

CRIMINAL INVESTIGATION (COVERT POWERS) BILL 2011

Council's Amendments — Consideration in Detail

Resumed from an earlier stage of the sitting after amendment 1 made by the Council had been partly considered.

Mr J.R. QUIGLEY: I know that there are a lot of clauses in this message—an awful lot of clauses—that has come to this chamber late. Mr Speaker, I wonder whether you intend to afford us a dinner break at seven o'clock or to work on in circumstances of privation, because this is going to take some hours.

The SPEAKER: It is not my opportunity to provide you with a dinner break, member. It is the house's decision to have reached this point at this stage. I, like you, will be somewhat deprived of dinner for a considerable period.

Mrs M.H. ROBERTS: Amendment 1 deals with who the authorising officer is for the police force, the Department of Fisheries and the Australian Crime Commission. We asked the minister why it is appropriate that the Commissioner of Police be the authorising officer for the fisheries department, especially given that is not the way it has been set up in other states. Indeed, we even asked why the Standing Committee on Uniform Legislation and Statutes Review's position of not including the fisheries department was not adopted in these 143 amendments. We were advised that the impetus for this legislation was the decision in *Ridgeway v The Queen*. Paragraph 6.1 on page 8 of the Standing Committee on Uniform Legislation and Statutes Review's sixty-ninth report states, in part —

- 6.1 There are two impetuses for the Bill. The first arises from the High Court of Australia decision in *Ridgeway v The Queen*. Ridgeway was arrested by the Australian Federal Police ... with 203 grams of heroin in his possession and convicted of possessing a prohibited import. The prosecution alleged that Ridgeway initiated a deal to import heroin into Australia and to purchase the drug when it arrived. The importation of the drug had been undertaken by an informer with the assistance of the AFP and the Malaysian Police in a 'controlled delivery' arranged for the purpose of apprehending Ridgeway.

The report went on to state that Ridgeway appealed his conviction and so forth and the court weighed up certain things, and that was one of the impetuses for the Criminal Investigation (Covert Powers) Bill 2011.

Paragraph 6.6 on page 9 of the report states, in part —

The emerging threat of organised crime

- 6.6 The second impetus is the belief that organised crime groups have reached "*macro-economic proportions*" and is an "*ever evolving transnational phenomenon of immense size*" though the Committee could find little statistical evidence for this belief ...

Looking at that as the impetus for the bill, it seems to me to be, in passing, strange that the fisheries department made its way in there. When I queried the minister earlier about why fisheries needed to be included and why she had not adopted the recommendation of the Standing Committee on Uniform Legislation and Statutes Review, the advice was a concern about fish trafficking. When I looked through the report to see what these issues are with fish trafficking, on page 10 I found that paragraph 6.8 states —

- 6.8 The Committee is dissatisfied with the assertion by the Department of Fisheries that there is evidence of organised crime. The little statistical evidence or other evidence such as the 2007 study referred to above, fails to indicate an emerging threat.

I will not read all the words out, but it then goes on to say that, between 2007 and 2011, seven covert operations were conducted by the Department of Fisheries, and it refers to a black market in things like dhufish. Is this what the minister means by fish trafficking? Is it people offering dhufish on the black market? Is the minister able to provide me with any other details of fish trafficking that will somehow be covered by this bill? Is the minister suggesting there is any connection between so-called fish trafficking and things like illegal drugs, illegal firearms, money laundering or other activities that are regularly associated with organised crime?

Mrs L.M. HARVEY: There certainly is evidence of organised crime activity in the abalone fishing industry, and in its 2012 report the Australian Crime Commission reported on increasing evidence of organised crime crossing over into the fishing industry. Problems have been identified in Tasmania with the trafficking of abalone.

Mrs M.H. Roberts: Is this the poaching of abalone? Can the minister explain exactly what is happening with abalone?

Mrs L.M. HARVEY: My understanding of the way these things work is that poaching occurs with abalone and many other species of fish, of which some members in this chamber may be aware. But, as far as the offence of trafficking of fish is concerned, high-value fish is exported to lucrative markets in Asia and other places. A range of different areas of fish trafficking will be covered under this legislation; hence, the view of the government that fisheries should be included as part of this legislation.

Mrs M.H. ROBERTS: Is the minister able to provide me with any evidence at all of this, or can I clarify whether the minister is asserting that the regular things we associate with organised crime are in any way linked to either abalone poaching or fish trafficking, as she referred to it? Do those organised crime groups include elements that may or may not include outlaw motorcycle gangs? Are those elements getting involved in fish trafficking, and is there a link with money laundering, drug importation or illegal firearms?

Mrs L.M. HARVEY: There is certainly black market activity in the fisheries area that affects the viability of local commercial fishers and the sustainability of our fishing stock. Where no controls exist and we cannot get to the bottom of who these people are, we have a problem on our hands. That problem is dealt with by the serious offences unit in the Department of Fisheries. The 2007 Australian Institute of Criminology report looked at organised crime trends in fisheries and concluded that it was evident that within many fisheries jurisdictions, management and enforcement frameworks do not have the capacity to contain the likely expansion of organised crime into fisheries. Indeed, there have been cases of organised crime syndicates connected with some illegal fishing operations and involved in drug importation and distribution.

Mrs M.H. ROBERTS: The minister has made the generalised assertion that there is evidence that organised crime syndicates are involved in drug trafficking. Is the minister able to provide any specific evidence of that?

Mrs L.M. HARVEY: Indeed it is envisaged that the purpose of this legislation is to bring some of those people to bear through covert investigations.

Mrs M.H. ROBERTS: What does the minister mean by “bringing them to bear”?

Mrs L.M. HARVEY: It means to have them charged with offences and have them be made responsible for the offences. Our Department of Fisheries officers, our police officers who deal in these matters and the Australian Crime Commission need this legislation to uncover crime syndicates and organised crime bodies where they cross over into fish trafficking and into drug importation and distribution. We need the legislation to further prosecute these matters.

Mrs M.H. ROBERTS: Would it be fair to say that there are likely to be many cases of potential prosecutions for fish trafficking utilising these powers that have no connection with organised crime whatsoever?

Mrs L.M. HARVEY: It is likely that there will be some organised crime crossover into fisheries trafficking offences. There will be some offenders who deal in fish trafficking who may be involved in organised crime, and then there will be people who may have no connection with organised crime but whom the serious offences unit within Fisheries will be able to better interrogate for some of the serious fish trafficking offences.

Mrs M.H. ROBERTS: Can the minister advise me what will occur if those fishers fishing from a boat travel into international waters? Will this legislation have jurisdiction there?

Mrs L.M. HARVEY: The jurisdiction for the purposes of this covert powers bill means Western Australia, and for the purposes of any suspected criminal activity being investigated by the fisheries department, it includes any waters not within the limits of Western Australia that are WA waters as defined in the Fish Resources Management Act.

Mr M.P. MURRAY: I am concerned about whether volunteer fisheries officers also come under this amendment and whether they could be part of that issue. Is there any age limitation at all? Some of those volunteers are very young—about the 15-year-old or 16-year-old mark—and I wonder whether the legislation applies to them or whether there are any rules about age.

Mrs L.M. HARVEY: For the purposes of this legislation, fisheries officers who would be able to engage in these investigations are covered in the bill. Under the definition of law enforcement officer in “Terms used”, it is a prescribed officer within the Department of Fisheries. Fisheries department officers would be involved in these investigations.

Mr M.P. MURRAY: I am still not sure because my understanding—I can certainly be corrected—is that volunteers would still have the same weight as a fisheries officer.

Mrs L.M. HARVEY: Officers of the Department of Fisheries are empowered to engage in covert operations for the purposes of this bill only for trafficking offences for fisheries. Those offences are investigated by the serious offences unit within the Department of Fisheries. Those are the officers who will use this legislation and will engage in covert operations—not volunteers.

Mr M.P. MURRAY: I understand it is a serious crime, but I am concerned, even after what the minister just said, that people could be coerced or used in the operational part of this system. I am adamant that those sorts of people should not be used in the whole operation or covert operations. I do not see that at this stage.

Mrs L.M. HARVEY: This legislation does not prevent a civilian from being used as part of a covert operation, with their cooperation. However, it is envisaged that the fisheries officers who would be engaged in these activities would be fisheries officers from the serious offences unit within the Department of Fisheries.

Mr M.P. MURRAY: The minister used to have a vested interest! I now think the minister has muddied the waters in that the volunteers can be utilised in the process. I do not think that is the intent of the bill itself; nor do I think that it should be in the process that volunteers could be rolled up. In some cases, if they are young people—I do not see any age limit on that whatsoever—the intent is the covert operations but not to bring in volunteers or young people as young as 14 or 15 who wear those jackets.

Mrs L.M. HARVEY: I refer the member to clause 12(3) of the Criminal Investigation (Covert Powers) Bill where it prescribes the particular occasions around civilian participants. It is stated under clause 12 —

- (3) A civilian participant —
 - (a) must not be authorised to participate in any aspect of a controlled operation unless the chief officer is satisfied that it is wholly impracticable for a law enforcement participant to participate in that aspect of the operation; and
 - (b) must not be authorised to engage in controlled conduct unless the chief officer is satisfied that it is wholly impracticable for the civilian participant to participate in the aspect of the controlled operation referred to in paragraph (a) without engaging in that conduct.

The person must have the appropriate skills or training to participate in the operation. I put to the member that the Department of Fisheries' officers who are most likely to use the tools given under the Criminal Investigation (Covert Powers) Bill will be those officers from the serious offences unit within the Department of Fisheries. I put to the member that it is highly unlikely that this would involve minors.

Mr M.P. MURRAY: For the sake of *Hansard*, I do not think that “highly unlikely” is strong enough. I would like the minister to say “it will not happen” under this bill. I see a gap there. “Unlikely”—it is unlikely that I am going to fly but I might fall out of an aeroplane! That is the point I am trying to make. I do not think they should be used at all, without the skills. With a yellow jacket on, officers become egotistic at times and get carried away with their own abilities and are not able to do the job properly. I am very concerned about this. We have seen the arguments—I am sure the minister has as well—on boat ramps alone, without covert surveillance, by what I see as an unauthorised person.

Mrs L.M. HARVEY: The serious offences unit of fisheries engages in prosecuting people who are involved in the very serious crime of fish trafficking. That involves a potential term of imprisonment of up to four years and, for second and subsequent offences, up to 10 years' imprisonment. I put to the member that these people will not be voluntary fisheries officers who are out there inspecting people's eskies for yabbies or some such thing; these are people who are involved in serious fish trafficking offences. They will be investigated by fisheries officers from the serious offences unit of the Department of Fisheries. In addition to that, the Commissioner of Police has to sign off on these operatives being able to engage in these activities. The Commissioner of Police would need to be satisfied that every participant in these covert operations would have the necessary skills to undertake these tasks. I think that those are adequate and indeed quite stringent requirements of any officers of any department that are engaging in these covert operations.

Mr M.P. MURRAY: The question I asked of the minister was whether she would give an undertaking that these volunteers would not be used. The minister has now made me more suspicious about what could happen here, because it is an individual's view of that skill, because the fisheries officers or volunteer officers, they are people who just put their hand up and say, “I'm going to do that.” I am asking for the minister to give a commitment in this house that those volunteers would not be used under this act.

Mrs L.M. HARVEY: I put it to the member that it would be highly unlikely that a minor would ever meet the criteria and would ever have the skills that would be required.

Mrs M.H. Roberts: Is that a miner or a minor?

Mr M.P. Murray: A pair of binoculars and a biro.

Mrs M.H. Roberts: I am interested in whether the minister is having a go at the member or whether she actually means minor with an “or”?

Mrs L.M. HARVEY: I am actually quite interested in seeing this important piece of legislation brought through the house this evening, and trite comments about whether it is a miner or a minor are not helpful.

I have great confidence in the Commissioner of Police having the skills to be able ascertain the skills of operatives that are being authorised to undertake covert investigations to prosecute serious offences of fish trafficking. I am confident that between the CEO of the fisheries department and then the Commissioner of Police, we are going to have people who are appropriately trained and appropriately located participating in these activities. I am satisfied that the legislation is tight enough to ensure that appropriate people are involved in the activities that are prescribed by this bill.

Mrs M.H. ROBERTS: The minister said at one point that she felt confident the officers were highly likely to be officers from the serious offences unit in the Department of Fisheries. Can the minister give me any idea of how many staff are in that unit or how many officers there are there?

Mrs L.M. HARVEY: At present, I am advised, there are 10 officers in the serious offences unit for the Department of Fisheries.

Mrs M.H. ROBERTS: The point that I make here is that I expect those 10 officers would be fairly readily identifiable to those people involved in the fishing industry. I fail to see how officers will operate who are actually working in the serious offences unit of the Department of Fisheries, who presumably have as their regular job engagement with people in the fishing industry on a very regular basis. I expect that those officers will be well known. It is not like they are 5 000 strong. When you have 10 officers in the serious offences unit who are engaged directly with industry, their identities, I suspect, would be well known. How could they then operate as an undercover officer?

Mrs L.M. HARVEY: Indeed, the member makes a valid point. At present these officers are undertaking covert operations under a ministerial exemption. What this legislation will in fact do is enable us to set up assumed identities for officers within the serious offences unit of fisheries, to protect their identities as they undertake their activities in prosecuting the offences of fish trafficking.

Mrs M.H. ROBERTS: If I can just clarify, if this legislation is passed, there will then be people within the serious offences unit within the Department of Fisheries who will not work under their own regular name, who will on a continuous basis use an assumed identity. Is that what the minister is saying? How will it work? When they prosecute people on a regular basis, will they have one identity but when they are covert, will they have another? Does the minister anticipate that they will wear disguises? How will this work in a practical sense?

Mrs L.M. HARVEY: I am advised that the officers in the serious offences unit within the Department of Fisheries who take part in covert operations are trained by WA Police in covert investigations. Indeed, some of those covert investigations occur without the need for an assumed identity and have been occurring over time under a ministerial exemption for that purpose. This legislation will allow for covert identities to be created, should they be required, in consultation with the CEO of the Department of Fisheries and obviously with the sign-off of the Commissioner of Police.

Mr M.P. MURRAY: I am sorry to hark back to my previous questions, but the answers have certainly added to my concerns. If only 10 of those officers will be available, there will need to be recruitment so that a proper surveillance job can be done on those people who are trafficking in fish.

Mrs L.M. Harvey: Not necessarily.

Mr M.P. MURRAY: Not necessarily? Give me the commitment that volunteer officers will not be used. I have now asked this for a second time.

Mrs L.M. HARVEY: As I have said previously, any of the civilian participants who may be involved in covert operations under this legislation would have to fit the criteria that I have already outlined in my previous answers to the member.

Mr M.P. Murray: Which, to me, is totally unsatisfactory.

Mrs L.M. HARVEY: The member says that it is totally inappropriate. I think there are enough appropriate checks and balances and, indeed, stringent requirements for these operations to suitably protect any civilian participant and to ensure that any civilian participant in these operations would be suitably trained.

Mrs M.H. ROBERTS: The minister asserted that not all covert operations that fisheries might be involved in would require anyone to have an assumed identity. Can the minister give an example of what kind of covert operations occur in fisheries that would not require an assumed identity?

Mrs L.M. HARVEY: I understand the member's desire to get to the bottom of the methodology that the serious offences unit within the Department of Fisheries undertakes when it goes through its covert investigations. I am not willing to go into areas of operational sensitivity or into how the serious offences unit goes about its business.

Ms M.M. Quirk: That's code for you don't know, minister.

Mrs L.M. HARVEY: The member can stand and ask a question in a moment; I am giving my answer. I am saying that I am not prepared to disclose areas of operational sensitivity.

Mrs M.H. Roberts: They could be hiding with night-vision binoculars in the bushes. Is that one of the things they do? I don't know; you tell me.

The ACTING SPEAKER: Member for Midland!

Mrs L.M. HARVEY: Member, that is another trite comment. I am not going to disclose areas of operational sensitivity of either police who undertake covert operations or the serious offences unit of fisheries. That is my answer.

Mrs M.H. ROBERTS: What the minister said quite plainly was that not all covert operations that fisheries officers engage in require an assumed identity. For example, I believe they may do some form of covert operation that involves covert surveillance of some activities. That is an answer that the minister could have given. I do not think it would have given away any particular secrets, but that is an example I am aware of. There must be others. I am just seeking a bit of clarity. Those general things do not give away any particular operational secrets. To find out that fisheries officers use night-vision goggles and sometimes conduct covert surveillance would not be news to anyone, particularly those who are involved in illegal activities. If the minister does not know the answers to the questions that I am asking, why can she not just seek advice and provide it to the house?

Mrs L.M. HARVEY: The advice I provide to the member is that the activities of the operators who engage in these covert operations for both fisheries and the police can be quite involved. Some of the work is very sensitive and quite dangerous. That is why we have afforded the protections for these operatives within this legislation further along in the amendments.

Ms M.M. QUIRK: I can understand why matters might be sensitive if we are talking about a specific operation and specific individuals. I understand that the minister does not want to necessarily disclose operational methods that are not generally known to people. One of the issues that the opposition had when this matter was first before the chamber was the necessity for fisheries officers to have these powers in the first place. I am asking the question in general terms. What powers do they need that they cannot currently deploy to successfully get the prosecution?

Mrs L.M. HARVEY: Fisheries officers are already considered to be law enforcement officers under the Surveillance Devices Act. Fisheries officers can undertake covert surveillance activities via a ministerial exemption. This legislation allows them to engage in certain forms of illegal conduct for the purposes of investigating offences. It is important that fisheries officers are brought into this legislation because this tightens the parameters of some of those fisheries operations. It also gives them some protections in order for them to investigate those serious fish trafficking offences.

Mrs M.H. ROBERTS: Would those fisheries officers be able to engage in entrapment activity; and, if so, under what circumstances?

Mrs L.M. HARVEY: Clause 12(1)(f) specifically precludes any operative engaging in activity that would fit entrapment.

Mr M.P. MURRAY: Covert operations cover a lot of areas. I wonder why the Potato Marketing Corporation of Western Australia has not been included in the bill as well. Workers carry sacks of potatoes from one area to another, which causes grief and also pain to the pockets of many. Why has that corporation not been included in this bill as well?

Mrs M.H. ROBERTS: I can make a further point on that. There has been an investigation into the operations of the Potato Marketing Corporation, the report of which I do not believe the government has tabled. There certainly seems to be advice around that that report talks about the potential for corruption within that industry. A further point was made by the member for Mindarie about endangered species and the like. They are quite reasonable questions. Why has fisheries, in particular, been singled out? As the minister said in part of her response, fisheries officers already have significant powers. They are already able to make use of the surveillance devices legislation, and they have powers under the Surveillance Devices Act. These are additional powers, and that is why we are asking the minister these questions. There is a broad assertion that organised crime is involved. I suppose we could argue the semantics of the definition of organised crime. It seems to me that the minister is taking the broadest definition that organised crime is just anybody who goes about criminal activity in an organised way; that is, if a person is trafficking in fish or perhaps fishing for dhufish somewhere that they should not be and then sending it overseas, and they do that on numerous occasions, that could be

considered organised crime. I do not know whether that is the minister's definition of organised crime—just crime that happens in an organised way—or whether she is referring to known criminal operations such as those associated with outlaw motorcycle gangs or drug traffickers.

Mrs L.M. HARVEY: At present, member, this legislation covers the covert operations by the Department of Fisheries, WA Police and the Australian Crime Commission.

Mrs M.H. ROBERTS: Of course, that takes us back to the amendment itself, in which there is reference to the authorising officer for the law enforcement agency. Not all states include the fisheries department. In fact, the minister has said that only two states do. When they do include fisheries, they do not have the Commissioner of Police in those states as the authorising officer. I again ask the minister: why should the CEO of the Department of Fisheries not be the authorising officer, and does the minister believe that any additional protection is afforded by having the Commissioner of Police in that role of authorising officer; and, if so, what additional protection does that provide?

Mrs L.M. HARVEY: I have already answered that question.

Mr M.P. MURRAY: Having heard the minister's answer that this bill covers only fisheries and the police, does this now override the likes of the potato board and others that may be using covert operations?

Mrs L.M. HARVEY: This legislation covers those three departments—the Department of Fisheries, the Australian Crime Commission and WA Police—should they need to engage in a covert investigation that requires them to break some of our laws. I am sure that other organisations conduct covert operations and covert investigations; however, under this legislation, they are not enabled in any way, shape or form to break any law in the undertaking of those investigations. This legislation does not prevent any other department from conducting a covert investigation.

Mrs M.H. ROBERTS: Taking the minister's argument to its full extension, why is the Department of Fisheries singled out when it could also just make use of the powers that the police are given under this bill?

Mrs L.M. Harvey: I have already answered that.

Mrs M.H. ROBERTS: Why does the fisheries department have to be specially mentioned? The minister has not answered that. It could make use of the powers that police have. That is clearly what is happening in other states under the model legislation, so why could it not happen that way here?

Mrs L.M. HARVEY: In other jurisdictions fisheries is managed by police. Fisheries need to be included in this legislation because fisheries operates its investigations under different legislation from police. However, it operates its covert investigations under a ministerial exemption. Fisheries officers need to be brought into this legislation because they need these powers to prosecute serious offences for fish trafficking.

Ms M.M. QUIRK: I think we are being a bit circular, here minister. I said earlier I understand successful prosecutions must have occurred by the serious offences branch of fisheries without the use of these powers. The minister is saying that no successful prosecutions have been obtained without a ministerial exemption.

Mrs L.M. Harvey: No; I am not saying that. I am saying fisheries officers will be able to undertake further operations and be more effective if they are empowered by this legislation.

Ms M.M. QUIRK: The minister has summed it up in one. What is it about not having access to the powers under this legislation that will act as an impediment to fisheries officers in the serious offences division?

Mrs L.M. HARVEY: Fisheries officers can presently be exempted from offences only by ministerial exemption for offences under the Fish Resources Management Act. This will allow them to, for instance, continue with a covert operation should they need to break other offences in the course of their covert investigation. This bill provides protection to the operatives, with oversight ultimately by the CCC, which has not previously occurred. It will tighten investigations and operations by fisheries officers.

Ms M.M. QUIRK: This is a problem because the minister has gone from saying fisheries officers need these powers to stop the trafficking of fish, but then she has talked about other offences that are not ones that are contemplated or have any nexus with organised crime. That is the nub of our issue. If fisheries officers have these powers, they will not use them just for trafficking; they might intend to use them for other things. That is what we are concerned about. I know the minister said only one activity carries the offence, but what is to stop someone saying, "Well, we were investigating trafficking but we were unsuccessful and couldn't get the evidence for that, but we'll get them under this other offence which carries a penalty of a year."

Mrs M.H. ROBERTS: Can I inquire whether the minister intends answering the member for Girrawheen's question?

Mrs L.M. Harvey: I have already answered it.

Ms M.M. QUIRK: With respect the minister has not.

Mrs L.M. Harvey: I have, but I may not have answered it to your satisfaction.

Ms M.M. QUIRK: No; the minister has not answered it at all. I will explain why she has not answered it. Some time ago she said the only offence that these powers were effectively required for was for fisheries officers to investigate offences of fish trafficking and that was particularly heinous because it was often linked with organised crime groups. Now the minister is saying, “If other offences along the way come to their attention, they will be able to use these powers.” That is not what I asked. I asked what impediments are there if they do not have these powers to successfully bring a prosecution for trafficking in fish under the fish resources legislation?

Mrs L.M. HARVEY: I have said many times, and I will say again, member, that, given the member’s strong opposition to fisheries being included in this legislation since this legislation was first brought to this place, I doubt that I will be able to prosecute an argument to the member that will satisfy her of the need for fisheries officers from the serious offences unit to be taken into this legislation. But I will say one more time that this legislation is required to ensure that, instead of having those fisheries officers from the serious offences unit operate by way of ministerial exemption, with very few checks and balances in place regarding their behaviour and very few protections afforded to them for the conduct that they may have to engage in during the course of a covert investigation, there will be protections for those officers, and also to allow them to conduct operations, in conjunction with the police, of a covert nature.

Ms M.M. QUIRK: Am I correct in assuming, after that very helpful explanation, minister, that these powers are not needed to secure convictions for the offences that the fisheries officers are interested in investigating and prosecuting; they are needed to increase oversight and accountability?

Mrs L.M. HARVEY: It may be, member, that the type of evidence that is required to prosecute some of these offences cannot presently be obtained without the Criminal Investigation (Covert Powers) Bill being enacted to empower fisheries officers to undertake these activities. It may be that there are offences that cannot be prosecuted because the evidence cannot be gathered at this time.

Ms M.M. QUIRK: Is the minister saying that by these officers not being able to use these powers, or by using their existing powers, evidence will be gathered that might be inadmissible—is the minister saying that?

Mrs L.M. Harvey: I am saying that.

Ms M.M. QUIRK: So the minister is saying that?

Mrs M.H. Roberts: What does “that” mean?

Ms M.M. QUIRK: Presumably what the minister is saying is that the powers that they currently have are insufficient to ensure convictions in some cases. Is that what the minister is saying?

Mrs L.M. Harvey: Correct.

Ms M.M. QUIRK: Well, we could have saved about an hour.

Mrs M.H. ROBERTS: About 10 minutes ago, the minister said, in response to a question from the member for Girrawheen, that with the benefit of this legislation, fisheries would be able to conduct—I quote the words the minister used—“further operations” that cannot be undertaken under the ministerial directive. What does the minister mean by “further operations”?

Mrs L.M. HARVEY: Any operations that authorise them to break the law.

Mr J.R. QUIGLEY: Before I ask the question, I would say that we are at least protecting the crayfish stocks of this jurisdiction, because I am told the Speaker will not let them eat crayfish out in the courtyard until this debate has finished, and that might take most of the evening at this rate. What I want to ask the minister is this. The minister said that there is evidence of organised crime in fisheries. We have heard from the former Attorney General on the anti-association laws. He was able to identify broadly the organised criminal groups, and he referred mostly to outlaw motorcycle gangs. Given that the minister is asking this Parliament to confer these very, very extreme powers on fisheries officers, and in view of the findings of the Legislative Council committee, apart from saying, on the advice of the minister’s advisers, that there is organised crime in the fisheries sphere, could the minister help us by giving us an indication of the sorts of groups she is talking about? Is it the Coffin Cheaters, or the Rebels? Who are these organised criminals that the minister reasonably suspects of being involved in fisheries offences?

Mrs L.M. HARVEY: With respect, the other piece of legislation that the member is referring to is specifically targeted at outlaw motorcycle gangs. We are talking about organised crime syndicates that operate in fish trafficking; we are talking about individuals that engage in fish trafficking. Some of the motorcycle groups to which the member has referred do, indeed, hold commercial fishing licences through other means, so there is a

crossover. It has been demonstrated and identified in the reports that I mentioned earlier. The legislation is needed.

Mr J.R. QUIGLEY: The minister said that the other legislation is targeted at bikie groups. With respect, that legislation just provides for anyone who commits serious criminal offences. Is the minister saying that the department has evidence of organised criminal groupings acquiring and holding fishing licences; and, if so, whom? Let us get down to it: who are we targeting? Could it just be recorded that the minister is stumped for an answer.

The ACTING SPEAKER (Mr I.M. Britza): Member for Mindarie, you cannot stand again.

Mrs M.H. ROBERTS: I would like to hear what the member for Mindarie was trying to say.

Mr J.R. QUIGLEY: I was asking: Which groups? Are we talking about Asian gangs, bikie groups? Generically, what sorts of groups is the government asking this Parliament to pass —

Ms M.M. Quirk: The east coast criminal milieu is another one.

Mr J.R. QUIGLEY: Yes—or is the minister not prepared to say?

Mrs L.M. Harvey: I'm not prepared to say.

Mr J.R. QUIGLEY: Does the minister know? Without being prepared to say, does the minister know? We assume the minister does not know.

Mrs M.H. ROBERTS: In response to the question put by the member for Girrawheen, the minister advised that this legislation was necessary so that fisheries officers could potentially break the law while involved in covert operations. The suggestion appeared to be that they might be breaking laws other than laws under the Fish Resources Management Act. Let us assume that there could be, as the minister suggested, organised crime involved. A covert fisheries officer might be undercover with a group that the Department of Fisheries suspects of being involved in illegal activities, such as fish trafficking. The person might be an authorised covert officer using the powers of this legislation, investigating fish trafficking. It might be an operation in conjunction with Western Australia Police, and maybe they would need to break other laws, not necessarily related to fish trafficking activities. For example, in addition to working side by side with the fish traffickers, catching and processing dhufish to send it off to a foreign country, they might also be involved, as the minister suggested, with drugs and other activities. It appeared to me that the minister was suggesting that they would need protection for those other potential offences. If that is the case, can I inquire as to what training would be provided to those fisheries officers?

Mrs L.M. HARVEY: As I have previously said, when these covert operations are put together, the types of offences that are covered are listed under clause 15(6)(g), (h) and (i)—(g) and (h)(i). The fisheries officers who are engaged in these covert operations will be trained by WA Police.

Mrs M.H. ROBERTS: Does that mean that they remain fisheries officers? Is it the intention at all to make them auxiliary officers or in any way incorporate them into the police? Would they potentially be made special constables? When we are talking about training, is it a couple of days' training or is it weeks' training or is it several months? What is the substance of the training?

Mrs L.M. HARVEY: Fisheries officers are fisheries officers, and they are covered under the definitions in the act. Police officers are police officers. The whole purpose for having this legislation here is to enable fisheries officers to undertake these covert operations within their jurisdiction under the Fish Resources Management Act.

Mrs M.H. Roberts: The police commissioner can make anyone a special constable.

Mrs L.M. HARVEY: They receive training by WA Police. But, no, they are not going to be trained or converted into police officers in order to engage in this activity. The bill enables them to undertake these covert operations should they have sufficient training.

Mrs M.H. ROBERTS: The minister did not answer part of my question and she ended her statement by saying provided they have sufficient training. I have inquired as to what would be sufficient training. Is it a few hours, is it days, is it weeks? What kind of training is involved here?

Mrs L.M. HARVEY: I am advised that they complete an undercover police training course; and that is all I am prepared to release with respect to that training.

Mrs M.H. ROBERTS: So the minister is not prepared to say whether that course is closer in duration to one day or one year, is that right?

Mrs L.M. Harvey: No.

Mrs M.H. ROBERTS: So, what confidence can we have that these officers are being properly trained to undertake these activities, and what secret information would the minister be giving away just by saying how long they are being trained for? Does the minister know how long they are trained for? I think the advisers with the minister probably know.

Mrs L.M. Harvey: It is an accredited course.

Mrs M.H. Roberts: The minister needs to stand if she is speaking. Those are the rules of the place.

Mrs L.M. HARVEY: I am advised that it is an accredited course and that each state undertakes accreditation for these particular activities. I am not prepared to tell the member the duration or the content of those courses but I will say that there is a standard —

Mrs M.H. Roberts: I'm not asking for the content; I've only asked for duration.

Mrs L.M. HARVEY: There is a standard of accreditation that is accepted across Australian jurisdictions.

Mrs M.H. ROBERTS: Is the minister able to guarantee to the house that the same standard of training and accreditation will apply in Western Australia as applies in other states, and that the length of training in Western Australia will be the same as in other states?

Mrs L.M. Harvey: Yes, it is consistent.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 2 made by the Council be agreed to.

Mrs M.H. ROBERTS: I wonder whether the minister would provide any explanation to the house as to why amendment 2 should be agreed to.

Mrs L.M. HARVEY: This identifies the chief officer of a law enforcement agency for the purposes of fisheries. Clause 3 clarifies that the chief officer of the fisheries department is still the chief executive officer of that department. The reason that this amendment is necessary is outlined in —

Mrs M.H. Roberts interjected.

Mrs L.M. HARVEY: We are on amendment 2. The amendment is necessary because even though the Commissioner of Police is now the approving entity for controlled operations and assumed identities, the chief officer of the fisheries department will still be responsible for the administrative and record keeping requirements under parts 2 and 3 of the bill.

Ms M.M. QUIRK: In that answer, the minister mentioned record keeping still being in the purview of the Director General of the Department of Fisheries. Can the minister explain what records she was alluding to?

Mrs L.M. HARVEY: Under division 4, subdivision 2, "Reporting and record-keeping", clauses 36 onwards cover the record-keeping requirements.

Ms M.M. Quirk: Which are?

Mrs L.M. Harvey: You can read them in the bill.

Ms M.M. Quirk: No, I am asking you.

Mrs L.M. Harvey: Do you want me to read them out? I will read them out for you, if you like.

Ms M.M. Quirk: Fine.

The ACTING SPEAKER: Member for Girrawheen, stand if you want to make a comment.

Ms M.M. QUIRK: The minister used the words "record keeping", so I am asking her what she means by those words.

Mrs L.M. HARVEY: I mean record keeping consistent with clause 39 of the bill.

Ms M.M. QUIRK: Under clause 39 of the bill, the director general has to keep records of each application made by a law enforcement officer of the agency. In this case, the director general is not the one to whom the application is made. Nevertheless, he will have to keep records of —

- (b) each authority granted to a law enforcement officer of the agency;
- (c) each variation application ...
- (d) each variation of authority ...
- (e) each order cancelling an authority ...

- (f) each retrospective authority granted ...
- (g) each report of a principal law enforcement officer of the agency under section 33(1) or 36.

In other words, a party that has had no involvement in the authorisation, the variation, the granting of a retrospective authority and reports of principal law officers will be required to keep and maintain those records.

Mrs L.M. HARVEY: This is an administrative requirement of the CEO or Director General of the Department of Fisheries, who has to first of all authorise the operations that are put together from within the serious offences unit of fisheries or operations prescribed under this act. The CEO of fisheries needs to sign off on that operation. They are ultimately responsible for the administration and record keeping of everything that falls under their purview. The Commissioner of Police then authorises that operation as put to the commissioner by the CEO of fisheries.

Ms M.M. QUIRK: That means when the Commissioner of Police authorises a fisheries officer to use the powers under this legislation, the Commissioner of Police will not keep that authorisation; he will give it to the DG of fisheries. If that is the case, if the commissioner is called to give evidence on his authorisation, he will need to contact the director general so that he can refresh his memory on the nature of the application because he will not have in his possession any of those documents; is that correct?

Mrs L.M. HARVEY: Clause 37 of the bill refers to the chief officers' reports. The chief officer is responsible for the reports that are put to the Corruption and Crime Commission as the oversight body. Therefore, the chief officer is responsible for the reporting for the operations that are authorised under that area. In the case of operations occurring under Western Australia Police, the chief officer is the Commissioner of Police. For fisheries, it is the CEO of fisheries. Although the Commissioner of Police is the authorising officer for fisheries operations, the Commissioner of Police is not then required to be responsible for the record keeping of operations that are occurring within fisheries; that responsibility is with the CEO of fisheries.

Ms M.M. QUIRK: I think the minister misunderstands. I will use the example of surveillance devices or telephone intercepts. From time to time in this place, a document is tabled that states in the last year police obtained X number of telephone intercepts or surveillance devices. That is tabled in Parliament but it is not primary evidence of the authorisation of the intercept itself. What I am saying is: primary evidence that an authorisation was given would be the authorisation document itself. Therefore, we have a situation in which the police commissioner is authorising that someone other than he has control over the custody and safe retention of that document. I see that as slightly problematical.

Mrs L.M. HARVEY: WA Police have been consulted on this and the police commissioner does not perceive that there will be an issue with that.

Mrs M.H. ROBERTS: I think that the member for Girrawheen made a very good point. It points to an anomaly that had not occurred to me before she raised it. I note that amendment 1 has been passed by this house. When this bill was before this house the first time, for the purposes that the member for Girrawheen was just talking of, the authorising officer and the chief officer, with respect to amendments 1 and 2, were essentially the same persons. Now it has been amended, they are really different people. Prior to amendment 1 being passed, clause 3 of the bill stated that the chief officer in relation to the fisheries department was the chief executive officer of the department. With the passing of amendment 1, there is now reference to an authorising officer. The authorising officer in relation to the fisheries department has now become the Commissioner of Police. When the bill was first before the house, the authorising officer was—if I am correct—the CEO of fisheries. So, there would have been some consistency in that the authorising officer and the chief officer for the purposes of fisheries were one in the same person—that is, the CEO of fisheries was both the authorising officer and the chief officer. Therefore, the person authorising the operations then had to keep the documents, as the minister pointed us to in clause 39, which states that “the chief officer of a law enforcement agency must cause all of the following to be kept”. That made sense and was very consistent when that chief officer was also, for the purposes of this act, the authorising officer.

Under those circumstances, I think it was reasonable to expect that the authorising officer would keep those records. But now we have this anomalous situation that the member for Girrawheen pointed to in which the Commissioner of Police becomes the authorising officer, so he gets all the applications and so forth listed in clause 39, but we require the chief officer of fisheries to maintain all those records that he has not been the authorising officer for. That to me seems to be an inconsistency. Can the minister explain to the house why it is not inconsistent and unreasonable?

Mrs L.M. HARVEY: Under clause 37, “Chief officers' reports”, the chief officer is responsible for reports on these operations, including the seizures, arrests and prosecutions arising from the organised operations. With respect to fisheries, the Director General of the Department of Fisheries will ultimately be the chief officer responsible for maintaining all of that information within the Department of Fisheries. The amendments to

“authorising officer” will strengthen the authorisation of these operations by making the authorised officer in these circumstances the Commissioner of Police, so that the Commissioner of Police can look at the way the operation has been put together and authorise it as a higher oversight authority with respect to the operations of fisheries. That does not in any way, shape or form abrogate the responsibilities of the CEO of fisheries, who as the chief officer of fisheries, needs to be accountable for all of the activities within that organisation.

Mrs M.H. ROBERTS: What obligations fall to the authorising officer in reporting or document keeping?

Mrs L.M. HARVEY: The authorising officer, being the Commissioner of Police, is also the chief officer for operations that occur under police. The chief officer of fisheries is the responsible officer under the Department of Fisheries. The Corruption and Crime Commission has oversight of all of these, and the chief officers’ reports need to be given to the CCC. The CEO of fisheries will report to the CCC on the reports of the operations within fisheries. The Commissioner of Police would be the chief officer reporting to the CCC in operations that occur under WA Police and also as an authorising officer. Should the commissioner choose to keep records of those operations that he has authorised, he is at liberty to do so, but he is not required to under this legislation. Under this legislation, the chief officer, the CEO of fisheries, is required to keep all of the records and report to the CCC, which will inspect their authenticity, accuracy and veracity.

Mrs M.H. ROBERTS: I was trying to interject to get some clarification and to move things on a little more quickly, but the minister will not take my interjections so I will need to continue to repeat things that she has said and then ask my questions. One of the things that the minister said—I will probably have to stand three times and ask the questions one by one—was that the reports need to be given to the CCC. Is it a requirement to give all reports to the CCC or do reports need to be provided upon request from the CCC?

Mrs L.M. HARVEY: I draw the member back, once again, to clause 37(1), which very clearly outlines that the reports need to be given to the CCC every six months for operations conducted on behalf of the agency.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 3 made by the Council be agreed to.

Mrs M.H. ROBERTS: I inquire as to the necessity of amendment 3.

Mrs L.M. HARVEY: This is a government amendment; it is new. With respect to this legislation, it enables the Corruption and Crime Commission to be the inspecting entity for controlled operations.

Ms M.M. QUIRK: What is the rationale for this government amendment?

Mrs L.M. HARVEY: The Corruption and Crime Commission was seen to be an independent oversight body.

Ms M.M. QUIRK: Given that the Corruption and Crime Commission has been able to investigate maybe only one out of 400 complaints referred to it in relation to police misconduct, has the minister explored whether the Corruption and Crime Commission has the resources to take on this oversight role? What is the estimated cost of this oversight role; and how many full-time equivalents it will take for the Corruption and Crime Commission?

Mrs L.M. HARVEY: The CCC is adequately resourced to take on this function.

Ms M.M. QUIRK: I did not say it was not adequately resourced. I asked: has there been any estimation as to what level of resources will be required for the Corruption and Crime Commission to devote itself to this function? While I am still on my feet, what occurred between the time of the matter being debated in this place and it going to the upper house in terms of not using the parliamentary inspector? The reason the parliamentary inspector was used —

Mrs L.M. Harvey interjected.

Ms M.M. QUIRK: I have not finished; I was waiting for the minister to listen. The reason the parliamentary inspector was used in this chamber was that he was equivalent to a public interest advocate who overlooks similar legislation in other states. Firstly, I ask: What level of resources will this take up for the CCC; has there been any calculation of that? What happened or occurred to make the government change its mind on the appropriate oversight body?

Mrs L.M. HARVEY: My understanding is that through the period of consultation, committee deliberations and discussions amongst government committee members and of those in the other place, the government determined that the Corruption and Crime Commission would be the appropriate inspecting entity for controlled operations; hence the amendment.

Ms M.M. QUIRK: I ask again: what level of current resources committed by the CCC to its various roles is it predicted will be required in this oversight role?

Mrs L.M. HARVEY: We have not done detailed costings of what the cost or impost to the CCC will be with respect to this oversight function. However, I am advised that the CCC is confident that it is resourced to be able to perform this function.

Ms M.M. QUIRK: Is it the case that the Corruption and Crime Commission approached or lobbied the government for it to be the oversight body in relation to this legislation?

Mrs L.M. HARVEY: I am not aware of that.

Mrs M.H. ROBERTS: I wonder whether the minister is able to advise the house whether the equivalent of the Corruption and Crime Commission in other states has the same role under their legislation, given there is similar legislation working collaboratively in each state. If it is not the equivalent of the CCC in the other states, which body has this role in the other states?

Mrs L.M. HARVEY: I am advised that in Queensland the Crime and Misconduct Commission takes on this role, and in other jurisdictions it is the Ombudsman. The government believes that the Corruption and Crime Commission is the appropriate oversight body in Western Australia.

Ms M.M. QUIRK: What is the basis for that belief? For example, the Ombudsman has the oversight role in relation to telephone intercepts, and I think acquits himself in that role very well. What is it that makes this different and makes the Corruption and Crime Commission a more appropriate body, in the government's view?

Mrs L.M. HARVEY: The Corruption and Crime Commission is currently the oversight organisation for WA Police.

Ms M.M. Quirk: One investigation out of 400; I would hardly call that oversight!

Mrs L.M. HARVEY: It has responsibility for the oversight of police.

Ms M.M. Quirk: And it is not doing it.

Mrs L.M. HARVEY: The Corruption and Crime Commission has oversight under the Criminal Investigation (Covert Powers) Bill.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 4 made by the Council be agreed to.

Mrs M.H. ROBERTS: Minister, why should amendment 4 be agreed to?

Mrs L.M. HARVEY: This is a consequential amendment to the previous amendment.

Mr J.R. QUIGLEY: I do not understand what the minister is saying. She said this is a consequential amendment to the previous amendment. The amendment deletes lines 12 to 14 on page 6. As I understand it that takes out the definition of "Parliamentary Commissioner", yet clause 38, for example, refers to the annual report of the parliamentary commissioner. The minister has gone to such extraordinary lengths to define in detail what the Corruption and Crime Commission is by adding to its definition. If the legislation still refers to the parliamentary commissioner, why is the minister taking out the definition of whom or to whom clause 38 is referring?

Mrs L.M. HARVEY: Much has been made of the fact that there are 143 amendments to this legislation. The insertion of the Corruption and Crime Commission as the inspecting entity for controlled operations has resulted in the need to remove references to the parliamentary commissioner. There are other consequential amendments as a result of the change to the "authorising officer" and "chief officer" roles. There are a number of consequential amendments. The deletion here makes sense in the context of amendments to this legislation contained further on in the notice paper.

Mr J.R. Quigley: So will clause 38 be removed?

Mrs L.M. HARVEY: No; it will be amended. The amendments are on the notice paper, member.

Mr J.R. Quigley: Which amendment is the minister referring to?

Mrs L.M. HARVEY: For clause 38, it is amendment 67.

Mrs M.H. ROBERTS: The minister referred to the fact that there are 143 amendments to this bill. I ask why the minister did not provide to the house a consolidated version of the bill, as is often done when there are a significant number of amendments, and whether the minister has in her possession a consolidated version of the bill?

Mrs L.M. HARVEY: I do not have a consolidated version of the bill in front of me, member. I have the bill as it left this house and the amendments that are on the notice paper.

Mrs M.H. ROBERTS: Can I ask the minister why she did not have a consolidated version of the bill printed so that it would be easy for people to follow the 143 amendments and we would not have had to waste our time asking a question about the parliamentary commissioner, which in the version of the bill we have is still there, yet at amendment 66 of 143 it is being taken out? I put it to the minister that this is very badly handled. That is one of the reasons that this committee stage is taking so long.

Mrs L.M. HARVEY: My understanding is that it is not convention to provide a marked-up copy of the bill when dealing with —

Ms M.M. Quirk: It is also not a convention to have 143 amendments coming back in, minister.

Mrs L.M. HARVEY: I accept that, member. I also put to the member that a number of those amendments are consequential amendments; they are almost administrative. If members went through the amendments on the notice paper, as I have done, and went through an original copy of the bill, as I have done, and cross-referenced them, a couple of hours' work would have got them there.

Mrs M.H. ROBERTS: I do not think insulting those people who are asking very reasonable questions will help progress this legislation. I would advise the minister against that. It is all very well for the minister to assert that it is not a convention to provide a marked-up copy of the bill. I would have said it was all but a convention when there were a significant number of amendments to the bill. It is often the practice, I would suggest, to provide a consolidated version of the bill when there are over 100 amendments to the bill. The minister has made the point that many of the amendments are consequential. I agree that many of them are consequential because they are changes to delete the word "chief" and insert "authorising". Many of the amendments propose the change from "chief officer" to "authorising officer". In some contexts, though, that can be significant in relation to that particular clause. It does not mean that they are one and the same. It means that they are actually now two separate roles, one of an authorising officer and one of a chief officer. In each of those cases it is relevant to have a look to see whether that change is appropriate.

I would counsel the minister against gratuitous insults. I think the government has a lot to answer for in terms of a bill that was first brought into this house in 2011, well over a year ago. It has been upstairs. It has had 143 amendments. Some are because of the Standing Committee on Uniform Legislation and Statutes Review, and some are government amendments, where it just did not get it right when it brought it into the house in the first place or has subsequently changed its mind as to what it felt was appropriate when it first brought the legislation before the house. I think the question asked by the member for Girrawheen is certainly a very, very reasonable one. I just note that the member for Girrawheen worked for many years for the National Crime Authority and potentially knows a lot more about covert operations than the minister does.

Mrs L.M. HARVEY: I think it is important that I get on record that I certainly meant no insult or offence in my comments. I merely was making a pragmatic statement of the way I had undergone wading through this not insignificant raft of amendments. This Legislative Council message was lodged in the house on 18 October. Had any member opposite asked me for a marked-up copy of this bill with the amendments clearly illustrated, I certainly would have provided it to them. However, no request was forthcoming; hence no copy was made available. Indeed, we have what we have.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 5 made by the Council be agreed to.

Ms M.M. QUIRK: Again, I would like an explanation of the rationale behind this amendment. I see that the offences for which these powers can be used are listed there. Firstly, is there still the capacity to prescribe other offences under regulations?

Mrs L.M. Harvey: Only within those acts that are prescribed.

Ms M.M. QUIRK: So, in effect, that limits the broader provision in the original legislation.

Mrs L.M. Harvey: That's correct.

Ms M.M. QUIRK: What is the rationale for including some of that legislation? Is it about organised crime? For example, the Firearms Act, the Misuse of Drugs Act and the Weapons Act may have some nexus to organised crime. The minister has told us that the Fish Resources Management Act has some nexus to organised crime. I am a bit curious about the Prostitution Act, as the police are not currently prosecuting prostitution. I am a bit intrigued as to why the Prostitution Act is included with all that other legislation.

Mrs L.M. HARVEY: The report into the model laws identified the type of relevant offences that should be covered under the legislation that this sits under. We have identified the relevant acts under which those offences described in the model laws would likely fall.

Ms M.M. QUIRK: Presumably, the report on the model laws identified these pieces of legislation as in some way being associated with these more heinous and serious offences and maybe having a nexus to organised crime. Is that the situation, minister?

Mrs L.M. HARVEY: I will read out the recommendation of the report. The recommendation was that the definition of “relevant offence” in clause 3 should be changed from that proposed in the discussion paper so that the jurisdiction should be able to prescribe offences that fall below the three-year threshold from the following categories—child pornography, gaming, fisheries, firearms, prostitution and corruption.

Ms M.M. QUIRK: Firstly, the Minister for Regional Development is distracting me a bit, which means that I have to talk slower, so it might take me longer to make my point.

In response to a question I put to the minister, I was told that the police are not actively prosecuting prostitution, as they say that it is not in the public interest to do so. Given that there are no prostitution prosecutions here at the moment, I wonder why that legislation has been included, because at the moment it is not actively enforced.

Mrs L.M. HARVEY: It is intended that there will be organised crime investigations and covert investigations into a range of criminal activity that will potentially fall under some of these acts.

Mrs M.H. ROBERTS: This amendment seeks to change the general category of offences outlined in paragraph (b) in the version of the bill that went through this house. The paragraph states —

an offence against the law of this jurisdiction that is prescribed for the purposes of this definition;

I am not sure where it was intended to prescribe them at that stage, but I note that this amendment lists those acts. Those acts can change. What happens if a future government puts the prostitution act 2013 in place? How is that covered under this amendment?

Mrs L.M. HARVEY: This would work the way that other legislation works in this place; that is, if an amendment to any of these acts is made, it is expected that should a subsequent amendment be required to this act, that would be made at the same time. Indeed, it was determined, certainly for the comfort of members in the other place, that it was better to have these acts listed in the legislation rather than having them prescribed by regulation.

Mrs M.H. ROBERTS: Is the minister able to advise me whether any aspect of the Prostitution Act 2000 has been enforced or any charges laid at any time in the past four years? If not, why not, and why is the minister including the act in this legislation if it is not an act that the police force is currently enforcing?

Mrs L.M. HARVEY: I do not have information on the number of offences that have been prosecuted by WA Police under the Prostitution Act to hand. Certain sections of the Prostitution Act would be relevant to this legislation, such as seeking a prostitute or engaging in prostitution in a place where a child is present. There are a range of provisions in the Prostitution Act to which this legislation may be relevant.

Mrs M.H. ROBERTS: I will just jog the minister’s memory. This would not have taken two hours’ study. The minister provided an answer to the member for Girrawheen within the past week or so. She advised that there had been no prosecutions under the Prostitution Act 2000 in the past few years. Since the containment policy had been in place since about 2005, there have been no prosecutions under the Prostitution Act 2000. In fact, the minister said in her answer that the police were not currently enforcing that act, and she gave reasons why they were not enforcing it. The minister said that there could be offences in there that should be prosecuted. Why is she not prosecuting them within the community here and now but she is interested in prosecuting them in relation to other offences?

Mrs L.M. HARVEY: I thank the member for jogging my memory to a question that was put to me on notice. These acts are prescribed. The joint working group determined that these are the appropriate acts. They will cover the types of offences that will be covered under the model laws for the purposes of this legislation. That is why they are in there.

Ms M.M. QUIRK: The minister said that this legislation was included because they were part of the draft working laws. That is in relation to jurisdictions where they have functional prostitution legislation that is enforced. We have prostitution legislation that is not enforced. Frankly, that is not a response to the question that was asked. Secondly, does this mean that because prostitution is included in this list of legislation that people can assume the identity of a prostitute for the purposes of securing a conviction?

Mrs L.M. HARVEY: The legislation quite clearly does not allow anyone to engage in any kind of activity that could be deemed as entrapment. Under the Prostitution Act 2000, sections 5, 6, 9, 15, 20 and 21, for example, are areas in which it is envisaged this legislation would come into play. I take the member's point about the answer to the question on notice about prosecutions under the Prostitution Act. I suggest that is a debate to have at another time. For the purposes of this legislation, the Prostitution Act is prescribed because it is deemed to be appropriate and falls under the recommendations of the "Cross-Border Investigative Powers for Law Enforcement Report".

Ms M.M. QUIRK: The minister can see our confusion, because she is conferring quite significant and important powers in legislation that is not even actively enforced, and that, to me, seems to be a major anomaly.

Mrs L.M. Harvey: Point taken.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 6 made by the Council be agreed to.

Mrs M.H. ROBERTS: Can the minister explain to the house why amendment 6 should be agreed to?

Mrs L.M. HARVEY: This refers to the applications for authorisation to conduct controlled operations. We are removing the chief officer as the authorising agent and inserting "authorising officer" as the authorising agent for the operations. It is a consequential amendment.

Mrs M.H. ROBERTS: I find that answer inadequate. The minister has simply read out the heading at clause 10 under division 2, "Authorisation of controlled operations", "Applications for authorities to conduct controlled operations". Subclause (1), the subclause the minister is seeking to amend, reads —

- (1) A law enforcement officer of a law enforcement agency may apply to the chief officer of the agency for authority to conduct a controlled operation on behalf of the agency.

When the legislation was before this house and debated before it was amended in the other place, the law enforcement officer, for example, an officer of the Department of Fisheries, would apply to the chief officer of that agency, which would be the fisheries agency. As it will now read with the amendment, that law enforcement officer—let us say again that it is a law enforcement officer of the fisheries agency—will now need to apply to the authorising officer. The authorising officer, because of the changes via the earlier amendments, will now be the Commissioner of Police. A law enforcement officer of a law enforcement agency may apply to the Commissioner of Police, who is the authorising officer. I would have thought that the person making the application to the authorising officer—that is, the Commissioner of Police—should in fact be the CEO of fisheries. Why would that not be the appropriate protocol?

Mrs L.M. HARVEY: It is envisaged that a law enforcement officer of the serious offences unit, for example, will apply to the CEO for authority to put together a covert operation and the CEO of fisheries will need to then seek authorisation from the Commissioner of Police to authorise a covert operation.

Mrs M.H. Roberts: That is not what the clause as amended would actually say, though.

Mrs L.M. HARVEY: Indeed, taken in context with the remainder of the amendments on the notice paper, that is what it will achieve.

Mrs M.H. ROBERTS: I really am not satisfied here. I think that with these 143 amendments, someone has just done a word check, and they have just checked everywhere where it says "chief officer", and that has pinged up on the computer and they have thought, "Is it appropriate to keep those words, or should it be changed to 'authorising officer' in this context?", and they have just made a choice—do we keep it at "chief officer", or do we change it to "authorising officer", or vice versa? I think that in some circumstances in which this occurs, they needed to think a little further than this. I would have thought that making an application for authorisation to conduct a controlled operation—that is, applying to the Commissioner of Police—should be made by the CEO of fisheries or an officer delegated on his behalf or acting in that role at the particular time. I think this is simply lazy drafting or redrafting. More attention should have been turned to this. The chief officer of fisheries should be required to apply to the authorising officer. I quite agree with the minister's point that in practice somebody within the particular unit in the Department of Fisheries would make the case to his or her CEO, and that CEO would in practice follow an appropriate departmental protocol and make application to the Commissioner of Police as the authorising officer. I think there is just slackness here in not actually spelling that out.

If we look at the full context of clause 10, which this amendment applies to, it goes on to say, because it is dealing, as the minister has pointed out, with applications for authorities to conduct controlled operations —

- (2) An application for an authority may be made —

Extract from Hansard

[ASSEMBLY — Thursday, 15 November 2012]

p8825b-8867a

Mrs Liza Harvey; Mrs Michelle Roberts; Mr Mick Murray; Ms Margaret Quirk; Mr John Quigley

- (a) in writing (a *formal application*); or
- (b) orally (an *urgent application*), if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the operation.
- (3) A formal application must be in a physical form, signed by the applicant.
- (4) However if it is impracticable in the circumstances for a physical document to be delivered to the —

We now get to another potential amendment—“authorising officer” —

... a formal application may take the form of —

- (a) a fax; or
- (b) an email ...

It goes on, and then there are other potential amendments to change “chief officer” to “authorising officer”, and we can get to that when we get to those other amendments.

My point is simply that this was drafted consistently and correctly when it was first before this house, because prior to the amendment that went through earlier tonight, there would have been a consistency here. The law enforcement officer from the fisheries department would have been applying to the chief officer of the fisheries department for the authority to conduct the controlled operation. Now it reads that the law enforcement officer will not just have to make the application to the Commissioner of Police, but that the other parts of this clause must also apply. To me, that is sloppy drafting. On a simple reading of this, somebody much lower down the agency in fisheries could make, under clause 10(2), an urgent application to the Commissioner of Police, and of course we know that that would not be protocol. When we do not have good law and the law is not clear, we then have to rely on, rather than making good laws here, the department putting in place good protocols to ensure that things happen in an appropriate manner. I think it is much more important to get the laws right, and that is one of the reasons, minister, that I suggested that a marked-up version of the bill would have been helpful.

Mrs L.M. HARVEY: I understand where the member is coming from with this, but ultimately the authorising officer for the agency—whether that be fisheries or, indeed, WA Police—is the Commissioner of Police, so the term “authorising officer” in this context is correct. It is envisaged that the Commissioner of Police and the Department of Fisheries will have a memorandum of understanding with regard to the flow of information. The law enforcement officer of the Department of Fisheries can only ever be authorised to conduct a controlled operation on behalf of the agency by the Commissioner of Police. That is why it is appropriate to have the definition of “authorising officer” as part of this amendment.

Mrs M.H. ROBERTS: Can I ask whether that memorandum of understanding is a public document?

Mrs L.M. HARVEY: It is not likely that the MOU would be a public document, given that it may contain operationally sensitive material.

Mrs M.H. ROBERTS: I fully expected that to be the answer, and that is the very reason I asked the question in the first place. I am not sure whether the minister followed properly my original argument, but it is not just about the amendment that is before the house and whether the word “chief” or the word “authorising” is right in that particular position—that is, the second line of clause 10(1); it is about the impact that it has on the whole clause. I suppose I am querying the words in the first line of clause 10(1), “A law enforcement officer of a law enforcement agency may apply”. The minister is saying that under a memorandum of understanding it would not be just any law enforcement officer of an agency, or any law enforcement officer from fisheries applying to the Commissioner of Police; there would be a memorandum of understanding in place. The point I am simply making is that it is better to have clear law that is publicly available and that everyone can see and read, rather than us relying on memoranda of understanding between agencies that are not public documents.

Mrs L.M. HARVEY: I take the member back to our previous dialogue in respect of this. A law enforcement officer in the context of fisheries would be an officer from the serious offences unit in the Department of Fisheries, who would put together an application for a controlled operation that would be signed off on by the chief executive officer of fisheries and would then be put to the Commissioner of Police as the authorising officer for the controlled operation. The commissioner is then required to ensure that the controlled operation actually fits the parameters outlined in this legislation; as such, every application for a controlled operation needs to be made, ultimately, to the authorising officer of the agency, which has been previously defined.

Mrs M.H. ROBERTS: I just make the point that the minister has actually outlined what is intended to happen in practice, rather than what is required to happen under this legislation.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 7 made by the Council be agreed to.

Mrs M.H. ROBERTS: Can I ask the minister why the house should agree to amendment 7?

Mrs L.M. HARVEY: Once again, this is a consequential amendment that addresses process. To change the authorising officer for the Department of Fisheries from the CEO requires “chief officer” to be replaced with “authorising officer” and, indeed, that is the context of the amendments right through to amendment 13 on the notice paper.

Question put and passed; the Council’s amendment agreed to.

Leave denied for amendments 8 to 13 to be considered together.

Mrs L.M. HARVEY: I move —

That amendment 8 made by the Council be agreed to.

Mrs M.H. ROBERTS: Amendment 8 changes “chief officer” to “authorising officer” in subclause (7). It states —

In any application, whether formal or urgent, the applicant must —

- (a) provide sufficient information to enable the chief officer to decide ...

That will now be changed to “authorising officer”. Again, I just point to the context. I am only talking with respect to the Department of Fisheries because that is where the changes occur. There has been no change for police. It makes no material difference for police in police operations whether it is “chief officer” or “authorising officer”. The material difference comes into being because of these amendments in fisheries, because the “chief officer” and the “authorising officer” have now become two different things. We therefore have a situation in which the applicant has to provide sufficient information to the authorising officer rather than to the chief officer. I do think that something is now lacking, because we are just to assume that protocols or the like within the agency of fisheries will be provided by way of memorandums of understanding between police and fisheries. The processes will no longer be defined in the act, as defined in law, and will not necessarily be publicly disclosed. One would assume that before the enforcement officer makes the application to the authorising officer, the enforcement officer will have to first make the case to their own CEO—the person formerly referred to as the “chief officer”—prior to these amendments. There is therefore no longer anything by way of legislation for that process; there is only the reference to the case that is required to be put before the “authorising officer”.

Question put and passed; the Council’s amendment agreed to.

Leave denied for amendments 9 to 13 to be considered together.

Mrs L.M. HARVEY: I move —

That amendment 9 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Leave denied for amendments 10 to 13 to be considered together.

Mrs L.M. HARVEY: I move —

That amendment 10 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Leave denied for amendments 11 to 13 to be considered together.

Mrs L.M. HARVEY: I move —

That amendment 11 made by the Council be agreed to.

Mrs M.H. ROBERTS: Can the minister explain to the house why amendment 11 should be agreed to?

Mrs L.M. HARVEY: It is a consequential amendment.

Mrs M.H. ROBERTS: I am just making sure I have the right line.

Mrs L.M. Harvey: It is the last line on the page, member.

Mrs M.H. ROBERTS: I already have that, helpful as the minister may be attempting to be. Clause 10(9) states —

As soon as practicable after making an urgent application, the applicant must make a record in writing of the application and give a copy of it to the chief officer.

Why is it necessary for that to occur?

Mrs L.M. HARVEY: In certain circumstances in urgent applications, authorisation may be given over the phone. The applicant must make a record in writing and give a copy to the authorising officer. This basically formalises that should an urgent application or authority be made over the phone, it in no way mitigates the requirement to make a record in writing to the accepted level to the authorising officer at the first available opportunity.

Ms M.M. QUIRK: In that context, the provision provides that the applicant must give a copy to the authorising officer. What happens to the original?

Mrs L.M. HARVEY: The copies are required to be kept by the chief officer of the agency, as in the CEO of fisheries, in keeping with other amendments that we have already discussed.

Ms M.M. Quirk: I asked about the original, not the copies.

Mrs L.M. HARVEY: The original authorisation in the circumstance of an urgent application is verbal, which then needs to be followed up with a record in writing.

Ms M.M. Quirk: Yes; you said that a copy of that goes to the authorising officer.

Mrs L.M. HARVEY: I understand what the member is asking now. If an urgent application is made over the phone and an authorisation is given by phone, the authorising officer makes a notation of that and then keeps the original record for themselves as the authorising officer and sends a copy of that authorisation to the chief officer.

Ms M.M. Quirk: Where does it say that?

Mrs L.M. HARVEY: It states it under clause 10(9).

Ms M.M. Quirk: Clause 10(9) amended would provide that he sends a copy to the authorising officer.

Mrs L.M. HARVEY: As I said, these need to be taken in context. Clause 15(8) provides —

The chief officer must ensure that written notes are kept of the particulars referred to in subsection (6) for each urgent authority.

Mrs M.H. Roberts: Is this clause 15(8)?

Mrs L.M. HARVEY: Yes. There is a cross-reference to urgent applications and the chief officer has to ensure that written notes are kept of the particulars referred to in this proposed section.

Mrs M.H. Roberts: But you're deleting that in a future amendment at amendment 23, aren't you?

Mrs L.M. HARVEY: No, it is not a deletion; it is the changing of the name from "chief officer" to "authorising officer", as I understand it.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move that clause, no, amendment 12 on the notice paper be agreed to.

Mrs M.H. ROBERTS: Excuse me, did the minister just say that clause 12 on the notice paper be agreed to?

Mrs L.M. Harvey: Amendment 12.

Mrs M.H. ROBERTS: That is not what the minister said.

Several members interjected.

Mrs L.M. HARVEY: Madam Acting Speaker, if I may correct the record—do excuse my error—I move —

That amendment 12 made by the Council be agreed to.

Mrs M.H. ROBERTS: Amendment 12 amends line 4 at the top of page 10. It deals with clause 11, "Determination of applications", which states —

After considering an application for authority to conduct a controlled operation, and any additional information furnished under section 10(8), the chief officer —

This amendment will change "chief" to "authorising" —

- (a) may authorise the operation by granting the authority, either unconditionally or subject to conditions; or

(b) may refuse the application.

In the case of police, in this instance, the authorising officer will be the Commissioner of Police. The clause states he “may authorise the operation by granting the authority, either unconditionally or subject to conditions; or may refuse the application”. In the case of fisheries, the application, I note, can be made by a law enforcement officer. If we go back to clause 10 in division 2, we see that it states that it is just “a law enforcement officer”. Under this legislation, it will not be required to be the CEO of fisheries.

Mrs L.M. Harvey: Member, if I can you help you out with this one, it is actually saying that the authorising officer is the person who considers an application for an authority, which is put to the authorising officer who can authorise the operation by granting an authority or who may refuse the application. The authorising officer is indeed the Commissioner of Police. The application for that authority may be made by the chief officer of the Department of Fisheries.

Mrs M.H. ROBERTS: It also makes reference to clause 10(8) in which the Commissioner of Police can require the applicant to furnish additional information as is necessary to determine that application.

Mrs L.M. Harvey: Indeed, the commissioner needs to satisfy himself that the authority has been put together in an appropriate fashion, taking into consideration aspects of the bill and requirements under this act, should it pass.

Mrs M.H. ROBERTS: In what circumstances would an application be likely to be refused?

Mrs L.M. HARVEY: If the commissioner is not satisfied that the application fits the criteria outlined in this legislation.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 13 made by the Council be agreed to.

Mrs M.H. ROBERTS: Minister, I seek an explanation as to why that amendment should be agreed to.

Mrs L.M. HARVEY: Once again, member, it is a consequential amendment regarding changing the words “chief officer” to “authorising officer” in the context of the definitions previously discussed.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 14 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I seek leave to move en masse amendments 15 to 21, which are consequential amendments deleting the word “chief” and inserting the word “authorising”.

Mrs M.H. Roberts: It would be more productive if the minister sought to know what amendments she could move together, rather than guessing.

Mrs L.M. HARVEY: I seek by interjection an indication from those opposite as to which amendments they may give permission to move en bloc.

I move —

That amendment 15 made by the Council be agreed to.

Ms M.M. QUIRK: Clause 12(2) will now read —

A person must not be authorised to participate in a controlled operation unless the authorising officer is satisfied that the person has the appropriate skills or training to participate in the operation.

This goes back to the old chestnut of having the police commissioner consent to an application by a fisheries officer. On what basis or criteria will the Commissioner of Police be able to make such a decision?

Mrs L.M. HARVEY: We previously discussed that the Commissioner of Police, as the authorising authority, would have to satisfy himself or herself that the person has the appropriate skills or training to participate; and we did indeed discuss appropriate training previously.

Ms M.M. QUIRK: That was not the question, minister. I know it has been a long day for the minister, but I asked “On what basis”, not “What was the training?” The question I asked was: on what basis could the police commissioner satisfy himself? In the case of police officers, the commissioner knows that a person holds the rank of inspector or senior sergeant, and he would expect that person to have had this and that training and have

this and that expertise and, therefore, he would be confident that it is appropriate to issue an authority to that person. In the case of an officer who works in another department, where he may have a rank of level 4, 6 or 7, which does not necessarily mean anything to the police commissioner, nor does the level of seniority, unless the commissioner can fit that individual training of that officer to the skills and the criteria that have to be satisfied.

Mrs L.M. HARVEY: I believe that the answer is in the wording of that line, in which the authorising officer, being the commissioner, would ensure that he or she is satisfied that the person has the appropriate skills or training to participate, which would depend on the nature of the controlled operation in any given circumstance.

Ms M.M. Quirk: I am asking how he does that. How does he determine what is appropriate when this person is not even an employee of his?

Mrs L.M. HARVEY: I put to the member that the application being put to the commissioner would have to clearly outline the type of activities that are involved.

Ms M.M. QUIRK: It is not in the legislation that that has to be included.

Mrs L.M. HARVEY: It is obvious.

Mrs M.H. ROBERTS: I make the point that this legislation was drafted when the CEO of fisheries would be the authorising officer, so I do not think it is adequate just to say that we can change one word for another. The whole drafting was done under the proviso that the authorising officer for fisheries would be the CEO of fisheries. If it is read in that context it makes sense. There are elements here that do not make the sense that they did when the CEO of fisheries was to do that. Of course, the CEO of fisheries would know a lot more about the operations of the Department of Fisheries than the Commissioner of Police would. Therefore, I can well understand why the member for Girrawheen asked the minister the question that she did.

Ms M.M. QUIRK: I have just looked back at clause 10, which sets out the things that need to be included in an application. Nowhere does it say that the applicant has to, for example, provide particular information about training. It does say “provide sufficient information to enable the authorising officer to decide” and there is the capacity for the authorising officer to require additional information to be furnished. But, as I said, the problem is that the application in these cases will not be streamlined and it might comprise more than one document if additional information has to be furnished and so on.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I seek interjection from the opposition members about whether there are other amendments that they would specifically like to speak to or whether I may have the opportunity to move amendments en bloc.

Mrs M.H. Roberts: Amendment 17.

Mrs L.M. HARVEY: Amendment 17, excellent. Therefore, I move —

That amendment 16 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 17 made by the Council be agreed to.

Mrs M.H. ROBERTS: This amendment to change “chief officer” to “authorising officer” is the clause that deals with civilian participants. This, of course, is the matter that the member for Collie–Preston asked about earlier. Clause 12 in the bill states —

- (3) A civilian participant —
 - (a) must not be authorised to participate in any aspect of a controlled operation unless the chief —

Is that still “chief” or has that changed to “authorising” at line 15? That changed, did it not?

Mrs L.M. Harvey: Yes.

Mrs M.H. ROBERTS: So that is now —

... the authorising officer is satisfied that it is wholly impracticable for a law enforcement participant to participate in that aspect of the operation; and

- (b) must not be authorised to engage in controlled conduct unless the authorising officer —

As it is proposed to be amended —

is satisfied that it is wholly impracticable for the civilian participant to participate in the aspect of the controlled operation referred to in paragraph (a) without engaging in that conduct.

It does not appear to make much sense to me why those clauses are there with respect to the civilian participants and why they should not be authorised to engage in conduct by the authorising officer as described there.

Mrs L.M. HARVEY: There are two aspects to this. The first thing is that the participation of a civilian in the controlled operation can occur only if the authorising officer is satisfied that that aspect of the operation is impractical for a law enforcement officer to participate in. The second aspect is: should the civilian need to engage in controlled conduct as part of the operation, the authorising officer needs to be satisfied that there is no other way for the controlled operation to continue without the civilian participant being authorised to engage in that controlled conduct.

Mrs M.H. ROBERTS: This is not about whether it should be a civilian participant or an officer of an agency, but more to do with what the civilian participant can engage in; is that a correct assessment?

Mrs L.M. Harvey: That is correct.

Mrs M.H. ROBERTS: I understand that effectively the controlled operation would, in the case of fisheries, be run by the Department of Fisheries rather than the police department, so it is still its controlled operation.

Mrs L.M. Harvey: Yes.

Mrs M.H. ROBERTS: When the CEO of the Department of Fisheries was the chief officer prior to this being potentially amended, it seems to me to make perfect sense. Where “authorising officer” is changed to “Commissioner of Police” there could be a significant degree of difficulty in the Commissioner of Police being able to be wholly satisfied and wholly informed on these matters. I note that in another clause of the bill it does not in practice have to be the Commissioner of Police; it can be any officer at commander level or above. I am not sure what expertise they would have, compared with the CEO of the Department of Fisheries, to make those kinds of determinations. I question whether it should be the “authorising officer” there or whether should have been some other words to do with “in consultation” or “on the advice of” the chief officer of the Department of Fisheries.

Mrs L.M. HARVEY: The authorising officer is the officer who has the responsibility to ensure that the controlled conduct is required. That is a requirement of the legislation. If the member thinks this should be worded a different way, I suggest she propose an amendment.

Mrs M.H. ROBERTS: I know the minister is of the view that just changing “chief” to “authorising” should be done and we should just move on —

Mrs L.M. Harvey: That is not my view at all.

Mrs M.H. ROBERTS: The minister is saying that the authorising officer has the responsibility. I agree with her on that—the authorising officer does have the responsibility. I am questioning whether he has the knowledge and whether there should be a requirement with respect to the CEO of the Department of Fisheries. It seems that with this changeover the CEO of the Department of Fisheries is largely left out of the legislation.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 18 made by the Council be agreed to.

Ms M.M. QUIRK: I would be grateful if the minister could explain why this amendment is necessary.

Mr C.J. Barnett: Ask your colleagues in the upper house.

Ms M.M. QUIRK: Sorry; what was that, Premier?

Mrs L.M. HARVEY: This is a consequential amendment changing the definition of “chief officer” to “authorising officer”.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 19 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 20 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 21 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 22 made by the Council be agreed to.

Ms M.M. QUIRK: I ask the minister to explain why this amendment is necessary.

Mrs L.M. HARVEY: This amendment requires the authorising officer to think through where the operations are going to be geographically located prior to authorising the controlled operations to go ahead. Legislators in South Australia and the Northern Territory have indicated that a tightening in this area is required. The Northern Territory's legislation is currently before Parliament. The view is that the South Australian legislation is weak and might not be recognised, so we have determined that deleting the word "be" and inserting "be, or is likely to be" strengthens the requirements under this part of the bill.

Ms M.M. QUIRK: I know it is late, minister, but I am completely puzzled. This does not seem to me to have the effect of strengthening it; in fact, it broadens it in my humble opinion, because the authorising person no longer has to be satisfied that the cross-border operation will be conducted in this jurisdiction or in one or more participating jurisdictions or in one or more participating jurisdictions specified in the authority. In other words, there need only be the prospect, not the strong likelihood. It seems to me that it has the opposite effect to what the minister has just told us—that it is tightening it up. I do not think it is; I think it is doing the opposite.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 23 made by the Council be agreed to.

Mrs M.H. ROBERTS: Can the minister explain why it is proposed to delete the lines in clause 15(8) and replace them with new clause 15(8)? What is the impact of the amendment?

Mrs L.M. HARVEY: Amendment 23 is in response to recommendation 10 of the report of the Standing Committee on Uniform Legislation and Statutes Review in the other place. It is semantics, some would say. It just changes the words "written notes" to "a record in writing", which was deemed by the uniform legislation committee to be a stronger requirement with regard to record keeping.

Ms M.M. QUIRK: The amendment states —

(8) The authorising officer must, as soon as practicable after granting an urgent authority, make a record in writing of the particulars referred to in subsection (6) relating to the authority.

In whose mind does "as soon as practicable" have to be judged? In other words, is that an objective thing or is it the authorising officer's view? Is it subjective as in "I have to do this as soon as I can" or is it an objective standard based on the circumstances and judged by someone else?

Mrs L.M. HARVEY: It would very much be determined by the nature of the operation. In certain circumstances, the oversight body would look at these matters and determine whether it was practicable to make a record in writing within 24 hours. In other circumstances, it might be a longer period of time.

Ms M.M. Quirk: In other words, it is an objective standard, not a subjective standard.

Mrs L.M. HARVEY: Yes, subjective.

Ms M.M. Quirk: No, objective.

Mrs L.M. HARVEY: It would depend on the operation. It would be an objective assessment.

Ms M.M. QUIRK: I am now confused. The minister is saying that an outside body would look at the circumstances. From my interpretation, that is an objective assessment. A subjective assessment would be the authorising officer addressing himself to what is reasonable or practicable for him. It seems to me that the minister is talking about an oversight body, so she must be saying that it is an objective standard.

Mrs L.M. HARVEY: I will clarify what I meant by that. I meant that the words in this legislation are "as soon as practicable". In the context of recordkeeping in this very prescriptive bill, in that instance the authorising officer would be making an assessment based on what was practicable in those circumstances. They will report to an oversight body every six months, making an assessment of whether they were accurate in determining what was practicable in the circumstances of that particular operation. I put to the member that the tests within this bill

are sufficient that as soon as practicable while perhaps being viewed as a subjective test could also be assessed and monitored as the covert investigations occur under this legislation.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 24 made by the Council be agreed to.

Ms M.M. QUIRK: This amendment deals with the variations of authority. Could the minister give me a list of circumstances in which the authorising officer may want to vary an authority?

Mrs L.M. HARVEY: I refer the member to clause 18, "Variations on chief officer's own initiative". The circumstances are covered in that clause.

Ms M.M. QUIRK: Sorry, minister; I did not make myself clear. Can the minister outline the circumstances in which that power might need to be exercised?

Mrs L.M. HARVEY: To quote from the bill, that power might need to be authorised to extend the period of validity of the authority; to authorise additional or alternative persons to engage in controlled conduct et cetera, as outlined in clause 18(a) to (e) on page 15 of the bill.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 25 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 26 made by the Council be agreed to.

Mrs M.H. ROBERTS: Amendment 26 seeks to amend clause 18(3) at line 11, page 15 of the bill, which states —

The chief officer must, as soon as practicable after varying an authority, prepare and give to the principal law enforcement officer for the authorised operation a written document that complies with section 21.

The chief officer, now the authorising officer, to the Commissioner of Police must, as soon as practicable, prepare and give a document to the principal law enforcement officer. In the case of fisheries, who would that principal law enforcement officer be?

Mrs L.M. HARVEY: It would be whoever was managing the operation. I think it is important to put this amendment in context. It is substituting "chief officer" for "authorising officer" in the context of the definitions that were changed earlier.

Mrs M.H. ROBERTS: I make it clear that the minister reversed that. The amendment seeks to substitute "authorising officer" in place of "chief officer". The clause further states —

... for the authorised operation a written document that complies with section 21.

Is section 21 this whole section of the bill or is it clause 21?

Mrs L.M. Harvey: It's clause 21 at present; it's only a bill.

Mrs M.H. ROBERTS: Clause 21 deals with a form of variation of the authority. Again we have this use of words: the Commissioner of Police, effectively, "must, as soon as practicable after varying an authority". What is the meaning of "as soon as practicable" in that circumstance?

Mrs L.M. HARVEY: It is subjective to the authorising officer, dependent on the particular operation.

Mrs M.H. ROBERTS: I am sorry; I could not understand the minister. I could not hear her properly. Did the minister say that it is subjective to the authorising officer?

Mrs L.M. Harvey: Indeed.

Mrs M.H. ROBERTS: It surprises me that it is just a subjective decision of the Commissioner of Police as to what is practicable. I would have thought there should be some objective measure of that. I wonder whether the minister might like to clarify her answer.

Mrs L.M. HARVEY: Member, the actual content of this clause has not changed, with the exception of changing the definition by substituting the word "authorising" for "chief" in the context of the definition that was changed earlier. This clause is the same, with the exception of the substitution of those words to make it consistent with

the definition that we agreed to previously. It has not changed from when this bill left this house after it was voted on previously.

Mrs M.H. ROBERTS: I am well aware of what the minister just said, so I have learnt nothing new there. What puzzled me, though, is that in the minister's answer to my earlier question, she said that the definition of "as soon as practicable" is a subjective decision by the Commissioner of Police. I would have thought that those words have meaning under the law and that there could be some objective assessment of what was practicable in certain circumstances. If the minister does not clarify it, it is crazy.

Mrs L.M. HARVEY: It is the commonsense definition that we would look up in a dictionary for "as soon as practicable". It is not rocket science.

Mrs M.H. ROBERTS: I point out to the minister that the definition of "subjective" is not rocket science either; "subjective" just means whatever the commissioner interprets it to mean at any given moment in time. I would have thought there should be some objective assessment of what is practicable in certain circumstances.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: Once again, I seek to ascertain whether there are other amendments that members wish to specifically interrogate or whether there may be some flexibility to move these amendments en bloc.

Leave granted for amendments 27 to 35 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 27 to 35 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 36 made by the Council be agreed to.

Ms M.M. QUIRK: As the minister said, this is a standard substitution of "chief officer" for "authorising officer". It deals with the form of variation of authority. It says, however, that, in that case, the authorising officer must ensure that written notes are kept of particulars referred to in subsection (5) for each urgent application of authority. In some circumstances involving Department of Fisheries officers, if you like, the original documents will go back to the director general, but it is mandatory that the authorising officer, the police commissioner, keep written notes of the particulars for the urgent variation of authority. Is there any responsibility on anyone else such as the director general of the Department of Fisheries to have copies?

Mrs L.M. HARVEY: This amendment has been put forward by WA Police to ensure consistency in the terminology between clause 19 and this clause regarding the types of records to be kept of an urgent variation application or approval process. The previous amendment I referred to comes out of recommendation 10 of the Standing Committee on Uniform Legislation and Statutes Review.

Mrs M.H. ROBERTS: I think the member for Girrawheen has made a good point here. It is brought about because of the change effectively from "chief executive officer" to "authorising officer". When the bill was before this house a lot of obligations were placed on the chief executive officer of the Department of Fisheries. Now all those obligations appear to fall on the Commissioner of Police as the authorising officer. Under the legislation, not much at all is prescribed in terms of record keeping or other requirements. It appears there is not so much required of the CEO of the Department of Fisheries and a greater onus will fall on the Commissioner of Police as the authorising officer. Does the minister agree that is the case? Will the increased, more onerous role on the police commissioner, or his acceptable delegated person, as the authorising officer for the Department of Fisheries, when it was originally proposed that the authorising officer would be the CEO of the Department of Fisheries—I acknowledge that the commissioner can delegate to commander or above—place a greater burden on the police department and, if so, will it have any financial or FEA implications?

Mrs L.M. HARVEY: This amendment relates to the authorising officer, being the Commissioner of Police, making written notes of any controlled operations that have been received and approved and an urgent variation of authority having been received. I do not envisage there will be an exorbitant number of these urgent variations of authority for controlled operations for fisheries. I do not believe they will have a resourcing impact on police.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 37 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 38 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 39 made by the Council be agreed to.

Ms M.M. QUIRK: Clause 23(3)(a) reads —

in this jurisdiction and in one or more participating jurisdictions specified in the authority; or

The effect of this amendment is to delete the words “jurisdictions specified in the authority; or”, and replace that with the words “jurisdictions; or”. I ask the obvious question: why is that the case?

Mrs L.M. HARVEY: This amendment and amendment 40 will allow covert operations to go into all recognised jurisdictions. Should there be a recognised jurisdiction in a cross-border controlled operation, for example, this would authorise those controlled operations to go into other jurisdictions that have similar legislative protections and requirements.

Ms M.M. QUIRK: Was this a government amendment or did this come out of the committee report?

Mrs L.M. HARVEY: Government amendment.

Ms M.M. QUIRK: Why was this not contemplated when the legislation was first introduced?

Mrs L.M. HARVEY: I was not the author of the original legislation, member. I put to the member that this will make the legislation more effective.

Ms M.M. QUIRK: Why?

Mrs L.M. HARVEY: Because it will allow cross-border jurisdictions—cross-border investigations.

Ms M.M. QUIRK: But it does that in any event, minister. The legislation already contemplates mutual recognition of other jurisdictions. It is contemplated in all covert operations and controlled operations that they may potentially move from one state to another. I know there are circumstances in which criminals go on the *Indian Pacific* from Western Australia to South Australia, and the information might be that they are getting off in Port Augusta, and they in fact go through to Sydney or Melbourne, and I can contemplate that there might be the necessity for authorisation to be obtained in relation to that jurisdiction as intelligence and more information comes forward. I do regard it as dangerous that these authorities will now not specify that—that is, it will not be apparent from the face of these authorities in which jurisdiction these powers are permitted to operate.

Mrs L.M. HARVEY: The effect of amendments 39 and 40 is that the authority should specify all the jurisdictions that the operation needs to go into. This is put in here to allow, in certain circumstances, if other jurisdictions have not been specified as part of the authority, that the controlled operation is allowed to go into jurisdictions that were not initially listed in the original authority, provided they are participating jurisdictions.

Ms M.M. QUIRK: What we are doing by this amendment, and amendment 40, as I understand it, is getting rid of the words “jurisdictions specified in the authority” and replacing that with the word “jurisdictions”. So is it not the case that jurisdictions will no longer be required to be listed in the authority?

Mrs L.M. HARVEY: They still need to be listed under clause 15(6)(d)(i).

Ms M.M. QUIRK: How was this not picked up initially, and why is it that the police now say it is required?

Mrs L.M. HARVEY: The reality is that this was probably overlooked in the original drafting. The joint working group certainly made a recommendation that this ability should be there. It is a safeguard.

Ms M.M. QUIRK: The minister referred me to clause 15(6) in respect of the content of “an authority”.

Mrs L.M. HARVEY: It was clause 15(6)(d)(i) and (ii).

Ms M.M. QUIRK: That states —

(d) for a cross-border controlled operation, state whether it is to be conducted —

(i) in this jurisdiction and in one or more participating jurisdictions specified in the authority; or

(ii) in one or more participating jurisdictions specified in the authority;

That is the basis on which the minister says that the application has to specify the jurisdictions.

Mrs L.M. HARVEY: To give the member an example, in setting up one of these covert operations it could be put that it is expected to go from Western Australia to South Australia and across into Victoria, and it may in fact inadvertently progress into New South Wales. For the purposes of this legislation, if the jurisdiction is a

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Mrs Liza Harvey; Mrs Michelle Roberts; Mr Mick Murray; Ms Margaret Quirk; Mr John Quigley

participating jurisdiction, the controlled operation does not need to cease at the borders of Victoria and New South Wales; it can go into those jurisdictions even if they have not been listed, provided they are participating jurisdictions. It is just a safeguard to ensure that the operation does not need to be called off because the other participating jurisdiction is not listed on the original authority.

Ms M.M. QUIRK: I am a little confused because the fundamental authority has to list one or more jurisdictions that it contemplates the controlled operation will go into —

Mrs L.M. Harvey: Where they're likely to be.

Ms M.M. QUIRK: Did the Whip say you could go, member for Bassendean?

Is that why the words “likely to be” are included—to broaden it out? The minister said that it was actually restricting it, but she is now saying that “likely to be” is, in fact, needed in the context of the participating jurisdiction.

Mrs L.M. HARVEY: The intention of this legislation is to make the original authority as distinct as possible. Sometimes these controlled operations do not go according to plan. One option would be to have every possible participating jurisdiction listed on every single covert operation application, which would include every jurisdiction in Australia—potentially every participating jurisdiction would be listed. This just means that the controlled operation does not need to be called off, should it go into another jurisdiction, provided it is a participating jurisdiction.

Ms M.M. QUIRK: On that last point, where does it say “provided it is a participating jurisdiction”? Is that subject to any corresponding law of that participating jurisdiction in clause 23? Is that what the minister says the proviso is?

Mrs L.M. HARVEY: A participating jurisdiction is a jurisdiction that is in the definitions.

Ms M.M. Quirk: I understand what the word means, but I am asking, by way of interjection, about what the minister has just said that it does not have to be listed provided it is a participating jurisdiction. I am asking: is the last sentence of clause 23(3), which reads “subject to any corresponding law of that participating jurisdiction”, where the minister derives her assertion?

Mrs L.M. HARVEY: No, it is paragraphs (a) and (b). What this legislation intends is that the controlled operations are put together in a prudent fashion and that they take into consideration all possible jurisdictions that the operation may need to go into. A participating jurisdiction needs to be a jurisdiction that is subject to the model legislation being enacted under the model law.

Ms M.M. Quirk: I understand what a participating jurisdiction is, minister. That wasn't the question.

Mrs L.M. HARVEY: The member had better get up and explain herself. I do not understand what she is asking me.

Ms M.M. QUIRK: The minister said a few minutes ago that a jurisdiction does not need to be listed on the authority if it is a participating jurisdiction. I ask: where does the minister get that proposition from?

Mrs L.M. Harvey: No, no, no.

Ms M.M. QUIRK: Is it from the last sentence of clause 23(3), because she referred me to clause 23(1), which refers to “participant”, which I would have thought was actually the person—the operative—engaged in the controlled operation and not a participating jurisdiction.

Mrs L.M. HARVEY: No. What I said was that the authority should authorise the jurisdictions they expect the controlled operation to go into.

Ms M.M. Quirk: Yes.

Mrs L.M. HARVEY: But that the controlled operation does not need to be called off if it goes into another jurisdiction.

Ms M.M. Quirk: Yes.

Mrs L.M. HARVEY: Provided that jurisdiction is a participating jurisdiction.

Ms M.M. Quirk: Yes, and I am asking you about that last bit you said about providing it is a participating jurisdiction. Where in the legislation does it say that?

Mrs L.M. HARVEY: It says it in (3)(a).

Ms M.M. Quirk: In 3(a) of what clause?

Mrs L.M. HARVEY: Clause 23(3)(a).

Ms M.M. QUIRK: In this jurisdiction and in one or more participating jurisdictions.

Mrs M.H. Roberts: Then it's changed, though, so that's the amendment.

Ms M.M. QUIRK: No, that is the issue. The issue is that the minister no longer has to list all the jurisdictions she may want to run a controlled operation in because of the contingencies that she outlined. What I am saying is: where does it actually say that the minister does not have to list them if they are a participating jurisdiction? In other words, it is about the form of the authorisation, which is early in the legislation.

Mrs L.M. HARVEY: Subclause (3) reads —

In the case of a cross-border controlled operation, the authority authorises each participant to engage in the conduct referred to in subsection (1) —

(a) in this jurisdiction and in one or more participating jurisdictions specified in the authority; ...

Ms M.M. Quirk: Yes.

Mrs L.M. HARVEY: We have deleted “specified in the authority”.

Ms M.M. Quirk: Yes.

Mrs L.M. HARVEY: We are saying that it is in this jurisdiction or in one or more participating jurisdictions. The officer needs to indicate in the original authority where they will be operating.

Ms M.M. Quirk: Yes, I understand that.

Mrs L.M. HARVEY: However, should the controlled operation take them to a jurisdiction that was not specified in the original authority, they can still continue with the controlled operation but they need to seek authority, as long as it is a participating authority.

Ms M.M. Quirk: Yes, that is the last bit.

Mrs L.M. HARVEY: Then we have subsequent amendments coming up that will refer to the retrospective authority in certain circumstances.

Ms M.M. Quirk: By way of interjection, minister, it is the last bit I have an issue with. I am asking where in the legislation it states—because it does not state it in the section that deals with the form of the authorisation—it is okay to leave a jurisdiction off the authorisation if it is a participating jurisdiction? It is that last bit I have not gleaned an answer to.

Mrs L.M. HARVEY: Indeed, the reason these amendments are put together in a block is that each of those amendments and each of these clauses need to be taken in the context of the bill. Specified jurisdictions are defined. The way an authority is put together is defined.

Ms M.M. Quirk: It is not the definition. It is the “so long as”.

Mrs L.M. HARVEY: You stand up.

Ms M.M. QUIRK: Minister, there is no reason to lose your bottle with me. I am trying to assist you.

Mrs L.M. Harvey: I am not; I am trying to understand where you are coming from and I think you might need five minutes to explain it to me. Please explain it.

Ms M.M. QUIRK: I will take the five minutes since the minister has asked me to. The minister has told Parliament and this chamber that this amendment is about not making a controlled operation have to stop at a border. For example, if a controlled operation goes somewhere it was not contemplated it would go when the authorisation was sought, that necessarily will not mean that the controlled operation has to stop. I am right so far?

Mrs L.M. Harvey: Yes.

Ms M.M. QUIRK: The reason the minister says it does not have to stop is that this amendment will permit the controlled operation to continue. Does the minister accept that?

Mrs L.M. Harvey: Yes.

Ms M.M. QUIRK: The minister then went on to say that the controlled operation can continue so long as where it goes is a participating jurisdiction. I am asking the minister where the bill refers to “so long as it is in the participating jurisdiction”.

Mrs L.M. HARVEY: It refers to these in clause 6, “Cross-border controlled operations”. It refers to this in clause —

Ms M.M. Quirk: Just hold on, minister, so I can look at that. No, but that states “in one or more participating jurisdictions”. It does not state “so long as it is a participating jurisdiction”. That is the issue.

Mrs L.M. HARVEY: Yes.

Ms M.M. QUIRK: What amendment are we up to? Amendment 39. We will just go to —

Mrs L.M. Harvey: Clause 13 as well determines a participating controlled—there are a number of clauses where the participating jurisdictions are referred to. Taking one line out of one clause does not necessarily make sense.

Ms M.M. QUIRK: This is what I am trying to clarify: the minister has said on three or four occasions that this will allow—obviously I am paraphrasing—a controlled operation to continue even though that particular jurisdiction is not listed on the authorisation. Then the fatal words start—“so long as it is a participating jurisdiction”. I want to know where that proviso is in the bill, because otherwise I am having trouble with amendment 39.

Mrs L.M. HARVEY: Clause 23, “Effect of authorities” states —

(1) While it has effect, an authority for a controlled operation —

Ms M.M. Quirk: Sorry, clause 23(1)(a) and (b) refers to participants in the controlled operation, not participating jurisdictions; they are different concepts.

Mrs L.M. HARVEY: Yes, and then further down it states that the effect of the authority —

In the case of a cross-border controlled operation, the authority authorises —

Ms M.M. Quirk: Where are you reading from?

Mrs L.M. HARVEY: I am reading the clause we are debating.

Ms M.M. Quirk: You said clause 23(1)(a), and then where is the next clause you talked about?

Mrs L.M. HARVEY: I am talking about clause 23 and subclauses (1), (2) and (3). This is the effect of the authorities.

Ms M.M. QUIRK: Clause 23(2) states —

In the case of a local controlled operation, the authority authorises each participant to engage in the conduct referred to in subsection (1) in this jurisdiction but not in any other jurisdiction.

That does not help me. What is the next subclause that the minister says explains it?

Mrs L.M. HARVEY: Clause 23(3) states —

In the case of a cross-border controlled operation, the authority authorises each participant to engage in the conduct referred to in subsection (1) ...

That means in the cross-border controlled operation, the authority authorises the participants to authorise each law enforcement participant to engage in the controlled conduct specified in the authority in respect of the law enforcement participants; and authorises each civilian participant, if any, to engage in the particular controlled conduct, if any, specified in the authority in respect of that participant in this jurisdiction or one or more participating jurisdictions.

Ms M.M. Quirk: Okay, that’s the answer.

Mrs L.M. HARVEY: Right, so the member just needed to read it all together.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 40 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 41 made by the Council be agreed to.

Ms M.M. QUIRK: Amendment 41 inserts after “hours” —

(or any longer period that the authorising officer may, in exceptional circumstances, allow)

Clause 25(2) deals with the situation that if a participant in an authorised operation engages in unlawful conduct in the course of the operation, the principal law enforcement officer for the operation may, within 24 hours—

although that will be extended further—apply for retrospective authority. Was this amendment part of the Standing Committee on Uniform Legislation and Statutes Review’s amendments or is it a government amendment? Can the minister explain the circumstances in which this provision might apply? What is meant by “exceptional”?

Mrs L.M. HARVEY: Amendment 41 implements recommendation 11 of the Standing Committee on Uniform Legislation and Statutes Review’s report.

Mrs M.H. ROBERTS: I have a few questions. The first one is about the words “or any longer period that the authorising officer may, in exceptional circumstances, allow” that are to be inserted. This amends a clause that deals with retrospective authority. We will insert those words after “24 hours” so that the whole sentence, to get it in context, will read —

If a participant in an authorised operation engages in unlawful conduct (other than controlled conduct) in the course of the operation, the principal law enforcement officer for the operation may, within 24 hours (or any longer period that the authorising officer may, in exceptional circumstances, allow) after the participant engages in that conduct, apply to the chief officer —

“Chief officer” will be amended, too, to read “authorising officer” —

for retrospective authority for the conduct.

When it was a defined number of hours—that is, 24 hours—that to me was clear. The amendment would appear to make things quite unclear. How do we determine what these exceptional circumstances are? How can the authorising officer determine that before they receive the retrospective request? What form would the allowance or commission take?

Mrs L.M. HARVEY: This came out of the committee’s deliberations, in which it was determined that there may be certain circumstances in which a person who is operating as a covert officer in a controlled operation may need to engage in unlawful actions that are outside the scope of the controlled operations that they had been authorised to act in. It was deemed, generally speaking, that an application to that officer’s superior to authorise that particular action could be made within a 24-hour time period, but in certain circumstances these controlled operatives may not be able to get in contact with their supervising officer within a 24-hour time frame, depending on the type of controlled operation they are engaged in. Therefore, “exceptional circumstances” would be an assessment made of those circumstances at the time —

Mrs M.H. Roberts: But this is retrospective.

Mrs L.M. HARVEY: — that retrospective approval is given.

Mrs M.H. ROBERTS: Is “principal law enforcement officer” defined in the bill? I did not see it in the definitions clause, although it may be there and I missed it; or is there a definition elsewhere?

Mrs L.M. Harvey: If the member could ask a further question —

Mrs M.H. ROBERTS: Amendment 41 is the first of seven amendments to clause 25 of the bill. I will raise a couple of questions on clause 25 generally and perhaps we may not need to speak to each of the seven separate amendments. This whole area of retrospectivity is not in the model bill, so why has this been inserted in the Western Australian bill?

Mrs L.M. HARVEY: It was not part of the model laws. The model laws were first proposed in 2003. My understanding is that it was originally contemplated by this state government around 2007. During the time that the laws came into effect in other jurisdictions, it was determined that there were rare but exceptional circumstances in which retrospective approval was required for covert operatives, so to ensure that those operatives were protected it was deemed that this retrospective authority should be brought into the legislation in Western Australia.

Mrs M.H. ROBERTS: Can I inquire of the minister which states have retrospective authority, given that it is not in the model bill?

Mrs L.M. Harvey: New South Wales is the only one at this point in time.

Mrs M.H. ROBERTS: So, retrospective authority is not in the model bill and is not in any other jurisdiction but New South Wales. I put it to the minister that she misled us in her earlier answer, because she said that some of the other states found there were circumstances in which retrospectivity would be appropriate so they put it into their legislation. The minister used the plural form, and gave us the impression that more than one state had this in place. I take it the minister has now corrected that statement by saying it is only New South Wales that has the retrospectivity.

Mrs L.M. Harvey: My apologies to the chamber for an inadvertent stutter earlier on.

Mrs M.H. ROBERTS: While I am still on my feet, I say that I think retrospectivity should be taken very seriously. The general philosophy is that permissions for this activity should be sought in advance and the minister herself has said that this should only be in rare and exceptional circumstances. I wonder whether she can enlighten the house as to what those rare and exceptional circumstances might be.

Mrs L.M. HARVEY: I am advised that there is an ombudsman's report in New South Wales outlining a circumstance of a controlled operation in which the operative was allowed to undertake certain activities. In the course of that operation the operative was offered a firearm by the people he was undercover with. The operative would have blown his cover if had refused a firearm, because obviously that would not have been in keeping with the role he was undertaking as part of the operation. He accepted the firearm. It was deemed that they were exceptional circumstances and that operative then needed to apply for retrospective approval to breach the Firearms Act. That is why this retrospective authority is in this legislation. We want to be certain that operatives covered under our Western Australian legislation are covered for unforeseen circumstances and exceptional circumstances like those I have just described. However, it is envisaged that all due care and prudence will be undertaken when these operations are put together and circumstances like that would indeed be prescribed as part of the authority.

Ms M.M. QUIRK: I have to say from my experience that sort of occurrence is actually not exceptional; it happens all the time with undercover officers. So, I am a bit confused about why the minister says it is exceptional. I would have thought that is something that would happen frequently in these sorts of operations.

Mrs L.M. HARVEY: The member might have that opinion, but I am guided by —

Ms M.M. Quirk: I've got that experience, minister.

Mrs L.M. HARVEY: I am guided by what actually occurred in those circumstances, and, indeed, it was not envisaged that the operative would be using a firearm. That was what happened and that is why this retrospective authority clause has been put into this legislation to ensure that should our operatives be put in those circumstances, they would be exempted from criminal charges being brought against them if they were engaged under the criminal investigations bill.

Mrs M.H. ROBERTS: I asked a question earlier about the words to be inserted here, "in exceptional circumstances, allow". That seems to be a strange turn of phrase there. Something is being allowed retrospectively and I do not know how that conclusion is able to be reached. I know the minister has advised that these words were inserted after some discussion and recommendation from the committee in the upper house, but I imagine that when the bill was drafted, the police thought it was reasonable to seek that retrospectivity to within 24 hours. Do the police still consider what they originally proposed—a 24-hour time limit—reasonable?

Mrs L.M. HARVEY: I draw the member's attention to the remainder of clause 25, which details the conditions under which a retrospective authority may or may not be granted. The time frame for the granting of the retrospective authority needs to be viewed with respect to the remainder of the clauses that refer to the conditions of the retrospective approval being given.

Mrs M.H. ROBERTS: I repeat my question: is it the view of the police department still, as it was in 2011, that 24 hours does enable ample opportunity to seek the retrospective authority?

Mrs L.M. HARVEY: I will quote from the committee report. The evidence WA Police gave to the committee was —

It is acknowledged that the 24 hour time limit for making the application to the chief officer could be problematic, as there may be occasions where a participant, because of their proximity to a target, may not be able to notify their principal law enforcement officer (PLEO) in a timely enough manner, to then enable their PLEO (if he/she so chooses) to make application to their Chief Officer within 24 hours. It may be that the Bill could be framed to allow for an application to be made outside of the 24 hour time period, but only in exceptional circumstances. Consideration will be given to drafting an appropriate amendment in committee to resolve this concern.

Question put and passed; the Council's amendment agreed to.

Leave granted for amendments 42 and 43 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 42 and 43 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 44 made by the Council be agreed to.

Mrs M.H. ROBERTS: This amendment relates to clause 25, which states —

(4) The chief officer —

Which is the Commissioner of Police —

may require the principal law enforcement officer to furnish such additional information concerning relevant conduct as is necessary for the chief officer's proper consideration of the application.

I note here that this is again retrospective. Every other jurisdiction bar New South Wales does not have the retrospective clause. Yes, there are considerable conditions placed here. In the case of the fisheries department, that principal law enforcement officer presumably is a senior officer of the Department of Fisheries, or is it the person running the operation for the fisheries department?

Mrs L.M. Harvey: Yes; however, this amendment is a consequential amendment referring to the authorising officer in respect of retrospective authority being approved rather than the chief officer, which would be the Department of Fisheries for a fisheries operation.

Mrs M.H. ROBERTS: But the principal law enforcement officer for the fisheries department who is being referred to here is not the CEO of the fisheries department but the officer running the operation, is it?

Mrs L.M. Harvey: Yes, that is correct—the officer running the operation.

Mrs M.H. ROBERTS: Because when I look back to page 6, it says something like that. The bill states —

... for an authorised operation, means the law enforcement officer who is responsible for the conduct of the operation;

That may not be the CEO of the fisheries department. It might be somebody in the serious offences unit within the Department of Fisheries, which was referred to previously.

Mrs L.M. Harvey: Yes.

Mrs M.H. ROBERTS: I want to link two things together. Firstly, the Standing Committee on Uniform Legislation and Statutes Review's report recommended that the Department of Fisheries not be included in this legislation. Not only has the minister included the Department of Fisheries in this legislation, but also retrospective authority can be applied to Department of Fisheries' operations, not just police operations, as I understand it. Can the minister refresh my memory about an answer to an earlier question: does New South Wales include Department of Fisheries officers in its legislation?

Mrs L.M. Harvey: No, they do not.

Mrs M.H. ROBERTS: This retrospective authority is not in the model legislation and we will be the only state in Australia in which Department of Fisheries officers can undertake these activities and then seek retrospective authority; is that correct?

Mrs L.M. Harvey: That is correct.

Mrs M.H. ROBERTS: It has already been said that some extraordinary powers are being given to Department of Fisheries officers. One of the checks and balances here is that the authorising officer for these operations will be the Commissioner of Police. Now we will be the only jurisdiction in Australia where the principal law enforcement officer of the Department of Fisheries can utilise some of these extraordinary powers and then seek retrospective authority from the Commissioner of Police. Minister, what happens if the Commissioner of Police does not see fit to grant retrospective authority?

Mrs L.M. HARVEY: It allows, in exceptional circumstances, the Commissioner of Police to authorise a Department of Fisheries officer, as part of this authority, retrospectivity with respect to their actions. The Commissioner of Police, as the authorising officer, does not have to grant that retrospective authority unless he or she is satisfied that the retrospective authority is warranted in the context of that operation. If the officer is not granted retrospective authority, they are not covered or protected by this legislation for any criminality that might ensue as a result of their actions.

Question put and passed; the Council's amendment agreed to.

Leave granted for amendments 45 to 48 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 45 to 48 made by the Council be agreed to

Questions put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I seek, by way of interjection from members opposite, whether there are other amendments they would like to speak to.

Mrs M.H. Roberts: Are we on amendment 49 at the moment?

The DEPUTY SPEAKER: Yes.

Mrs M.H. Roberts: Yes, I would like to speak to 49.

Mrs L.M. HARVEY: I move —

That amendment 49 made by the Council be agreed to.

Mrs M.H. ROBERTS: Amendment 49 deals with page 23, line 3 under the heading “Parliamentary Commissioner to be notified of retrospective authorities”. Can I clarify whether that heading is still accurate?

Mrs L.M. Harvey: No. The heading will be changed by the Clerks after the bill has passed, should it be passed.

Mrs M.H. ROBERTS: What will it be changed to, minister?

Mrs L.M. Harvey: It will be “Corruption and Crime Commission to be notified of retrospective authorities”.

Mrs M.H. ROBERTS: The impact of this amendment is to delete “a chief” and insert “an authorising”. Why is it “an” authorising officer rather than “the” authorising officer? Other clauses in the bill, such as clause 25, to which there were about seven amendments, originally referred to “the chief” officer and those references have all been amended to read “the authorising” officer. We have now gone for “an” authorising officer as though there could be more than one.

Mrs L.M. Harvey: It is grammatically correct, I am advised.

Mrs M.H. ROBERTS: It is a choice. Subclause (1) will now state —

An authorising officer who grants a retrospective authority under section 25 must provide to the —

And the next part of that subclause is the subject of a further amendment.

Mrs L.M. Harvey: That is right, yes.

Mrs M.H. ROBERTS: That is amendment 50, which inserts the term “Corruption and Crime Commission”. I note that we have asked the minister questions about the choice there, and I note that some of the states use the ombudsman. I do not intend to re-engage in that debate.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 50 made by the Council be agreed to.

Ms M.M. QUIRK: This amendment will insert the words “Corruption and Crime Commission” in lieu of “Parliamentary Commissioner”. We have already canvassed in some detail the rationale for that. Now that the Corruption and Crime Commission will be doing these things in relation to controlled operations and the conduct of them, will it be subject to the oversight of the parliamentary commissioner, who oversees the CCC? Will actions under this legislation also be subject to the oversight of the parliamentary inspector?

Mrs L.M. HARVEY: To the extent that it carries out an inspection function as part of its functions under this act, yes.

Question put and passed; the Council’s amendment agreed to.

Leave granted for amendments 51 to 53 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 51 to 53 made by the Council be agreed to.

Question put and passed; the Council’s amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 54 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 55 made by the Council be agreed to.

Mrs M.H. ROBERTS: This amendment is to line 8 and it will delete the word “chief” and insert “authorising”. This is an amendment to clause 30 of the bill. I am advised that it does not contain a corresponding provision to

the one in the model law. Is that correct? I will clarify that a bit more for the minister. Some notes that I have state —

Clause 30 of the Bill does not contain a corresponding provision to clause 17(2)(b) and (3) of the Model Law which provides for a participant in a controlled operation continuing to have the protection of the immunity if they are unaware the authority for the controlled operation has been cancelled, unless the participant is not reckless about the existence of the cancellation. So, it could be argued the Bill gives greater protection to participants in these circumstances than the Model Law.

Those notes were appended to the upper house committee’s report. If it is the case that the bill gives greater protection than the model law, what are those greater protections and why has it been provided?

Mrs L.M. HARVEY: The two amendments to clause 30, “Effect of being unaware of variation or cancellation of authority”, are consequential amendments on the Commissioner of Police being the legislatively appointed approving entity of controlled operations conducted by the fisheries department.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 56 made by the Council be agreed to.

Ms M.M. QUIRK: I would be grateful if the minister could explain the reason for this amendment.

Mrs L.M. HARVEY: This amendment extends the coverage of confidentiality of information for operations that have been ceased as well as for current operations.

Ms M.M. QUIRK: I am not clear what that means. I ask the minister to expand on that.

Mrs L.M. HARVEY: This amendment is to the definition of “operational amendment”. The indictable offence provision in this clause is intended to protect operational information from unlawful disclosure. This protection was intended to apply to operational information gathered while an authorised controlled operation was in force and also after it had been completed. However, the previous definition of “operational information” contained the words “authorised operation”. This is defined in clause 5 of the bill to mean a controlled operation for which an authority is in force. This means the protection of this indictable offence provision previously only had application to controlled operations conducted wholly within WA while the authorised operation is in force. It did not protect the highly sensitive information once the operation was completed. This amendment remedies that problem.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 57 made by the Council be agreed to.

Ms M.M. QUIRK: This amendment seeks to insert on page 29, line 11 a couple of paragraphs in subclause 2(c). If amended, subclause (2) will read —

A person who has access, or has had access, to operational information must not disclose the information except —

...

- (ca) for the purpose of seeking legal advice; or
- (cb) to a government agency for the purposes of a law enforcement operation conducted by that agency or for intelligence-gathering purposes;

I am concerned about the words “or for intelligence-gathering purposes”. That implies that they are for intelligence-gathering purposes other than a law enforcement operation, and that concerns me. Can the minister explain the rationale for this amendment and what is meant by “intelligence-gathering purposes” if it is not included within the definitions for the purposes of law enforcement operation?

Mrs L.M. HARVEY: Effectively, the insertion of these paragraphs facilitates information sharing. WA Police was of the view that some operational information would be extremely beneficial to share with other law enforcement agencies, either to assist them with current investigations they are undertaking or even to alert them to potential future activity they may need to know about. In certain circumstances it was deemed that there needed to be a provision included here to allow that to occur.

Ms M.M. QUIRK: I absolutely have no problem if it is for the purposes of a law enforcement operation conducted by that agency; what I have a problem with is that because there is a disjunctive, or an “or”—“or for intelligence-gathering purposes”—the implication is that in some way it might be broader than law enforcement.

I am particularly concerned about what is contemplated by “intelligence-gathering purposes”. If that is within law enforcement purposes, could it not be covered by the first section of that provision?

Mrs L.M. HARVEY: It may be that it is deemed appropriate in certain circumstances to pass on information to another government agency about unlawful activity that is occurring for which there may not be an investigation taking place within that other organisation. For example, there may be a controlled operation of the Department of Fisheries that may in fact uncover some other organised crime activity, such as drug couriers and organised crime to do with drug importations or exportations—items of that type. The purpose of this is to enable officers engaged in the covert operation to pass on that information to other agencies or law enforcement agencies that may have an interest in perhaps initiating an investigation as a result of that information sharing.

Ms M.M. QUIRK: My problem is that it is not limited to law enforcement agencies. That is why I have a real issue. Can the minister explain whether this is a government amendment or whether it was something suggested by the committee, and is she able to explain why it was phrased in that way? Is there a particular reason for that?

Mrs L.M. HARVEY: I am advised that the first part was an amendment resulting from the deliberations of the Standing Committee on Uniform Legislation and Statutes Review. The second part of the amendment was a government amendment that was deemed appropriate in respect to the consultation with WA Police.

Ms M.M. Quirk: When you say the second part, do you mean paragraph (cb)?

Mrs L.M. HARVEY: Paragraph (cb) is a government-initiated amendment; paragraph (ca) is a government-initiated amendment resulting from the committee deliberations.

Mrs M.H. ROBERTS: This amendment is to clause 35(2). Is it correct that this is less prescriptive than clause 22 of the model law, which specifies different elements to be satisfied for the different penalties?

Mrs L.M. HARVEY: Would the member be so kind as to clarify what she means by “less prescriptive” and which area of the model law she is referring to?

Mrs M.H. ROBERTS: I am advised that clause 22 of the model law specifies different elements to be satisfied for the various penalties. I also add that the model law does not provide for a fine, whereas this provides for a summary conviction penalty of \$24 000 or imprisonment of two years. Why are those variations from the model law?

Mrs L.M. HARVEY: The threshold for our law is lower. Under the model law the person would need to establish an intent of knowing or reckless disclosure of information. This requires the person to not disclose information, except in those circumstances outlined in paragraphs (a), (b), (c) and (d).

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 58 moved by the Council be agreed to.

Ms M.M. QUIRK: This is a fairly lengthy amendment and I would like an indication of its purpose. Is it a government amendment?

Mrs L.M. HARVEY: This comes out of recommendation 16 of the Standing Committee on Uniform Legislation and Statutes Review’s report, which proposed a new clause with a list of nine further prescribed matters that should be included in the principal law enforcement officer’s report. There is no objection to these additional areas being listed.

Mrs M.H. ROBERTS: Can I clarify that these provisions are not in the model law and whether the minister is aware of any similar provisions being put in place in any of the other jurisdictions?

Mrs L.M. HARVEY: Aspects of this legislation are specific to Western Australia and some aspects fall out of the model law. This amendment responds to that recommendation of the Standing Committee on Uniform Legislation and Statutes Review’s report.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 59 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Leave granted for amendments 60 to 67 be considered together.

Mrs L.M. HARVEY: I move —

That amendments 60 to 67 made by the Council be agreed to.

These are consequential amendments redefining once again “chief officer” and “authorising officer”. They are all similar in nature. Amendments 66 and 67 are similar to previous amendments that change references to “Parliamentary Commissioner” to “Corruption and Crime Commission”.

Question put and passed; the Council’s amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 68 made by the Council be agreed to.

Mrs M.H. ROBERTS: I seek an explanation from the minister for why this amendment is required.

Mrs L.M. HARVEY: This amendment responds to recommendation 17 in the Standing Committee on Uniform Legislation and Statutes Review’s report. This will ensure there is notification that information has been excluded from a report. It is incumbent upon the minister to ensure that, should specific information that might endanger a person or contain sensitive information about a covert operation be excluded from a report, the report specifically contain notification that the information has been excluded for this purpose.

Ms M.M. QUIRK: The existing provision states —

- (3) The Minister must exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2).

What is the difference between existing subclause (3) and new subclause (3) as proposed in this amendment? Is it solely the addition of a statement that information has been excluded?

Mrs L.M. Harvey: Yes.

Question put and passed; the Council’s amendment agreed to.

Leave granted for amendments 69 to 71 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 69 to 71 made by the Council be agreed to.

Question put and passed; the Council’s amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 72 made by the Council be agreed to.

Mrs M.H. ROBERTS: This is seemingly a much more substantial amendment, so I seek an explanation as to why the minister has moved this amendment.

Mrs L.M. HARVEY: The joint working group suggested that the powers listed here should be the powers given to the inspector of this legislation. The Corruption and Crime Commission did not have these powers. This amendment will enable the CCC to perform these investigations for this purpose.

Mrs M.H. Roberts: Who comprises the joint working group?

Mrs L.M. HARVEY: The joint working group is the group that worked on the “Cross border investigative powers for law enforcement” report of 2003, out of which this model law legislation has fallen. So it was deemed that the inspector of these operations should have these powers. The Office of the Parliamentary Inspector was enabled under its legislation to have the ability to inspect as described. The Corruption and Crime Commission did not have those powers, so it has been included here. This also will enable the Corruption and Crime Commission to delegate to an officer of the commission these powers of inspection.

Mrs M.H. ROBERTS: If I heard the minister correctly, she said that the joint working group recommended this amendment. When did it recommend this amendment, and why was it not included in the bill when it was before this house earlier?

Mrs L.M. HARVEY: In 2003, when the joint working group put its report together, the recommendation for these powers was part of that report. In the original legislation as it was drafted, we had the Ombudsman and the Office of the Parliamentary Inspector listed as those agencies that would perform this inspection function. That has since been changed to the Corruption and Crime Commission. Therefore, this clause is required to enable the Corruption and Crime Commission to perform these inspection functions under this legislation.

Mrs M.H. ROBERTS: We are dealing with amendment 72, which deletes lines 25 to 28 on page 35 of the bill.

Mrs L.M. Harvey: Removing the parliamentary commissioner.

Mrs M.H. ROBERTS: Yes. It replaces the very brief clause 41(2) which reads —

The Parliamentary Commissioner Act 1971 section 11 and Part III apply, with any necessary changes, to an inspection under this section as if the inspection were an investigation under that Act.

That is being replaced with a substantially longer amendment—(2)(a), (b) and (c), and (2A). There is a lot more prescription in the amendment than there is in the original bill; it is not just a matter of a name change, as I read it, from parliamentary commissioner to the Corruption and Crime Commission. Where has this amendment come from? I cannot see how these are the words that were recommended in 2003 if they were not in the original bill.

Mrs L.M. HARVEY: Clause 41(2) states —

The *Parliamentary Commissioner Act 1971* section 11 and Part III apply, with any necessary changes, to an inspection under this section as if the inspection were an investigation under that Act.

These inspection functions are not prescribed in the original bill because there is a reference to them under section 11 and part III of the *Parliamentary Commissioner Act 1971*. The CCC does not have that inspection function prescribed under its legislation, so it needs to be prescribed in this legislation to allow it to perform this function.

Mrs M.H. ROBERTS: The amendment also includes new subclause (2A), which reads —

The Corruption and Crime Commission may delegate to an officer of the Commission (as defined in the *Corruption and Crime Commission Act 2003* section 3(1)) a power or duty of the Corruption and Crime Commission under this section and, for that purpose, the *Corruption and Crime Commission Act 2003* section 185(3) to (6) apply as if the delegation were a delegation under section 185.

There does not appear to be a similar provision in the bill as it was first presented to this house, so why is it necessary for that delegation power to be inserted there?

Mrs L.M. HARVEY: Indeed, member, the Corruption and Crime Commission is a body, and (2A) enables that body to delegate to a person, being an officer of the commission, to perform these inspection roles. Section 11 of the *Parliamentary Commissioner Act 1971* provides the power of delegation from that authority to a person. We needed to prescribe it in our legislation because the Corruption and Crime Commission does not presently have that delegation or these inspection functions as part of its legislative framework.

Ms M.M. QUIRK: Can the minister confirm that the exercise of these particular powers by the CCC will be subject to oversight by the parliamentary inspector?

Mrs L.M. Harvey: Yes.

Question put and passed; the Council's amendment agreed to.

Leave granted for amendments 73 to 75 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 73 to 75 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 76 made by the Council be agreed to.

Mrs M.H. ROBERTS: Amendment 76 is to delete lines 3 to 12 on page 37 of the bill and insert the lines as listed on our notice paper here today. I note that clause 43 defines a “senior officer”, with respect to the Australian Crime Commission, as the director of national operations as well as a person holding a prescribed office in the Australian Crime Commission. The amendment contains those, as well as director, and defines “senior officer” to mean, in relation to the police force, an officer of or above the rank of commander, whereas the model law states a rank above assistant commissioner. Can I ask why the minister has chosen to have someone at or above the rank of commander? Perhaps at the same time the minister can advise me how many assistant commissioners and how many commanders there are currently in the Western Australia Police service.

Mrs L.M. HARVEY: The reason we have delegated to the rank of commander is that the state intelligence division of the WA Police force does not have an assistant commissioner sitting above it; it is run by a commander. There are currently eight assistant commissioners, six commanders and two deputy commissioners, to which this senior officer role could in fact be delegated.

Mrs M.H. ROBERTS: I am sorry; I missed what the minister said then. Did the minister say that the state intelligence service does not have a commander? Was that the unit she was referring to?

Mrs L.M. Harvey: The state intelligence service is run by a commander, and that is why —

Mrs M.H. ROBERTS: It is run by a commander, so it does not have an assistant commissioner; is that what the minister said?

Mrs L.M. Harvey: Yes.

Mrs M.H. ROBERTS: So, I put it to the minister that the only commander who would be relevant here would be the one in charge of the state intelligence service, if the minister wants to go down to that rank. While I have the call, I also ask at the same time whether, given that in the model legislation it was envisaged that someone would be at least of the rank of assistant commissioner, any of the other jurisdictions have chosen to include officers of a rank below assistant commissioner.

Mrs L.M. HARVEY: I am advised that New South Wales has delegated this function to the rank of superintendent. We have delegated ours to someone above the rank of commander, so that anybody above the rank of commander can be delegated as this authorising officer.

Ms M.M. QUIRK: In relation to the amendment in paragraph (c), which relates to the delegation by the chief executive officer of the fisheries department, it says that it can be delegated to a fisheries officer holding a prescribed office in the department. I ask the minister: what is such a prescribed office; and, can the minister also advise me what is the range of decisions that the CEO of the fisheries department can take?

Mrs L.M. HARVEY: The fisheries officer's rank will be prescribed by regulation. It would be an executive director.

Ms M.M. QUIRK: The other part of my question is: can the minister explain to me in relation to the CEO of the fisheries department what the decision-making powers are that can be delegated?

Mrs L.M. HARVEY: This is a delegation to a fisheries officer prescribed by regulation for the purposes of administration, record keeping and, basically, the reporting function requirement and administrative function requirement within fisheries.

Ms M.M. QUIRK: Is that the only power that can be delegated under this legislation by the Department of Fisheries?

Mrs L.M. HARVEY: That is the only function that the chief officer of fisheries has, so that is the only function the officer can delegate.

Mrs M.H. ROBERTS: Is the minister able to advise how many people in fisheries hold the rank of executive director or above; and will the regulations prescribe who can be a prescribed officer?

Mrs L.M. HARVEY: At this moment in time there is one executive director in fisheries and indeed that function needs to be prescribed by regulation.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 77 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Leave granted for amendments 78 and 79 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 78 and 79 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Leave granted for amendments 80 to 88 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 80 to 88 made by the Council be agreed to.

These are consequential amendments changing “chief officer” to “authorising officer” or “chief” to “authorising” in sections of the bill.

Mrs M.H. ROBERTS: I know that the minister wants to pick up speed here and we are quite happy to help her in this, but can I clarify what has been moved so I know that I am not missing what I want to speak to?

The DEPUTY SPEAKER: Amendments 80 to 88.

Mrs L.M. HARVEY: This group of amendments, 80 through to 88, amends clauses 47, 48 and 49, which deal with the formal application and approval procedure for the acquisition and use of an assumed identity. The amendments replace references to “chief officer of” and “chief” with “authorising officer for” and “authorising” respectively. The amendments are a consequence of the decision to make the Commissioner of Police the approved entity for the acquisition and use of assumed identities by the fisheries department. In this regard the Commissioner of Police will also be the designated office holder to approve variations or cancellations of such authorities, as in the controlled operations part of the bill.

Question put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 89 made by the Council be agreed to.

Ms M.M. QUIRK: I would like to know the purpose of this amendment. I can understand that the existing bill refers to “chief officer” and the amendment refers to “authorising officer”, but there are quite distinct changes other than that. The bill seeks to ensure that person has written notes of the particulars of granting the authority for someone to assume an identity, but the amendments refer to what needs to be done with an urgent authority and there is no reference to notes. Is this a government amendment or a committee amendment? Can the minister explain the context?

Mrs L.M. HARVEY: Member, earlier we discussed changing the words “written notes” to “a record in writing”; therefore, “record in writing” replaced the phrase “written notes” in the bill prior to this amendment. The committee, in making that recommendation, referred only to controlled operations. This is a government amendment for the sake of consistency. We have included it in the assumed identities part of the bill to ensure that there is consistency throughout the legislation.

Ms M.M. QUIRK: The other change that seems to occur is that in the existing bill it appears that those notes need to be taken contemporaneously, but with this amendment they will need to be made only as soon as practicable. I can see that it is in the committee report, is that why that change has been made?

Mrs L.M. Harvey: That's right.

Ms M.M. QUIRK: Was that change made on the basis of any submissions that police gave the committee?

Mrs L.M. HARVEY: No. My understanding is that WA Police, although acknowledging that distinction, did not request the terminology in the drafting. That distinction was contained in the model law and there was a need for consistency with that terminology. Therefore, WA Police did not request it, but —

Ms M.M. Quirk: No; I am not talking about the “written notes” and “a record in writing” terms; I am talking about the term “as soon as practicable”, which was not in the original bill.

Mrs L.M. HARVEY: This amendment is also the committee insisting on consistency throughout the bill. The words “as soon as practicable” have been mentioned previously, in clause 10, and in the committee's opinion there should be a consistent reference to that phrasing further in the bill.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I seek leave to move amendments 90 to 93 en bloc. These are consequential amendments, once again, deleting the word “chief” and substituting the word “authorising”, consistent with previous amendments.

Leave granted for amendments 90 to 93 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 90 to 93 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 94 made by the Council be agreed to.

Mrs M.H. ROBERTS: Can I just clarify whether this amendment has been moved for consistency and whether it is a government amendment?

Mrs L.M. HARVEY: This is a government amendment and, yes, I can confirm that once again, for the sake of consistency we have “record in writing” replacing “written notes”.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I seek leave to move amendments 95 to 99 en bloc. Once again, these are consequential amendments deleting “chief” and replacing it with “authorising”, as previously agreed to.

Leave granted for amendments 95 to 99 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 95 to 99 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 100 made by the Council be agreed to.

Mrs M.H. ROBERTS: I seek information from the minister as to the necessity of this amendment.

Mrs L.M. HARVEY: Once again, this is one of those amendments for consistency, replacing “written notes” with “record in writing”.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I seek leave to move amendments 101 to 107 en bloc. Once again, these are consequential amendments deleting “chief” and replacing it with “authorising”, consistent with the changes previously discussed for “authorising officer”.

Leave granted for amendments 101 to 107 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 101 to 107 made by the Council be agreed to.

Mrs M.H. ROBERTS: Looking at these amendments, I understand what the minister has said. With respect to amendment 102: at page 48, line 30, under the heading “Yearly review of formal authority”, “chief officer” is changed to “authorising officer or a delegate of the authorising”. In that circumstance, who would be the delegate?

Mrs L.M. HARVEY: This is in fact a consequential amendment changing the words in line 30 from “chief” to “authorising” in two places, so it is granted by the authorising officer or a delegate of the authorising officer rather than granted by the chief officer or a delegate of the chief officer. It is a consequential amendment to ensure that we refer to the authorising officer in this circumstance.

Question put and passed; the Council’s amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 108 made by the Council be agreed to.

Mrs M.H. ROBERTS: Why is this amendment required?

Mrs L.M. HARVEY: Once again, this is a consequential amendment deleting “an authority granted under section 48 authorises” and inserting “the authorising officer for a law enforcement agency grants an authority under section 48 authorising”. It is, once again, a consequential amendment to make sense of previous amendments.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I seek, by way of interjection from those opposite, amendments that they wish to single out for debate.

Ms M.M. Quirk: Amendment 114.

Mrs L.M. HARVEY: I seek leave to move amendments 109 to 113 en bloc.

Leave granted for amendments 109 to 113 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 109 to 113 made by the Council be agreed to.

Question put and passed; the Council’s amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 114 made by the Council be agreed to.

Ms M.M. QUIRK: I would like an explanation from the minister as to who suggested this amendment and what is its purpose.

Mrs L.M. HARVEY: This amendment corrects a grammatical error and also ensures consistency in terminology between this clause, being clause 76, and clause 38 of the bill. The amendment also implements recommendation 24 of the Uniform Legislation and Statutes Review Committee’s report.

Ms M.M. QUIRK: I take it the grammatical error is the words “both Houses” and that has been changed to “each House”; is that correct?

Mrs L.M. Harvey: That is correct.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 115 made by the Council be agreed to.

Mrs M.H. ROBERTS: There is a change of wording here, which I understand has probably come out of the Uniform Legislation and Statutes Review Committee's report. The wording that was in the bill that we passed here states —

- (3) The Minister must exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2).

Obviously the reference here is to "chief officer". In the amendment that has replaced it, it is more detailed. It deletes those lines that I just read out and inserts —

- (3) The Minister must —
- (a) exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2); and
 - (b) insert a statement to the effect that information has been excluded from the report under paragraph (a).

I can quite understand why the upper house committee has put paragraph (b) there. It would seem to me to aid the purposes of transparency. In the original wording, there was a reference to, "The Minister must exclude information from the report if satisfied on the advice of the chief officer". It is now reworded, "of any of the grounds set out in subsection (2)", which is virtually the same there. Can the minister clarify whether this has come at the recommendation of the committee and whether this will increase transparency?

Mrs L.M. HARVEY: This does implement recommendation 23 of the committee's report. Indeed, it does compel the minister to take notice of the advice of the chief officer with respect to information that needs to be excluded from a report, should that information endanger personal safety et cetera, as outlined in subclause (2)(a), (b) and (c). It also insists that the minister must insert a statement to the effect that this information has been excluded from the report.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 116 made by the Council be agreed to.

Mrs M.H. ROBERTS: There are some changes that the minister is proposing in this amendment. I wonder if she would outline what those changes are and the purpose of them.

Mrs L.M. HARVEY: These changes replace the definition of "senior officer" and also the title of director national operations of the Australian Crime Commission. That position has been renamed, so it is now defined as "an SES employee as defined in the *Australian Crime Commission Act 2002*".

Question put and passed; the Council's amendment agreed to.

Leave granted for clauses 117 to 119 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 117 to 119 made by the Council be agreed to.

These are consequential amendments substituting "chief" with "authorising".

Question put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 120 made by the Council be agreed to.

Ms M.M. QUIRK: I ask the minister to explain the purpose of this amendment and whether it was a government amendment or one that was suggested by the uniform legislation committee.

Mrs L.M. HARVEY: This amendment implements committee recommendation 25 in respect to witness identity protection. Much consideration was given to this amendment by not only the committee but also members in the other place to the balancing act between the protection of witnesses and the preservation of parliamentary privilege. This amendment relates to recommendation 25 in the committee's report.

Mrs M.H. ROBERTS: Can the minister explain to us what difference this amendment makes in terms of the wording at lines 22 and 23?

Mrs L.M. HARVEY: For the purposes of the act, it removes “Houses of Parliament” from the definition of “court”.

Ms M.M. QUIRK: What is the upshot of that in terms of this bill? What are the consequences of the removal of the reference to “Houses of Parliament”?

Mrs L.M. HARVEY: This amendment foreshadows amendments to insert new definitions that differentiate between court and parliamentary proceedings. It institutes two separate regimes that are reflective of the processes that would be followed in a court and also a process fashioned towards Parliament that preserves Parliament’s entitlement to control its own processes and procedures when taking evidence from protected witnesses.

Mrs M.H. ROBERTS: Clause 80(c) of the bill, in relation to the definition of “court”, is not actually in the model law. Why is it not included in the model law? Have other states taken the same initiative as is being taken here with this amendment?

Mrs L.M. HARVEY: We have adopted a different definition of “court” from the model law. We have included “Parliament” for the purposes of having some consistency between the certificates that would be issued to operatives under this legislation and operatives who would have similar protections under the Witness Protection (Western Australia) Act.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: Once again I seek an indication from members opposite as to clauses they wish to interrogate?

Mrs M.H. Roberts: 121.

Mrs L.M. HARVEY: I move —

That amendment 121 made by the Council be agreed to.

Mrs M.H. ROBERTS: Can the minister explain the necessity of this amendment?

Mrs L.M. HARVEY: This amendment needs to be considered with amendment 122, which defines a court proceeding as distinct from parliamentary proceedings and parliamentary committee proceedings.

Mrs M.H. ROBERTS: The minister has explained what the amendment does. Can I have some reason the government wants to do that?

Mrs L.M. HARVEY: As I have said, this amendment falls out of recommendation 25 of the committee. For the protection of a covert operative’s identity, there needed to be different defining provisions for court proceedings as opposed to parliamentary committee and parliamentary proceedings given the importance placed on the integrity of the privileges of Parliament.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 122 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 123 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 124 made by the Council be agreed to.

Question put and passed; the Council’s amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 125 made by the Council be agreed to.

Mrs M.H. ROBERTS: Amendment 125 inserts new clause 84A. Why does the minister wish to insert that new clause?

Mrs L.M. HARVEY: Divisions 2A and 2B need to be taken in context. We have separated the provisions applicable to court proceedings from the provisions applicable to parliamentary proceedings to be consistent with previous amendments that redefine the court processes separately from parliamentary processes.

Mrs M.H. ROBERTS: Why were these provisions not in the original bill?

Mrs L.M. HARVEY: As mentioned previously, these provisions have arisen out of recommendation 25 of the committee of the other place, and, indeed, debate in the other place determined that these were better separated for the purposes of this bill.

Ms M.M. QUIRK: How does the new clause augment the common law position in relation to the protection of the identity of a person who is not an operative or who gives or intends to give evidence in a court proceeding?

Mrs L.M. HARVEY: It does not affect it.

Question put and passed; the Council's amendment agreed to.

Leave granted for amendments 126 and 127 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 126 and 127 made by the Council be agreed to.

These amendments tidy up language as per earlier clauses.

Question put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 128 made by the Council be agreed to.

Mrs M.H. ROBERTS: Amendment 128 inserts a new division 2B. Why does the minister want to amend the bill to insert new division 2B?

Mrs L.M. HARVEY: These provisions are applicable to parliamentary proceedings. As foreshadowed, this separate division is a result of concerns raised during committee stage debate on the formerly extended definition of "court" in clause 80 and its effect on parliamentary privilege. The amendment is fashioned towards Parliament and preserves Parliament's entitlement to control its own processes and procedures when taking evidence from protected witnesses.

Ms M.M. QUIRK: This was inserted by the committee, but is this something that police are concerned about? Is this something that the government opposed in the upper house or what is the position?

Mrs L.M. HARVEY: This is indeed probably one of the most important provisions of this bill with respect to Western Australian police officers. This allows for a witness identity protection certificate to be given to Parliament to protect the true identity of a covert operative should they be required to give evidence before a parliamentary committee. It protects their true identity from being exposed through any of our parliamentary records or internet access or whatever. It is deemed to be crucial to ensure the safety of those operatives after they have been engaged in one of these covert operations.

Ms M.M. QUIRK: Something has just occurred to me in this context: if a member of that committee were to come into this chamber and name that operative or describe the physical attributes of that witness so that they could be recognised, are there any sanctions against that or how will that be handled?

Mrs L.M. HARVEY: There are no sanctions at present for members of Parliament who choose to reveal the true identity of any officer who gives evidence to a parliamentary committee. Indeed, it may be something that both houses of Parliament might look at in the future as an amendment to their standing orders to introduce sanctions for persons who may endanger the life of a covert operative or somebody in the witness identity protection program by exposing their true identity and thereby putting them and their family at risk.

Mrs M.H. ROBERTS: Why do their true identities need to be given to parliamentary committees in the first place, minister?

Mrs L.M. HARVEY: This provides an opportunity for a witness or a covert operative to give their evidence to a parliamentary committee under their assumed identity as opposed to their true identity. That obviously is important to those operatives to ensure that their true identity is not revealed and that they are not put at risk.

Mrs M.H. ROBERTS: If somebody only has an assumed identity, how will they reveal the true identity of someone in this house? The member said perhaps the house should look at penalties. I am not quite sure of the scenario.

Ms M.M. Quirk: They could physically describe them.

Mrs L.M. Harvey: They could reveal information about the witness or about the operative which could, in effect, disclose the operative's identity, where they live or where they work.

Mrs M.H. ROBERTS: Did the minister contemplate putting penalties for that behaviour into this legislation; and, if not, why not?

Mrs L.M. HARVEY: Under the Parliamentary Privileges Act, members of Parliament are immune from prosecution and, indeed, that act protects us from prosecution should members of Parliament reveal the identity of a witness or a covert operative. A considerable amount of work and effort has been put into this amendment to ensure a process is in place to protect the true identity of any witnesses giving evidence to a parliamentary committee.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 129 made by the Council be agreed to.

Mrs M.H. ROBERTS: Minister, what is the purpose of amendment 129?

Mrs L.M. HARVEY: It is to ensure that any operative who is giving evidence to a parliamentary committee under cover of a witness protection certificate notify either the court or the Clerk of the House of Parliament should that certificate be cancelled.

Mrs M.H. ROBERTS: Is it a choice to notify the court or the Clerk of the house of Parliament, or is there a circumstance surrounding one or the other?

Mrs L.M. HARVEY: It is defined by subclause (3)(a), which refers to a court; and (3)(b) refers to the Clerk of a house of Parliament. It would depend on whether the proceedings were before a court or before one of the Houses of Parliament or their committees.

Question put and passed; the Council's amendment agreed to.

Leave granted for amendments 130 and 131 to be considered together.

Mrs L.M. HARVEY: I move —

That amendments 130 and 131 moved by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Mrs L.M. HARVEY: I move —

That amendment 132 moved by the Council be agreed to.

Mrs M.H. ROBERTS: This provides for review of the act. Why has the government agreed to include a review of the act and why has the particular time frame been chosen?

Mrs L.M. HARVEY: This comes in response to recommendation 27 of the uniform legislation committee. Indeed, it indicates that at the end of five years the act should be reviewed.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY: I move —

That amendment 133 moved by the Council be agreed to.

Mrs M.H. ROBERTS: These amendments affect the Criminal Injuries Compensation Act 2003. Why does this now need to be inserted by way of amendment rather than being included in the original bill?

Mrs L.M. HARVEY: This proposed part will be inserted because of a committee recommendation. This legislation, in effect, will exempt covert operatives from being charged with certain criminal offences. However, it may well be that there are people who would ordinarily be eligible for compensation under the Criminal Injuries Compensation Act. However, if it is subject to a covert operation, there may be no criminal charges laid. This amendment will allow people who might otherwise have been eligible for criminal injuries compensation to receive that compensation in the absence of charges being laid, as a result of the provisions of this bill affording an exemption to a potential offender.

Question put and passed; the Council's amendment agreed to.

Leave granted for amendments 134 to 143 to be considered together.

Extract from *Hansard*

[ASSEMBLY — Thursday, 15 November 2012]

p8825b-8867a

Mrs Liza Harvey; Mrs Michelle Roberts; Mr Mick Murray; Ms Margaret Quirk; Mr John Quigley

Mrs L.M. HARVEY: I move —

That amendments 134 to 143 made by the Council be agreed to.

These amendments amend part 10 of the bill, which amends the Witness Protection (Western Australia) Act with regard to non-disclosure certificates, consistent with this legislation.

Question put and passed; the Council's amendments agreed to.

The Council acquainted accordingly.