

COMMONWEALTH HEADS OF GOVERNMENT MEETING (SPECIAL POWERS) BILL 2011

Report

Report of committee adopted.

Remaining Stage — Standing Orders Suspension — Motion

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [8.28 pm] — without notice: I move —

That so much of standing orders be suspended as to enable the Commonwealth Heads of Government Meeting (Special Powers) Bill 2011 to proceed to the third reading during this day's sitting.

By way of brief explanation, the reason for this is to ensure that the Commonwealth Heads of Government Meeting (Special Powers) Bill, which has been amended, can be transmitted today to the other place for its consideration of the amendments in a timely fashion. Therefore, the government seeks the house's cooperation to do this.

The DEPUTY PRESIDENT (Hon Brian Ellis): Members, for this motion to be agreed to, we must have an absolute majority in the house. As there is not an absolute majority at the moment, I will call for the ringing of the bells.

Bells rung.

The DEPUTY PRESIDENT: Members, we do have an absolute majority in the house, and I will put the question again, the question being that the motion be agreed to.

Question put.

The DEPUTY PRESIDENT: There being a dissentient voice on this motion, I have to call for a division.

Division taken with the following result —

Ayes (25)

Hon Liz Behjat	Hon Phil Edman	Hon Alyssa Hayden	Hon Sally Talbot
Hon Matt Benson-Lidholm	Hon Sue Ellery	Hon Col Holt	Hon Ken Travers
Hon Jim Chown	Hon Brian Ellis	Hon Robyn McSweeney	Hon Max Trenorden
Hon Peter Collier	Hon Jon Ford	Hon Michael Mischin	Hon Ken Baston (<i>Teller</i>)
Hon Ed Dermer	Hon Philip Gardiner	Hon Helen Morton	
Hon Kate Doust	Hon Nick Goiran	Hon Simon O'Brien	
Hon Wendy Duncan	Hon Nigel Hallett	Hon Ljiljana Ravlich	

Noes (4)

Hon Lynn MacLaren	Hon Giz Watson	Hon Alison Xamon	Hon Robin Chapple (<i>Teller</i>)
-------------------	----------------	------------------	-------------------------------------

Question thus passed with an absolute majority.

Third Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [8.35 pm]: I thank the house for approving this suspension of standing orders. I now move —

That the bill be read a third time.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [8.36 pm]: I do not normally make a contribution to the third reading debate on a bill. However, we have had an interesting exercise in dealing with the Commonwealth Heads of Government Meeting (Special Powers) Bill 2011. The little exercise we have just gone through reminds us of the shambolic drafting that we have had to deal with on this piece of legislation.

This is an important piece of legislation. It is legislation for an important event that will take place in Western Australia at the end of the year. We acknowledge that, and we will be supporting the bill. However, we support the bill with some caution, because of our concern that this Liberal-National government may be using this bill to introduce by stealth the stop-and-search laws that it tried to put through this place last year. That is our concern. We want to make sure that this bill will not do that, and that this bill will be restricted in its timing.

This bill was first read in this place in April, and it commenced its debate in mid-May. We have endeavoured to try to move through this bill as swiftly as we can, because we understand that time is marching on and we are

getting closer every day to that period in October when CHOGM will be held. However, we found when we went into Committee of the Whole that we were halted in our tracks, because we had so much difficulty in trying to understand what the government is seeking to achieve with the drafting of this legislation. After this bill had made tortuous progress through the other place in March or April of this year, and as a result of the endeavours of the opposition in the other place, the government acknowledged, before this bill came into this place, that there were problems with the drafting of this legislation. The government moved 15 amendments to its own legislation. That is very unusual. Hon Giz Watson also put a number of amendments on the notice paper. The government acknowledged, by moving its amendments, that it had taken on board the criticism that had been levelled at this legislation by the opposition in the other place. I acknowledge that the government had the decency to try to tidy up the legislation, but once we got to the committee stage, we discovered that even those amendments were flawed. It is a real shame that the parliamentary secretary is not able to be with us tonight, because I know that she has worked quite diligently to try to resolve some of these matters.

It became quite a difficult process in this place; normally these bills are managed by Hon Peter Collier, representing the Minister for Police, and he is normally quite accommodating and tries to be reasonable. I know that it is difficult for the parliamentary secretary because she is just following the instructions of the minister in the other place, and we all know that he can be quite intractable on these matters. When we discovered on the first day of the Committee of the Whole—around 24 May—that we were hitting some really deep potholes in this legislation, I actually said to the Leader of the House, “Why don’t we go onto another piece of legislation? We’re obviously not going to get too far. Why don’t we step outside this place and try to resolve the issues we’ve got?” It had become quite plain to me and Hon Giz Watson and others who have an interest in this legislation that perhaps this was an example of legislation that should have been referred to the Standing Committee on Legislation—a very good committee—so it could have a proper look at the structure, drafting and associated issues. But, no, the Leader of the House said to me, “No, just take 10 or 15 minutes and we’ll resolve everything; we’ll come back and give it another go.” I think it took a couple of attempts like that. We made very slow progress, and the government ultimately agreed to amend its own amendments.

I give the parliamentary secretary credit for acknowledging that she needed to make some changes on foot, if you like. Finally, by the Thursday of that sitting week, we actually had to get the government to agree to step outside the chamber with the advisers and the parliamentary secretary, and we spent about an hour and a half with the advisers working through the issues that we had with the drafting of the bill and the government’s amendments. It was only after that out-of-chamber session that we were able to come back in here, work through the relevant matters and make significant progress on this bill.

The experience of the past couple of weeks has been a very interesting example of dealing with bills that come out of the office of the Minister for Police. We have consistently had to deal with legislation that is drafted in haste, and legislation that is quite often not well thought out. It then takes us an extended period to work through it. I see Hon Peter Collier thinking about that, because he is the person who has had to manage some of these cumbersome and lengthy bills in the past.

We on this side of the chamber have not sought to extend the debate on this bill. I hope that when the bill goes back to the other place, the Minister for Police will not make that claim; he is often wont to say that when bills come here, the opposition seeks to filibuster. We have not done that, and we can quite clearly demonstrate that we have not. Only about three speakers on this side of the chamber contributed to the second reading debate, and only two or three members on this side have participated in the committee stage of the bill over the past couple of weeks. The fact that the government has acknowledged its mistakes by rectifying the flaws in its own amendments shows that this has been a very difficult document to work through.

Although we acknowledge the significance of what will occur at the end of the year, it has been a very complicated exercise to try to understand how it will all fit together. The clauses in the bill that Labor does not support, because we still have not been provided with enough justification, deal specifically with the engagement of the Corruption and Crime Commission during the period of the Commonwealth Heads of Government Meeting. We have not been provided fully with justification for why the CCC even needs to be involved in this arrangement.

I want to put on the record that this bill is not standard legislation. It has come to us as flawed legislation. The government’s effort to remedy that, even in acknowledging that it is flawed, has been a difficult process as we in this chamber had to tighten the government’s own amendments. I am sure we could deal in future with such legislation in a better way than through this tortuous process. The Leader of the House is very keen to get on and deal with other legislation, as we come to the busy midyear period. Perhaps it would have been more beneficial to the progression of this legislation in this place if in the first instance it had been referred to a committee. It would then have probably come back at an appropriate time for us to resolve all the concerns and to deal with the drafting issues without having to work through them in this chamber in such a difficult manner. The opposition needs to look at that issue in future, rather than agreeing with the government when it says that a bill should not

be referred to a committee but instead be dealt with in this place. This bill is a very good example of legislation that should have been dealt with by a parliamentary committee, rather than dealt with by the Committee of the Whole in this chamber as the first port of call.

The opposition does support the bill, but with some caution. We do not support the CCC provisions in the bill, and I have explained why; we still do not have confidence in those clauses. I am still concerned about how this legislation will play out when it comes to fruition in October. The government and the relevant agencies obviously have a lot of work ahead of them. They will have to resolve the concerns of the various players involved in organising CHOGM. They will have to not only determine the secure areas, but also make sure that people living and working in the CBD, and those living in surrounding areas who need access to the CBD during the four-day period and the extended period before and after, have appropriate access and egress from the CBD. We do not want to get to that time and discover that things are not as they were put to us. I will be very concerned if we get to that time and find that large tracts of the city are shut down and people are excluded from areas. That is something we will be watching.

I should probably say to Hon Peter Collier, as he is the minister representing the Minister for Police in this place, that I hope somebody in cabinet sits this minister down and says to him, "Listen, you know we understand the importance of these types of bills. You know that if you are going to put through bills like these, you must make sure you've thought out all the issues and all the implications and must get the drafting right, otherwise it will take an extended period of time." We in the upper house are doing our job. We are raising the issues of relevance. We are trying to get the best legislation that we possibly can out of this place and we will continue to do that. It would make everybody's life so much easier, particularly those on the government side, if the police minister did his job and brought well-drafted legislation into both houses. That is something we can all look forward to. I hope he does not disappoint us.

HON GIZ WATSON (North Metropolitan) [8.50 pm]: I will say a few words at the third reading stage of the Commonwealth Heads of Government Meeting (Special Powers) Bill 2011. The Greens (WA) will not support the bill. Having gone through the lengthy process of scrutinising this piece of legislation, our concerns have not been addressed. That leaves us with no option other than to oppose the bill. The reasons we will oppose the bill include that the powers in this bill are disproportionate to the anticipated circumstances outlined through this process in the Legislative Council. As much as we can understand about what is anticipated and the argument put for why special powers are needed, the legislation has not been amended to address the Greens' concerns. For example, there is no assurance that security areas will be clearly delineated so that members of the public will know when they are in a security area, despite the fact that being in a security area can lead to a penalty of 12 months' imprisonment. The amendments we presented to insert a requirement that security areas be clearly identified were rejected by this house. That is very unfortunate.

This bill introduces significant new penalties that will apply to the Commonwealth Heads of Government Meeting. As Hon Kate Doust said, this is an unusual bill; it is about special powers. This bill could have equally had the words "extraordinary powers" or "exceptional powers" in its title. They are more than special; they are powers that would not normally be provided to police and other officers. It is worth commenting that in the more public debate about this legislation, including the need for it and the provisions that it brings in, both the Labor Party, the formal opposition, and the National Party have taken the position that they do not really like the provisions and have some concerns about them but that it is okay because it is for only a week! I find that a rather extraordinary position to take. They are either extraordinary powers, and we ought to be very mindful and cautious about introducing them, and very rigorous in deciding whether we need them, or they are not. They might apply for only three days, but they still might affect a considerable number of people within those three days, or a week, or however long this CHOGM period is, because we still do not know how long the CHOGM period is. That will be decided by regulation. That leaves very little opportunity for Parliament to debate that. We can simply accept or reject it.

I remain concerned that the coercive powers available under the Corruption and Crime Commission Act will be available in a new set of circumstances not contemplated by the original CCC legislation. It is a novel way to use CCC powers. I think it is exceedingly worrying. It indicates a "mission creep"—I think is the language used in these sorts of circumstances. Obviously I will not remind members again exactly how powerful those coercive powers are and how they trammel a range of principles of law, including procedural fairness and presumption of innocence; but apparently it is okay if we use them only for a week or in particular circumstances!

When enacted, this bill will enable people to be publicly named and shamed as excluded persons. That can happen without a person's knowledge and without any right of appeal on whether they want to be named and shamed. I assume most people do not want to be named and shamed as an excluded person for the purposes of a CHOGM special power. Even the names of juveniles can be published. Additional public officers will be sworn in and authorised to carry out a range of powers at the discretion of the Commissioner of Police. This range of

powers is to be finalised by regulation, or the Parliament will have limited powers to scrutinise what those powers will be. Even though we have had some reassurance on the record from the parliamentary secretary that these powers are to be very limited, that is fine and I appreciate the assurance that the parliamentary secretary has given but it does not detract from the fact that the bill says the Commissioner of Police can determine those powers by regulation.

The review of the operation and effectiveness of this act will be conducted by the same body that uses the additional powers, the exceptional powers and the special powers; that is, the police. There will be no independent review. It is on the record, by way of a response from the parliamentary secretary, that the Minister for Police, who will receive this review, can simply report to the Parliament by way of one sentence, saying, "I am happy with the review, and this is my report." The capacity of the Parliament to scrutinise the operation of this act is absolutely minimal. For all these reasons, we cannot support the bill that will give special powers to the police.

By the government's own admission, this bill is an exceptional bill designed to deal with an exceptional event—an event agreed to by the government. I am not even sure whether the government agreed to host the event. I am not quite sure who said, "Yes, thanks very much, we'd like to host CHOGM." The community was certainly not engaged in a conversation as to whether it would like to host CHOGM. I am sure most people did not even contemplate the fact that if we hosted CHOGM, we would have new laws to enable that to happen. All this has happened somewhere else; it has landed in Parliament and this is the bill that we are debating. As far as I followed the debate, it was just announced that Perth was going to host CHOGM and we were informed that special and very expensive policing would be required to host that event.

This is a very complex bill. It came to this place with 15 government amendments. That is quite an acknowledgement from the government that it needed to take significant changes on board. It has taken a significant amount of time to scrutinise this bill in this place. That is a consequence of bringing in a complex bill with a series of amendments and having the house deal with those amendments without the benefit of a report from the legislation committee. Such a bill used to be referred to the Standing Committee on Legislation. I had an exchange with Hon Norman Moore, the Leader of the House, about why I did not refer the bill to the Standing Committee on Legislation. I can answer that question. I did not refer it to the committee because I knew that there was no chance that it would go there. In light of Hon Norman Moore's comments, I will think again about referring bills to the Standing Committee on Legislation. I was on the Standing Committee on Legislation for 12 years; I was the deputy chairman for half that time. It does not matter who is in government as that standing committee does very good work in dealing with complex matters and providing advice to the house as to how we might debate a bill. It is obviously still up to the house what we accept and reject. Some of the complexities in bills relating to criminal matters in particular should be scrutinised by a standing committee of the Parliament. We have such a standing committee; it is called the Standing Committee on Legislation, and it is currently languishing without bills being referred to it. The Standing Committee on Legislation has the capacity to ensure that the debate in this place is not so protracted and complex that it requires us to adjourn and go away to sort out some words and come back, which is a very inefficient use of the time of the house and no doubt it not only frustrates the government in trying to get its program through, but also deprives the Parliament of the opinions, evidence and advice that can be given to a parliamentary committee by stakeholders and key parties. Members in this place will be aware of the Law Society's view on this bill because they might have either contacted that organisation directly or read its views in the media. We do not hear from any expert witnesses or get any community input if we do not use the standing committees of this place. Not referring certain legislation to a committee not only lengthens the debate but also reduces the evidence base on which we can make our decisions in this place. The function of the Legislative Council is to do a different job than is done in the other place. It is important that we are mindful that it is our responsibility, in my view, to be sure we have that sort of stakeholder and community input and access to expert evidence. The only way we can do that in any effective way is through tabling a report in this place of a standing committee of Parliament. In this case the appropriate standing committee would have been the Standing Committee on Legislation.

Debate in this place is much poorer for the lack of that and it takes much longer. It is ultimately the choice of the two political parties that have the numbers in this place to decide whether legislation is properly scrutinised by the appropriate committee of the house, as it has done for a significant period. That function has been well provided to ensure that debate is informed, succinct and manageable.

The advice I am offering before I finally sit down and say we still do not support the bill is that the government might want to check exactly how many hours were spent passing this bill and think again whether it might move or even indicate that it supports a referral of this sort of legislation to a standing committee for proper scrutiny. With those words, we oppose the bill.

Question put and a division taken with the following result —

Extract from *Hansard*
[COUNCIL — Wednesday, 22 June 2011]
p4600b-4604a

Hon Simon O'Brien; Deputy President; Hon Kate Doust; Hon Giz Watson

Ayes (26)

Hon Liz Behjat
Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Jim Chown
Hon Peter Collier
Hon Ed Dermer
Hon Kate Doust

Hon Wendy Duncan
Hon Phil Edman
Hon Sue Ellery
Hon Brian Ellis
Hon Jon Ford
Hon Philip Gardiner
Hon Nick Goiran

Hon Nigel Hallett
Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Helen Morton
Hon Simon O'Brien

Hon Ljiljanna Ravlich
Hon Sally Talbot
Hon Ken Travers
Hon Max Trenorden
Hon Ken Baston (*Teller*)

Noes (4)

Hon Lynn MacLaren

Hon Giz Watson

Hon Alison Xamon

Hon Robin Chapple (*Teller*)

Question thus passed.

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