TERRORISM (EXTRAORDINARY POWERS) AMENDMENT BILL 2015

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Section 3 amended —

The SPEAKER: The member for Midland has the call.

Mrs M.H. ROBERTS: Clause 4 reads —

> In section 3 insert in alphabetical order:
>
> > ***data*** includes any record, any computer program, and any part of a computer program, in a digital, electronic or magnetic form;

The explanatory memorandum states that data just goes in alphabetical order into section 3. Can we can have an explanation for the need to include the definition of "data", and whether that will, in some way, futureproof this legislation?

Mrs L.M. HARVEY: The definition of "data" has been included, and it is identical to the definition of data in section 57 of the Criminal Investigation Act. It is a matter of including that for consistency, and to ensure that the definition remains contemporary.

Clause put and passed.

Clause 5: Section 7 amended —

Mrs M.H. ROBERTS: Clause 5 amends section 7 by the insertion of "believe" in place of "suspect"; "suspect" was included in the original 2005 legislation. Section 7 relates to the Commissioner of Police having reasonable grounds to suspect, rather than believe, certain things. Can the minister explain the difference between that burden of proof around "suspect" versus "believe", and how that will affect a judge's determination?

Mrs L.M. HARVEY: Member, section 4 of the current act outlines what "reasonably suspects" means. It reads —

> For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she, acting in good faith, personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non existent), when judged objectively, are reasonable.

The difference between "suspect" and "believe" relates to the High Court ruling in George v Rockett (1990), which determined that suspicion and belief are different states of mind. With the member's indulgence, I will read the advice. It states —

> "Suspicion, as Lord Devlin said in *Hussien v. Chong Fook Kam* (63), "in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove'." The facts which can reasonably ground a suspicion may be quite insufficient to ground a belief, yet some factual basis for the suspicion must be shown. In *Queensland Bacon Pty. Ltd. v. Rees* (64), a question was raised as to whether a payee had reason to suspect that the payer, a debtor, "was unable to pay [its] debts as they became due" as that phrase was used in s.95(4) of the *Bankruptcy Act* 1924 … Kitto J said (65):
>
> > "A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to 'a slight opinion, but without sufficient evidence', as Chambers Dictionary expresses it. Consequently, a reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence. The notion which "reason to suspect' expresses in sub-s. (4) is, I think, of something which in all the circumstances would create in the mind of a reasonable person in the position of the payee an actual apprehension or fear that the situation of the payer is in actual fact that which the subsection describes—a mistrust of the payer's ability to pay his debts as they become due and of the effect which acceptance of the payment would have as between the payee and the other creditors."
>
> The object circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief, but that is not to say that the objective circumstances must establish on the balance of probabilities that the subject matter in fact occurred or exists: the assent of belief is given on more slender evidence that proof. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition and the grounds which can reasonably induce that inclination of the mind may, depending on the circumstances, leave something to surmise or conjecture."

Mrs M.H. ROBERTS: This clause will replace the word "believe" with the word "suspect", which I think is effectively a higher level. The minister referred in her quote to idle wondering, so maybe the belief is idle

wondering—something might be believed, without having much evidence or proof of it—whereas forming a suspicion presumably involves more than just random idle wondering or whatever. In a sense, we are making it more difficult; suspecting something is a higher level than just believing something. This relates to a commissioner's warrant. I wonder whether the minister could comment on that. Where did the impetus come from to make this change for the commissioner's warrant?

Mrs L.M. HARVEY: If we talk in general terms about the difference between believing and suspecting, suspecting is a lower threshold than holding a belief. To believe something is to have confidence in the truth, the existence or the reliability of a fact. It is to accept something as being true and to feel sure of the truth of it, whereas to suspect something, an idea or impression is needed of the existence or presence of the truth of something without certain proof. We are allowing the commissioner to apply for a warrant on grounds of reasonable suspicion, which means they have an idea or an impression of the existence or the presence of the truth of something without necessarily having certain proof, whereas a belief has a higher burden of proof of the truth and the existence of something in order to apply for the warrant.

Mrs M.H. ROBERTS: I understand that what the minister is saying is that suspecting is effectively a lower threshold, so what was the impetus for lowering this threshold? Why is the minister doing that?

Mrs L.M. HARVEY: The Lindt Chocolate Café siege is an example that we can point to. At the time of that siege occurring, it appeared as though—it was certainly suspected—that could be an act of terrorism, but until the facts unfolded, there was difficulty in forming a belief that that was the case. This change will lower the threshold and also make it consistent with other parts of the act. Allowing the commissioner to have reasonable grounds to suspect rather than reasonable grounds to believe is also consistent with the current degree of satisfaction required of a judge under section 26.

Mrs M.H. ROBERTS: The minister said in her second reading response that in, I think, 2010 an application was made to use the powers of this act, but in reality they were not proceeded to be used. Were the powers under this section or another section applied to be used?

Mrs L.M. HARVEY: I am advised that that was an application for a covert search warrant under part 3 of the act.

Mrs M.H. ROBERTS: The minister has referred to the Lindt cafe siege and said that that might be a difference between suspecting and believing, because arguably the Commissioner of Police in that state suspected that it could be a terrorism incident and in effect it turned out not to be. Does the New South Wales legislation use the word "suspect" or "believe"? Can the minister point to that and indicate whether or not its legislation has the word "suspect" and therefore enabled it or does it have the word "believe"?

Mrs L.M. HARVEY: They are two different things. Section 7 deals with commissioner's warrants and allows the commissioner to issue warrants that authorise police to exercise the additional powers prescribed under division 3 if he or she is satisfied that there are reasonable grounds to suspect that a terrorism act has been or is about to be committed, whether in or outside the state. It is not about applying for a covert search warrant, which is covered under part 3.

Mrs M.H. ROBERTS: I thank the minister. I was distracted by the minister using the Lindt cafe example as a reason for the impetus for changing the word "suspect" to "believe" in this section of the act. As the minister has correctly pointed out, this clause amends section 7 in division 2 of the Terrorism (Extraordinary Powers) Act 2005. Section 7(2) will state that the commissioner must not issue such a warrant unless he or she is satisfied there are reasonable grounds to suspect, as opposed to believe. Again I ask: why is the minister making this change for the commissioner's warrant? Has the term "believe" proved impractical in some way, is it based on what has happened in another jurisdiction, or is it just about wanting to lower the burden of proof that the commissioner needs to exercise?

Mrs L.M. HARVEY: It is required because of the difficulty of establishing the evidence and the facts when an incident occurs. This is around the commissioner's warrant and enabling the powers under the act to be exercised by police in managing the incident. At the time, forming a belief is a higher threshold test and would require a higher evidence requirement and establishment of fact. Obviously, when an incident unfolds, commissioner's warrants will be allowed to be issued on the suspicion that it may be an act of terrorism. I have just been given some advice. An example is the attack in Parliament in Ottawa, Canada. It was not clear whether or not it was a terrorist attack initially. Should an incident such as that occur here, and the commissioner forms a reasonable suspicion that it could be an act of terrorism, he can issue a warrant to allow the powers under this act to come into force for police to manage that incident. Forming a belief would require a higher establishment of the fact, which is not always possible as an incident unfolds.

Mrs M.H. ROBERTS: When the legislation was first brought to this place in 2005, the word "believe" was used, and that was clearly believed to be appropriate at the time. The minister has identified that when an

incident occurs, whether it is what happened at the Lindt cafe or what happened at the Parliament of Ottawa, sometimes in the immediacy of the situation, there is difficulty establishing the facts of what has occurred. I do not doubt that.

Is the minister aware of any incident in Australia in which a commissioner has not been able to issue a warrant because the burden of proof has been too high? In particular, is the minister aware of a case in Western Australia in which the commissioner would have liked to issue a warrant but did not because he did not think the case could meet the criteria of "suspect" as opposed to "believe"?

Mrs L.M. HARVEY: When police have been conducting their training exercises in responding to acts of terrorism and have been troubleshooting, they have established that problems could potentially arise from having to form a reasonable belief as opposed to a reasonable suspicion in allowing the commissioner to issue a warrant and exercise the powers under the act. Establishing a belief on reasonable grounds is a somewhat high threshold. We want to ensure that this legislation can be used effectively.

Mrs M.H. ROBERTS: In lowering the threshold, does the minister anticipate there will be any more or any fewer instances of the commissioner utilising a warrant? I suppose that is the point I am getting at. We are lowering the threshold. I think people in the community would be concerned about it because this request will not go before a court or before a judge to determine. The commissioner has to form his own reasonable suspicion or opinion that he has reasonable grounds to suspect. He can do that independently without reference to a court or any third party. Presumably, in the aftermath, those matters could be looked at, but I think people in the community might form the view that it should be that higher threshold of "belief"—that the commissioner should reasonably believe that it is a terrorist act—before he issues a commissioner's warrant. I wonder whether I can finally get some comment from the minister about what I believe will be the fears of some people in the community that this will make it easier for the commissioner to issue a warrant behind closed doors without any independent oversight.

Mrs L.M. HARVEY: A judge still has to approve the issuing of a commissioner's warrant. The commissioner applies to the court to approve the issuing of the warrant. It is not up to just the commissioner. Based on the past 10 years' use of this legislation and mirrored legislation in other jurisdictions, this is an exercise in restraint for police. To date, the powers have not been misused in any of our jurisdictions; they have been used appropriately. Allowing this change in the threshold in the application of a commissioner's warrant will allow the legislation to be more workable in our state should it ever be required.

Mrs M.H. ROBERTS: The final question I have on this clause is: it is my understanding that when what the minister referred to as mirror legislation was put in place in each state, the commissioner's warrant required reasonable grounds to believe. Can the minister advise whether this change is proposed in those mirror pieces of legislation?

Mrs L.M. HARVEY: I am advised that each jurisdiction has a different test for forming a belief or a suspicion, for both the commissioner's warrant and the application for a covert search warrant, which we will get to in part 3. Each jurisdiction is somewhat different. In the review of our legislation, which has unfolded over some time, we believe it is warranted for the commissioner to form a reasonable suspicion, as opposed to a reasonable belief, to ensure that should police need to manage an incident, they will have the ability to act quickly.

Mr J.R. QUIGLEY: I want to put a question to the minister, who gave an answer to the shadow minister that seemed to contradict what I said in my second reading contribution, and I think is wrong, but I will clarify it. The minister's answer was that the commissioner's warrant needs a judge's approval. That is not exactly right, is it? The commissioner's warrant now, grounded on suspicion, when a judge is not available, under section 7(3) of the act, cannot be issued without the approval of the judge, but if there is an urgent need to issue it and the judge cannot be contacted to request approval, the commissioner may issue it without such approval. That is the situation, is it not? A commissioner's warrant could be executed based on mere suspicion without the judge's approval. There are other safeguards in the act, which, given the report to the minister, I concede, but for clarification for the *Hansard*, it is true, is it not, that the commissioner can issue a warrant for up to 24 hours duration if the judge is not available?

Mrs L.M. HARVEY: Yes, member. I refer to the other parts of section 7, which I accept are not in the body of the amendment. Section 7(3) reads —

> The Commissioner must not issue such a warrant without the prior approval of a judge but, if there is an urgent need to issue it and a judge cannot be contacted to request approval, may issue it without such approval.

Mr J.R. Quigley: That's right.

Mrs L.M. HARVEY: It then goes on to say in subsection (4) —

If the Commissioner issues such a warrant without the prior approval of a judge, the warrant ceases to have effect if —

(a) a judge subsequently refuses to approve its issue; or

(b) a judge does not approve its issue within 24 hours after its issue,

whichever happens first

Mr J.R. QUIGLEY: Just for clarification, we were talking about the need for the opposition's support of this legislation for the purpose of facilitating prompt interdiction. The commissioner could suspect a terrorist act at three in the morning and, not being able to contact the judge immediately, issue a commissioner's warrant, which could then be executed at 3.10 in the morning on the commissioner's authorisation, but he would have to then go on to seek a judge's approval as soon as he could find one. There could be an execution of the warrant in that window prior to it coming before the judge. We do not oppose this but seek clarification.

Mrs L.M. HARVEY: WA Police and the judiciary have protocols in place around scenarios such as this. I am advised that an urgent duty judge is usually available after hours. In the issuing of the warrant, the commissioner would need to make a serious attempt to contact the urgent duty judge to approve it. It would not be appropriate for the commissioner to just issue the warrant and assume that the judge would be unavailable. In issuing the warrant, the commissioner would need to make a serious attempt to contact the urgent duty judge to approve the warrant. In the event that those attempts to contact the judge in line with the protocols are unsuccessful, the order could be in place until an urgent duty judge was available to approve it.

Mr J.R. QUIGLEY: Or it could be in place after the expiration of 24 hours, whichever came earlier.

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

Mr J.R. QUIGLEY: We accept that. May I ask a further question while I am on my feet, or does someone else have the call?

The SPEAKER: Seeing as you ask me so nicely, with pleasure!

Mr J.R. QUIGLEY: Thank you. I still have the four warnings from yesterday rattling in my skull, so I am doing it very nicely today, Mr Speaker!

I want to go back to the matter of suspicion. The minister may not be able to answer this, because it is has a factual basis. I want to apply suspicion to the Lindt cafe siege and what we know that has been reported in the media and was seen live on television, and what we know of the coroner's inquiry so far. In that siege there was some sort of Arabic scrawl on a black cloth, which others said was not an Islamic State of Iraq and Syria flag. From my recollection, there was no demand. I know that we are past this point, but I am bringing it back to suspicion in the clause before the chamber. Section 5(2) of the act, in defining a terrorist act, reads, in part —

(b) is done with the intention of advancing a political, religious or ideological cause; and

(c) is done with the intention of —

(i) coercing, or influencing by intimidation, the government of, or of a part of, any jurisdiction;

That is what the Commissioner of Police would have to have. He would have to have a reasonable suspicion that whoever was performing an act like that in a siege situation was doing it with specific intent to overthrow a government.

Mr P. Papalia: Where does it say that?

Mr J.R. QUIGLEY: Section 5(2) of the act begins —

In this Act ***terrorist act*** means an act that —

(a) is an act that falls within subsection (3) but not within subsection (4);

(b) is done with the intention of advancing a political, religious or ideological cause; and

(c) is done with the intention of —

(i) coercing —

Mr P. Papalia: He demanded a conversation with the Prime Minister.

Mr J.R. QUIGLEY: Perhaps I am asking for an opinion.

Mr P. Papalia interjected.

The SPEAKER: Nice and clear, because Hansard has to follow.

Mr J.R. QUIGLEY: I withdraw the question, because I am asking for an opinion on a factual basis, and that is unfair to the minister.

Mr P. PAPALIA: It is an interesting discussion as to whether or not the Lindt cafe siege met the definition. I suspect that it would. I would like to explore the advice that the minister received about WA Police's decision to propose lowering of the threshold from the commissioner being required to hold a belief to the commissioner being required to hold a suspicion. As I understand it from hearing earlier conversations, the advice the minister has is that this is based essentially on the gaming of the various scenarios by WA Police, determining that there was a potential for that belief threshold to represent a hurdle that the minister does not believe is in the interest of the public or the police in prosecuting such a situation. Is that correct?

Mrs L.M. HARVEY: It became apparent when the police were going through their exercises that there could be possibilities and potential scenarios in which that threshold of forming a belief would be too high a threshold to enable the commissioner's warrant to be issued in the interests of managing an incident, and in the interests of public safety. As I said, in Victoria, it is "suspect or believe", and other jurisdictions have different definitions. We have reviewed our own legislation and taken into consideration reviews from other jurisdictions and the review of the Lindt cafe incident, and adjusted our legislation by changing the threshold from belief to suspicion.

Mr P. PAPALIA: That is interesting. Noting that it has been 10 years since this act came into force in Western Australia, I am assuming that there have been at least significant annual exercises of the use of this sort of legislation in a terrorism scenario. We usually have at least one major counterterrorism exercise annually, and potentially many more, because in the case of the national anti-terror plan, there may have been major exercises here in which Western Australia Police was involved. Exactly how frequently, or how regularly was this hurdle, or potential problem, encountered in those exercises? I am not really of the view that the situation confronting the New South Wales police commissioner, for instance, was that problematic, were he or she required to determine that they held a belief, as opposed to a suspicion, that a terrorism incident was in progress. I am not actually convinced that the Lindt cafe siege is such a great example to justify lowering this threshold. I understand that the minister has said that Victoria, for instance, allows for a suspicion or a belief, so it enables a more liberal determination. If our amendment is based on mirroring another state or jurisdiction, that might be a reasonable argument. The minister has also indicated that other states do not necessarily have that lower threshold, so perhaps that is not a good argument. If it is based purely on our exercise experience, could the minister give some indication of the extent to which that lower threshold was seen as necessary, or was it just something that might have arisen as a potential hurdle? In the course of the 10 years of exercises, how frequently was a problem experienced with the necessity for the commissioner to hold a belief rather than a suspicion?

Mrs L.M. HARVEY: The state conducts exercises frequently. It is also involved in multijurisdictional exercises on managing suspected acts of terrorism, or incidents of that nature. Whenever there is an incident overseas, WA Police examines that incident to determine whether the rigour in our legislation is sufficient to allow police to respond in the way the community would expect. To give an example, going back to the Mumbai attacks, where a number of attacks occurred at the same time, it took quite some time to realise that they were connected and that they were acts of terrorism. To form a belief in those circumstances would be problematic in allowing the commissioner to apply for a warrant. Police will workshop incidents that have unfolded overseas and test that against our legislation. The advice we have had is that police believe that this legislation would be more effective and responsive if we changed that threshold from forming a reasonable belief to forming a reasonable suspicion.

Mr P. PAPALIA: Once again, I would probably dispute the example the minister has chosen. Mumbai was categorically a terrorism incident, and probably universally determined to be so by anyone watching the internet or the evening television news.

Mrs L.M. Harvey: Not at the outset when it first happened.

Mr P. PAPALIA: They were firing AK47s into public places.

The SPEAKER: One person at a time, please.

Mr P. PAPALIA: It is generally not the sort of thing that would be assumed to be a random act of crime. The extent of the devastation that played out in a very short time would in most reasonable people's minds have escalated that incident beyond being assumed to be just a criminal act. That aside, in light of the minister's observation that that is what WA police do—they see what happens internationally or in other jurisdictions, analyse that and determine whether the law is suitable in light of what was experienced in that jurisdiction—was a report prepared based on the Mumbai attack that justifies the lowering of the threshold?

Mrs L.M. HARVEY: No. As I said, as these incidents unfold in various different jurisdictions, the police here will workshop them about whether we would be prepared as first responders to respond in those various different scenarios. To use the member's example of Mumbai, where people were firing AK47s into a crowd, the Port Arthur incident occurred in Tasmania in which a shooter fired into a crowd, and it was difficult to ascertain how many shooters there were at that time. That was not an act of terrorism, but it was a similar scenario. Therefore, to use the two and assume it was an act of terrorism because someone was firing into a crowd, I think

lots of evidence from the United States and other countries shows that that is not necessarily an act of terrorism. However, legislation was used around the Lindt cafe siege incident because there was evidence of the Arabic flag in the window with the lone gunman demanding to speak to the Prime Minister, or whatever the circumstances were as they unfolded. That allowed the formation of a reasonable belief. In the absence of the flag, dependent on the circumstances, the commissioner may be able to apply for a warrant to allow the exercise of these powers on a reasonable suspicion in that instance. Every circumstance is different. We certainly have not suggested the lowering of the threshold from belief to suspicion on the basis of an individual incident. It is looking at an accumulation of what has occurred on the spectrum over the last 10 years, particularly in the last 12 to 18 months, in the way various different acts of terrorism have started to be plotted and perpetrated on various communities around the country. It is not in response to an individual incident that we are proposing this amendment; it is in response to the workshopping of a number of incidents and the belief of WA Police that this is an appropriate course to take.

Mr P. PAPALIA: I guess it is not that important that we pursue this too far, but I note that over the course of this debate the justification for changing the threshold has shifted a number of times. Initially, some reference was made that there may have been a problem with the Lindt cafe and the Commissioner of New South Wales Police Force making a determination that he held a belief there was a terrorist incident. That shifted from, as I understand it, to being—based on our workshop exercise—wash-ups and conclusions drawn from exercises that were conducted that determined that there might have been a potential for a problem, represented by the need for the commissioner to hold a belief. It has moved on to our analysis of other incidents around the world, variously, I am assuming, determining whether or not the Western Australian police force would have had difficulty acting if that threshold of belief was being imposed. I am not entirely convinced that there is much justification for this other than a desire to perhaps harmonise with jurisdictions such as Victoria, or to harmonise the legislation so that it contains the same requirement for a commissioner's warrant, as with other requirements outlined later in the legislation.

Essentially, the opposition will support the legislation. I do not think it will be opposing the amendment, but I am concerned. It is essential that we always apply a questioning focus on the police's justification for changes to legislation of this nature. It is easy to say that we held an exercise and we determined that there may have been a problem with the commissioner having to meet this threshold, so we are going to lower it. That is easy to do. I was not at the exercise. I have been at a lot of similar exercises; I have conducted some of those exercises and I have conducted the wash-ups and the gathering of lessons learned upon completion. However, it is easy to say as a justification to the opposition or to the minister, without the opposition having access to the debriefing material or the findings of any exercise and the reports of those exercises and their findings, that the police force might need it and that it might work. The problem is that over time if that is the only justification required of any agency such as the police to enact changes to laws, it erodes the safeguards put in place 10 years ago and today have not proved an impediment at all in Western Australia because we have not had to use them.

I would like to record my concern about that. I urge the government and whoever is the Minister for Police to always be as critical as possible of any justification that is provided by the police or other agencies that are trying to change such laws. It is very easy to say that we had a number of exercises and found that it could possibly have been, maybe, a problem. Unless there are examples, all it is is speculation and it is not even necessarily backed up by actual experience in the exercise. I am sure that a report would have been produced of any of these exercises as a consequence of any findings made during the exercise. I would hope that the minister has seen them; if she has not, I expect in the future that that is something that we could ask for.

Mrs L.M. HARVEY: In trying to illustrate the requirement for this by individual examples, I do not mean to imply that an individual example in and of itself is the reason for our proposing this change. It is the collective examples and collective experiences of police in all jurisdictions in Australia and New Zealand, and interaction that we have with our international counterparts, in unpicking various different acts of terrorism in other jurisdictions, and trying to then workshop those and create that scenario in our jurisdiction. That accumulated knowledge base has led to what I believe is a requirement to bring this threshold from forming a reasonable belief to forming a reasonable suspicion. The entire purpose of the review of the legislation was to identify any problems that might occur in allowing police to use the legislation and the powers that we are giving them in extraordinary circumstances should they be required not only appropriately, but also effectively. It is not based on any individual incident. I might use individual incidents to illustrate individual points, but it is based on an accumulated knowledge base over the 10 years this legislation has been in place, what has occurred and what has been learnt by other jurisdictions, and all that knowledge has been pulled together by our expertise in WA Police. The counterterrorism unit in WA Police believe this is required, and that is why we have brought it there—and I support that.

Mr P. Papalia: Is there any move by us to propose a Council of Australian Governments or any other appropriate ministerial level meetings for a harmonisation of this particular threshold of needing to only hold a

suspicion as opposed to a belief, because it sounds as though some of the other jurisdictions do not replicate what we have? Is there an attempt to try to achieve harmonisation?

Mrs L.M. HARVEY: It is up to each of the individual states to manage their legislation. Obviously we are all on different political cycles and we are all on different cycles with our legislation. The overarching commonwealth legislation gives a referral of powers to the states in certain circumstances, and we refer powers to the commonwealth in certain circumstances. The answer is yes; at the various COAG meetings that I attend there is a willingness from the states to try to harmonise the legislation. The difficulty that we have is that we are all on different timetables with our legislative priorities. The states have been trying to achieve that for many, many years. I doubt that we will achieve full harmonisation of all our legislation in these areas in my tenure as police minister but that is ultimately the goal that we are working towards.

Clause put and passed.

Clause 6: Section 14 amended —

Mrs M.H. ROBERTS: Clause 6 refers to target vehicles. It amends section 14 of the act, and states —

(1) In section 14(1)(b) delete "is" and insert:

is, or contains,

(2) In section 14(2):

(a) in paragraph (b) delete "search." and insert:

search;

The punctuation is slightly different in that case.

(b) after paragraph (b) insert:

(c) access and operate any device or equipment in the vehicle that holds or processes data.

I have a few questions. Basically, I think the explanatory memorandum suggests that a target vehicle might be contained within another vehicle such as a car within a truck. I seek some clarification from the minister. Would a ship also be a vehicle? If a car went into a ship, is that therefore covered by this clause as well? I also seek an explanation about what devices and equipment in a vehicle might hold or process data that needs to be accessed.

Mrs L.M. HARVEY: The definition of "vehicle" is in section 3 of the original act, which states —

> **vehicle** means any thing capable of transporting people or things by air, road, rail or water, and it does not matter how the thing is moved or propelled.

It covers a boat or a vessel. In the context of the amending clause 8, a car within a boat would fit the definition under this legislation.

Mrs M.H. ROBERTS: I also asked about the data issue. The minister has not responded to that.

Mrs L.M. HARVEY: We would need to go back to the definition of "data", which means any record, computer program or part thereof in any digital, electronic or magnetic forms. That would include any computers that were part of that vehicle—a GPS device, for example. It is anything that contains, records or stores data.

Mrs M.H. ROBERTS: I am just wondering whether the minister could explain what those things are in a vehicle that record data. Quite clearly, something like a GPS and whatever would. I have just forgotten the term for it but basically there are electronic devices within vehicles now that can tell us a lot about the vehicle, including not just where it has been via GPS. These are not devices that a person would be potentially using in the vehicle and accessing themselves, such as a mobile or some kind of inbuilt GPS. The recording capacity within the vehicle that a person would not be accessing can tell us what speed a vehicle is doing, not just where it has been but braking patterns and lots of different things. Is it that type of internal system? I understand that some vehicle manufacturers allow police to access that internal vehicle data, as it is called—I had forgotten the title for it—but other vehicle manufacturers effectively prohibit it and do not give police permission. I am wondering whether this clause overrides that. In order to access some of this so-called data, I understand that in some circumstances we might require the assistance of the vehicle manufacturer, whether that be Ford, BMW, Volvo or whatever. That information is not necessarily easily interrogated or accessed. We can understand why a vehicle manufacturer might effectively encode the information so that it can be downloaded or accessed only with its own equipment. If police are not able to access that equipment, this amendment might be in vain. I am just wondering whether the minister can provide us with any information on those issues.

Mrs L.M. HARVEY: This amendment is about what police officers can do at the scene with respect to vehicles that may be searched. It allows police officers to "enter and search the vehicle and any thing in or attached to it

for a thing connected with a terrorist act or for the target person or both". For the purposes of searching a vehicle under section 14(1), a police officer may do any or all of the following —

(a) stop and detain the vehicle for a reasonable period;

(b) move the vehicle to a place suitable to do the search;

(c) access and operate any device or equipment in the vehicle that holds or processes data.

By amending this section to insert paragraph (c), that would, by definition, allow police to access and operate anything to do with the vehicle operations system that may include the computer data that provides all the information about the vehicle, such as when it was last stopped, its speed and those sorts of things. This amendment basically allows the police to access and operate any device in the vehicle. If they require assistance, they can go to section 2 of schedule 1 of the act, which provides a detailed explanation of how police can receive assistance to exercise the powers that we are prescribing under the act.

Mrs M.H. ROBERTS: It is all very well to say that this amendment gives police permission to access and operate any device or equipment in the vehicle that holds or processes data. It is one thing to have access but it is another thing to have permission to operate. Just because the police have access and permission to operate does not mean they have the capacity to do so. That is essentially the point that I was getting at. It is not just a matter of professional training, for example, on how to access or operate certain devices or equipment within the car; the police need to be able to properly interrogate that data. This will need the support of the manufacturer of the vehicle, because only they can download that data and it cannot necessarily be done in other circumstances. My query is whether that has been covered in this clause. Recently I was listening to people talking about something similar in the context of road safety. Sometimes in a car crash, police want to access data from a vehicle to find out the causal factors for the car crash. I understand that some Australian jurisdictions have greater capacity than others to do that and there is equipment that can interrogate cars' electronic systems, but it cannot necessarily be done for all makes and models of cars. I am querying whether police will be able to effectively access the data and utilise it. It is one thing to have physical access to something and the permission to access something, but it is another to have the know-how to access something, when manufacturers, for their own reasons, choose to embed, for want of a different word, controls to access data and whatever. Manufacturers employ electronics experts and the like so that effectively they have sole access to that data, so without their systems or their equipment, police cannot effectively download that data. I understand that there is plenty of data that police will be able to access by utilising this provision. We have already referred to the GPS systems in phones or whatever. I am no expert in this area, but I can envisage circumstances in which there would be some utility in being able to download data from a car's internal computer. I know that police in some circumstances would like to be able to do that post car crashes, but they cannot necessarily do that and that is a lack of not only permission for access, but also cooperation from vehicle manufacturers, which are often based overseas and probably in the future will be exclusively based overseas.

Mrs L.M. HARVEY: The answer is that we have covered that in clause 16, which inserts section 28A "Order to provide access to data", which states —

(1) For the purpose of seizing a record or data, or exercising a power under a covert search warrant, an officer may order a person to provide any information or assistance that is reasonable and necessary to enable the officer to seize the record or data or exercise the power.

(2) An order under subsection (1) may be given to the person from whom the record or data may be seized; or an employee (whether under a contract of service or a contract for services) of that person, if an officer reasonably suspects that the person knows how to gain access to or operate any such device or equipment.

Proposed subsection (3) goes into penalties for not complying with that offence and subsection (4) outlines that it is not a defence to a charge under subsection (3) that the information that becomes available under the access order would or may incriminate the accused. We have covered that under clause 16.

Mrs M.H. ROBERTS: My question here relates to what the minister has not acknowledged; that is, the persons who may be subject to an order may well be overseas. I wonder whether the minister is seriously going to make those orders to provide that access on, for example, BMW in Germany or another car company in Japan or whether an order will be made only if someone is in WA or Australia.

Mrs L.M. HARVEY: Proposed section 14 gives a police officer the power to "access and operate any device or equipment in the vehicle that holds or processes data". We do not have interjurisdictional powers, so we would not be able to compel the owner, for example, of BMW in Germany to comply but we would seek their

voluntary assistance in accessing the data that was seized from the vehicle that was suspected of involvement in an act of terrorism.

Mrs M.H. ROBERTS: I will close off on this by pointing out to the minister that policing jurisdictions in Australia have sought the voluntary assistance of car companies based overseas in investigations into traffic crashes but those companies have denied them access, which is why I raised the issue. It is an unfortunate circumstance that any car company that values its reputation would deny access to that crash data; however, it seems that they put the privacy of their client, the person who has purchased their vehicle, at a higher level than providing information that might indicate culpability in a traffic crash. I anticipate that it would be highly unlikely for this issue to arise if there were a serious incident of terrorism. I think the opprobrium that would flow to the company not providing that access would be high. We are very much in uncharted waters in that scenario. I highlight this because I recently heard from a police officer in another jurisdiction that they had difficulties accessing data from vehicles in determining matters connected to road crashes. Vehicles these days collect a phenomenal amount of information that can be accessed and effectively decoded by the manufacturer's equipment. I am happy enough to move on from this clause, but I am not reassured and maybe we can look to that in the future.

Mrs L.M. HARVEY: I concur with the member's assessment that if an international car company refused to provide assistance to police to access information that may be contained in a vehicle that could be pertinent to an act of terrorism, there would be substantial international fallout for their reputation, but there are opportunities for us to work with our federal counterparts to try to gain the support of some of those international car companies to translate the data contained in their vehicles' storage system should it be required to prove or establish evidence in an act of terrorism. But this is not about car crashes. I understand exactly what the member said. For the benefit of members, a lot of motor vehicle companies hold onto their data. They encrypt the data that they collect from their vehicles and they are not keen to release that data—not all of them, but some of them—to police in the event that it might uncover a fatal flaw in their engineering or in the vehicle's manufacturing process, which would lead to undue fallout for them with respect to sales of that vehicle. But that is not connected to acts of terrorism and the provision of information that may help police uncover how an act of terrorism has unfolded and who might be responsible for that. We would be reliant on their goodwill and their willingness to maintain their international reputations by providing that information for the purposes of this bill.

Mr J.R. QUIGLEY: The minister explained to the shadow Minister for Police that under proposed section 14(2)(c) police can operate any equipment within the vehicle. Can the minister tell me the protocols on that? There was a very controversial hooning case involving police accessing electronic equipment in, I think, a Lamborghini, owned by a dentist. I think the Lamborghini was in for a service at the time a mechanic drove it at excessive speed. On that occasion, investigating officers accessed the electronic equipment. That was followed by a long and controversial dispute as to the restoration of the electronic equipment. Could the minister tell us something about police protocols at the moment on accessing the electronic equipment of a vehicle? Bearing in mind that under this legislation the commissioner will need a mere suspicion that there is a terrorist act, on which basis it will go to a judge, I assume, to get a warrant, the interception will be done and the electronic box will be accessed by police. I understand from that preceding case that because the electronic box was not accessed by the makers of the vehicle—Lamborghini—over $100 000 or $200 000 worth of damage was done to the vehicle and it remained unserviceable for a considerable length of time. Could the minister tell us the protocols for restoring the vehicle to the as-is position after the search of the electronic equipment?

Mrs L.M. HARVEY: This is with respect to the commissioner forming a reasonable suspicion that the vehicle may be involved in an act of terrorism or an incident. Section 14(2) of the Terrorism (Extraordinary Powers) Act 2005 states —

> (2) For the purposes of searching a vehicle under subsection (1), a police officer may do any or all of the following —
>
> (a) stop and detain the vehicle for a reasonable period;
>
> (b) move the vehicle to a place suitable to do the search.

Clause 6 inserts —

> (c) access and operate any device or equipment in the vehicle that holds or processes data.

Police can move the vehicle.

Mr J.R. Quigley: I accept that. That happened in the previous case, but in the process great damage was done and a huge dispute arose between the owner and the police department. I was just wondering what the protocols are for the restoration of the property.

Mrs L.M. HARVEY: That did become a civil matter, which is what I predict would happen if there were an abuse of process in these circumstances. Section 44(2)(e) of the Criminal Investigation Act covers police behaviour around executing a search warrant and police officers' ancillary powers, and outlines the way that police need to behave when going about their duties. There are checks and balances across the board to ensure that police officers act appropriately when they are performing their duties. With respect to police officers seizing or moving a vehicle that is suspected to be involved in an act of terrorism, I would expect that police officers would behave responsibly. The Lamborghini incident was an unfortunate and rare event.

Mr J.R. QUIGLEY: I do not know that it is rare—that it was a Lamborghini was exceptional. My wife happened to acquire a second-hand Discovery that has electronic equipment in it, which I dare not go near. I do not know that it is an exceptional event. I would expect that police are accessing data because they might want to find out whether the vehicle moved between two points or was capable of achieving a speed. We accept that even in perhaps the Lamborghini case, police acted responsibly. I am not suggesting they did not act responsibly. But a responsible search of an electronic data box can nonetheless result in damage, which needs to be repaired to restore the vehicle to its previous operating condition. Bear in mind that this is all being done on mere suspicion, and it might turn out that it is not a terrorist act or it is not a terrorist's vehicle. I am concerned for the public about the protocols police now have in place and whether they undertake to restore vehicles to their previous operating condition if they have accessed this electronic box.

Mrs L.M. HARVEY: The answer is yes. Police often, in fact regularly, process claims from people who have had searches executed on their properties for the repair of damage caused as a consequence of the search. When police access data from a motor vehicle, it is generally an electronic download; it is not necessarily the removal of a component part from under the dashboard. There is usually a way for police to access that information by way of the various access points to the computer systems that operate the vehicle. However, police routinely pay for the repair of damage to house doors and windows, and vehicles that have been damaged as a consequence of a search. We do not envisage there would be any other scenario that would operate under this legislation; if something is damaged, it is returned after its evidential value has been established or disestablished and then the owner of that vehicle can apply for repairs to be done, which WA Police would cover, provided it is a reasonable request.

Mrs M.H. ROBERTS: I want to briefly provide some clarity for people who might be following the debate on this clause. One of the reasons this bill is being updated is that technology has moved on. What people understood to be a computer device 10 years ago when the legislation was first brought to this place is very different to what it is understood to be these days, and the use of smart phones, iPads and other tablet devices was not as ubiquitous as it is now. Primarily because of my interest in road safety, I am probably more aware than the average person of the electronic data that is now stored by vehicles. There is now effectively a black box for cars, which has real computing capacity. Most vehicles produced since probably the turn of this century have some form of electronic black box in them, including event data recorders—EDRs. There are groups that provide information about EDRs and that claim they can download from the event data recorders in some vehicles. In Europe and America various people are moving on the basis of privacy and contemplating who can access this. There is an old saying that information is power, and an amazing array of information is collected by what I will refer to for now as vehicle black boxes. Modern cars have sensors in various areas that sense things all the time, including information about the activation of anti-lock braking systems, control management, climate control and airbag deployment. It is not confined to speed matters, but also how the stereo and sound equipment is being deployed, and any malfunctions—all kinds of things are recorded. A vehicle's engine used to be very much a mechanical thing; it is now very much an electronic thing. We now have computer diagnostics to diagnose what needs to be done to maintain one's vehicle. I wanted to provide that clarification, and I have only scraped the surface. I am not absolutely au fait with all the terms and all the data that can possibly be recorded, but people who know more about computing and electronics than I do and who follow this cutting-edge technology will appreciate that an amazing array of material can be used, on everything from one's driving habits to data collected at the time of impact. Information of potential commercial benefit can also be collected by the manufacturer of the vehicle that one drives. The question then arises about who has access to that data. Today is *Back to the Future* day, and it is a brave new world in terms of data collection. Plenty will happen in the next 10 years that we cannot even contemplate today, and hopefully we can come as close as possible to covering all those things.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Section 16 amended —

Mrs M.H. ROBERTS: Clause 8 amends section 16 and it provides for seizing things found. Proposed section 16(3) reads —

> If a thing is seized under this section, a police officer may access and operate any device or equipment in the thing that holds or processes data.

I am seeking some clarification because the Terrorism (Extraordinary Powers) Amendment Bill 2015 makes reference to seizing things found. I am wondering whether, in seizing it, there is the capacity to retain it; and, if so, for what period can it be retained? My recollection is that that is covered in another part of the bill, but I am wondering what occurs with seizure, what obligations there are to return anything seized, whether there is a time frame within which seized things need to be returned, and how long they can be held for.

Mrs L.M. HARVEY: Schedule 1 of the Terrorism (Extraordinary Powers) Act 2005 covers this, under clause 6, "Seizing things, ancillary powers for"; clause 7, "Seizing records, ancillary powers for"; and clause 8, "Returning seized things", which reads —

> A police officer who seizes a thing under this Act must return it to the person who owned it, or had lawful possession of it, when it was seized if the officer is satisfied that —
>
> (a) the thing does not need to be retained as evidence; and
>
> (b) it would be lawful for the person to possess the thing.

There is no time frame on that; the onus is on police to return that seized thing once it has been determined that it does not need to be retained as evidence.

Clause put and passed.

Clause 9: Section 17 amended —

Mrs M.H. ROBERTS: Clause 9 amends section 17 by deleting "Territory" and inserting "Territory; or" and inserts after section 17(1)(b) —

> (c) a sworn employee of the New Zealand Police; or
>
> (d) a law enforcement officer of a foreign jurisdiction prescribed for the purposes of this subsection.

Firstly, I am wondering whether the minister can give us some advice about the utility of including New Zealand Police. Secondly, can the minister detail how and where the foreign jurisdictions will be prescribed, and what is included under the term "law enforcement officer"?

Mrs L.M. HARVEY: In 2012, New Zealand joined Australia in the Australia–New Zealand Counter-Terrorism Committee, so New Zealand is part of our process in working through how we respond as a region to acts of terrorism. This amendment allows the commissioner to appoint sworn employees of New Zealand Police as special officers for the purposes of this legislation. Also, if we require the cooperation of, or to work with, law enforcement officers from other jurisdictions, this will allow us to appoint them and allow them to work with us, should it be required, in response to an incident of terrorism.

Mrs M.H. ROBERTS: Thank you, minister. Is a "law enforcement officer" more than a police officer? Can the minister explain what is included?

Mrs L.M. HARVEY: As an example, American Federal Bureau of Investigation agents are considered agents, not police officers, so it would include people such as that.

Mrs M.H. ROBERTS: Can the minister also explain whether that would include an unsworn officer or an auxiliary officer? Can a parking inspector potentially be a law enforcement officer?

Mrs L.M. HARVEY: This provision allows the commissioner to appoint a special officer for the purposes of this act. "A law enforcement officer" is a broad term that covers those officers who may be involved in law enforcement but are not sworn police officers. It would be highly unlikely that a parking inspector would be involved in interrogating acts of terrorism. This is really about working with those law enforcement officers, whether they be a public servant, as defined under our terminology, or some other such employee of another jurisdiction. If they are involved in law enforcement and WA Police requires their assistance in responding to an act of terrorism, this provision allows the commissioner to appoint them as special officers for the purposes of the act. In part 2, division 4 of the Terrorism (Extraordinary Powers) Act 2005, section 17(2) covers special officers—this is not contained in the amending legislation—and states —

> The Commissioner must not make an appointment under subsection (1) unless he or she is of the opinion that the appointment is necessary for the more effective exercise of the powers that may be exercised under a Commissioner's warrant.

Mrs M.H. ROBERTS: Finally, can I have some clarity on whether accompanying regulations will be provided for the jurisdiction prescribed for the purposes of this subsection? Presumably, there will be a limited list of prescribed jurisdictions, so where will that list be provided or prescribed?

Mrs L.M. HARVEY: This provision allows for prescribing of the regulations, but at present there is no immediate requirement to make those regulations. This gives us an ability to make those regulations in the future if required, but we do not anticipate having to do that and we will not prescribe regulations at this time.

Mrs M.H. ROBERTS: Let us say, for example, that in January the Commissioner of Police wants to engage an officer of a foreign jurisdiction. Because it has not been prescribed, does it mean that it will not be able to happen?

Mrs L.M. HARVEY: No, they can be appointed as a special constable.

Mrs M.H. ROBERTS: Would you or would you not use proposed section 17(1)(b) and then proposed section 17(1)(d)? Proposed section 17(1)(d) states —

> a law enforcement officer of a foreign jurisdiction prescribed for the purposes of this subsection.

If they are not prescribed for the purposes of this subsection, we are not using this provision. Is the minister suggesting that the commissioner can appoint someone as a special constable using other powers or would they use this power?

Mrs L.M. HARVEY: The first thing is that we cannot prescribe regulations until the act has been passed. If we believe there is a requirement to appoint a law enforcement officer from another jurisdiction as a special officer for the purposes of the act, we would make those regulations. However, if there is a more urgent requirement to appoint somebody, the commissioner has the ability under the Police Act to appoint people as special constables in certain circumstances.

Mrs M.H. ROBERTS: Under the Police Act, can the Minister for Police appoint anyone other than an Australian or New Zealand citizen as a special constable in our state?

Mrs L.M. HARVEY: No, the minister does not appoint; the commissioner appoints.

Mrs M.H. ROBERTS: I may have used the wrong word in my rush. Under the Police Act, is the commissioner able to appoint a special constable to the Western Australian police force, as it is described in the Police Act, from a jurisdiction other than Australia or New Zealand; and, if so, from what other jurisdictions could he appoint a special constable?

Mrs L.M. HARVEY: Section 35 of the Police Act says "any person" by definition. It does not limit by jurisdiction the ability to exercise those powers.

Mrs M.H. ROBERTS: I am not going to debate that matter with the minister now. I know the minister has had some preliminary advice on the matter, so I ask that the minister consider getting further advice, and if the advice that she has provided to me just now is not correct, that she correct the record.

Mr J.R. QUIGLEY: When the minister says "any person", are we talking about that in its widest sense? For example, if during the interdiction of a terrorist cell that involved aliens, including, by way of example, Syrians who had entered this country, the commissioner wanted to utilise for the purpose of an investigation a person who was neither a resident of the country nor a member of a foreign law enforcement authority, could he take a person such as a Syrian who had come into the country and appoint him under the legislation to exercise the powers under this extraordinarily powerful legislation?

Mrs L.M. HARVEY: Not just anyone can be appointed for the purposes of this Terrorism (Extraordinary Powers) Amendment Bill. The appointment needs to be a law enforcement officer of a foreign jurisdiction prescribed for the purposes of the subsection. As I stated earlier, section 17(2) of the original act states —

> The Commissioner must not make an appointment under subsection (1) unless he or she is of the opinion that the appointment is necessary for the more effective exercise of the powers that may be exercised under a Commissioner's warrant.

In no way, shape or form does this give the commissioner carte blanche to appoint anybody as a special officer. There are conditions and requirements, and it needs to be a law enforcement officer of a foreign jurisdiction.

Mr J.R. QUIGLEY: I was just asking about that because of the given answer before that they could appoint any person. Section 17 of the act is titled, in part, "Appointing police officers of other jurisdictions", so as long as the appointee is a police officer from any jurisdiction in the world, they can be appointed.

Mrs L.M. HARVEY: This provision allows the commissioner to appoint as a special officer, a law enforcement officer of a foreign jurisdiction prescribed for the purposes of this subsection, so that is by regulation. As I said, it is in the context of the execution and application of a commissioner's warrant.

Mr J.R. QUIGLEY: Yes, but as I understood the minister's earlier answer, as there are no regulations drafted, if something happened before the drafting and those regulations were laid on the table and during that lengthy process to promulgate a regulation, the commissioner could always rely on section 35 of the Police Act. I am not

directing the question specifically at this provision but to section 35 of the Police Act, which I do not have in front of me. Is there a similar caveat that, under section 35 of the Police Act, any person appointed as a special constable needs to be a law enforcement officer of another country in another jurisdiction, or is it available to the commissioner under section 35 of the Police Act, which the minister said is the section that would be used until—if ever—regulations were promulgated here. Is it any person? What is the caveat on the appointment of those special constables under section 35?

Mrs L.M. HARVEY: That would be an intelligence-led decision. As I have said, we do not see any need to prescribe law enforcement officers from other jurisdictions at this point. Our inclusion of them to be prescribed by way of regulation is there should it be required at a future point. In the interim, section 35 of the Police Act allows the appointment of special constables. I will seek some further clarification for the member in the third reading debate to speak to what the requirements are in the exercise of section 35 under the Police Act.

Clause put and passed.

Clause 10: Section 20 amended —

Mrs M.H. ROBERTS: This amendment is allegedly the result of a court case in New South Wales that occurred since the 2005 act was put in place. There is a reference in the explanatory memorandum to the decision of Kirk v Industrial Court (NSW) [2010]. Can the minister please explain to the house why that decision affected what clause 10 proposes?

Mrs L.M. HARVEY: The essence of the outcome of the decision of Kirk v Industrial Relations Commission of New South Wales and WorkCover New South Wales in 2010 is that the state Parliament cannot exclude judicial review for jurisdictional error. A state Supreme Court has the ability to review decisions. It would infringe on section 73(ii) of the commonwealth Constitution to exclude the ability for judicial review of any state decision with respect to a jurisdictional error. There was a provision in the state legislation that sought to exclude judicial review via the state Supreme Court, which has—by that High Court decision—been declared invalid. This is an amendment to the existing legislation to include the ability to ensure we do not limit the ability for judicial review for a jurisdictional error.

Mrs M.H. ROBERTS: Is the import of this clause that if there is a jurisdictional error, there will be recourse to the Supreme Court with this amendment to the act?

Mrs L.M. HARVEY: Should an entity choose to take a decision to the Supreme Court for review, the effect of this clause is that there is now no limit to the ability for the state Supreme Court to review that decision in the event of a jurisdictional error. This provision will be put in place for us to meet the requirements of the Constitution whereby the state Supreme Court retains its power to provide relief in the event of a jurisdictional error by specialist state courts. A state law that purports to prevent that review is unconstitutional and therefore invalid. The High Court has confirmed that state legislation cannot remove or diminish the state's Supreme Court's powers. It cannot limit the Supreme Court's ability to review specialist state courts. In the event of a jurisdictional error, there is the ability to apply to the Supreme Court for a judicial review of a decision.

Mrs M.H. ROBERTS: Can the minister give us any examples of entities that would have standing to seek such a review in the Supreme Court? Is it limited in any way? Who would the likely entities be?

Mrs L.M. HARVEY: That would be an individual or an entity that had been subject to a commissioner's warrant that was issued under this legislation. If they took exception to the decision to issue a commissioner's warrant, they have an ability to appeal to the Supreme Court for a review.

Clause put and passed.

Clause 11: Section 22 amended —

Mrs M.H. ROBERTS: Part 3 of the Terrorism (Extraordinary Powers) Act 2005 is headed "Covert search warrants". There are a significant number of amendments in clause 11. The clause inserts, in alphabetical order, the two new definitions of "Commonwealth terrorist offence" and "target vehicle" for the purpose of covert search warrants. The clause states —

> **Commonwealth terrorist offence** means an offence set out in section 23(2)(b) or (c);
>
> **target vehicle**, in relation to a covert search warrant, means a vehicle that is specified to be searched under the warrant.

Why do these additional definitions need to be recorded? Have there been any instances in which covering these definitions would have assisted in any Australian jurisdiction?

Mrs L.M. HARVEY: These definitions are here as a result of the changes to the definitions in the commonwealth legislation. They have been added in.

Mrs M.H. ROBERTS: The clause states that a commonwealth terrorist offence means an offence set out in section 23(2)(b) or (c). By that, I am assuming that we are looking at amending section 23 of the Terrorism (Extraordinary Powers) Act 2005. As the minister points out, some of those provisions are offences under the commonwealth Criminal Code Act 1995. For example, the proposed amendment to section 23(2)(b) states that —

> (b) a person has committed an offence under *The Criminal Code* section 102.3 set out in the Schedule to the *Criminal Code Act 1995* (Commonwealth).

I wonder what those commonwealth offences are which are now being included and which were not previously included.

Mrs L.M. HARVEY: Section 80.2C of the commonwealth Criminal Code Act 1995 states —

> Advocating terrorism
>
> (1) A person commits an offence if:
>
> (a) the person advocates:
>
> (i) the doing of a terrorist act; or
>
> (ii) the commission of a terrorism offence referred to in subsection (2); and
>
> (b) the person engages in that conduct reckless as to whether another person will:

Debate interrupted, pursuant to standing orders.

[Continued on page 7738.]