operation of Parliament, including corruption offences, such as members of Parliament receiving bribes. There is also a series of offences for corruption and abuse of office contained in chapter XIII of the Criminal Code. Given the definition of “public officer” in the Criminal Code, it is clear that many of those offences would relate to offences of corruption committed by members of Parliament in that capacity. Many of these Criminal Code offences comprise elements that are substantially identical to some of the offences set out in section 8 of the Parliamentary Privileges Act 1891, or breaches of parliamentary privilege generally. Bribery of a member of Parliament is probably the clearest example of conduct that would comprise both an offence against section 61 of the Criminal Code and an offence punishable by Parliament under section 8 of the Parliamentary Privileges Act 1891.

In creating the Criminal Code offences referred to, Parliament has ceded its previously exclusive authority to deal with conduct of the character referred to in section 8 of the Parliamentary Privileges Act 1891. Offences under these provisions of the Criminal Code may properly be investigated by the police and prosecuted in the courts. Insofar as conduct by a member of Parliament or another person constitutes an offence against both the Criminal Code and section 8 of the Parliamentary Privileges Act 1891, the courts and the relevant houses of Parliament may have been said to have had concurrent jurisdiction. Given the concurrent jurisdiction of the courts and Parliament in relation to that “conduct”, it cannot be said that punishment for the conduct that gives rise to an offence against section 8 of the Parliamentary Privileges Act 1891 was, following the introduction of the relevant

Criminal Code offences, determinable exclusively by Parliament. That conduct may well amount to an offence against the Criminal Code and, indeed, “misconduct” for the purposes of the Corruption, Crime and Misconduct Act 2003.

The removal of the word “exclusively” from the Corruption and Crime Commission Amendment (Misconduct) Act 2014, had the potential effect that even though suspected conduct may well amount to an offence against the Criminal Code and, indeed, “misconduct” for the purposes of the CCM act, if that conduct would also amount to a breach of parliamentary privilege, it could not be the subject of a Corruption and Crime Commission investigation. This is because the matter would be determinable by a house of Parliament. Reinsertion of the word “exclusively” would remove that potential effect so that the CCC would be able to investigate conduct over which there was concurrent jurisdiction of the courts and Parliament. The amendment would leave the powers and privileges of Parliament unaffected. Indeed, the broader purpose of section 3(2) of the CCM act is to ensure that the privileges of Parliament are not affected by the CCM act. For example, the Parliament and its privileges committees would retain their full authority in relation to the investigation and determination of breaches of the privileges of Parliament, including all the offences under section 8 of the Parliamentary Privileges Act 1891. The amendment does not affect those powers at all.

Similarly, parliamentary privilege would still have a role to play in the investigation and prosecution of these Criminal Code offences, whether by the CCC as part of a misconduct investigation, or an investigation by the police as part of a criminal investigation. For example, parliamentary privilege may preclude the obtaining and adducing of various types of evidence. In this regard, a distinction needs to be drawn between the powers of Parliament under the Parliamentary Privileges Act 1891, the exclusivity of which the Criminal Code provisions affect, and the immunities enjoyed by the house, its members and committees under section 1. The immunities of a house of Parliament and of a member of a house are not affected by the existence of these Criminal Code offences. For example, article 9 of the Bill of Rights 1689, which provides that “the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”, may, in a particular case, have an impact on the extent of an investigation by the CCC or a prosecution in a court for an offence against the Criminal Code. It is settled that article 9 of the Bill of Rights is made applicable in Western Australia by section 1 of the Parliamentary Privileges Act 1891. The authority for that is *Halden v Marks* (1995) 17 WAR 447 at 461. Those issues are separate from the one dealt with by the amendment, which is whether the CCC, as with the police, can investigate certain conduct at all.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. Nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth. I commend the bill to the house and table the explanatory memorandum.

[See paper 904.]

Debate adjourned, pursuant to standing orders.