

**CRIMINAL INVESTIGATION (COVERT POWERS) BILL 2011**

*Council's Amendments — Consideration in Detail*

The following amendments made by the Council now considered —

No 1

Page 2, after line 14 — To insert —

**authorising officer**, for a law enforcement agency, means —

- (a) in relation to the Police Force or the fisheries department — the Commissioner of Police;
- (b) in relation to the Australian Crime Commission — the Chief Executive Officer of the Australian Crime Commission;

No 2

Page 2, line 15 — To delete the line and insert —

**chief officer**, of a law enforcement agency, means —

No 3

Page 5, after line 28 — To insert —

**Corruption and Crime Commission** means the Corruption and Crime Commission established under the *Corruption and Crime Commission Act 2003*;

No 4

Page 6, lines 12 to 14 — To delete the lines.

No 5

Page 6, lines 26 and 27 — To delete the lines and insert —

- (b) an offence not covered by paragraph (a) that is prescribed for the purposes of this definition, being an offence under any of the following Acts —
  - (i) the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*;
  - (ii) *The Criminal Code*;
  - (iii) the *Firearms Act 1973*;
  - (iv) the *Fish Resources Management Act 1994*;
  - (v) the *Misuse of Drugs Act 1981*;
  - (vi) the *Prostitution Act 2000*;
  - (vii) the *Weapons Act 1999*;

No 6

Page 8, line 19 — To delete “chief officer of” and insert —  
authorising officer for

No 7

Page 9, line 2 — To delete “chief” and insert —  
authorising

No 8

Page 9, line 14 — To delete “chief” and insert —  
authorising

No 9

Page 9, line 21 — To delete “chief” and insert —  
authorising

No 10

Page 9, line 23 — To delete “chief” and insert —  
authorising

No 11

Page 9, line 27 — To delete “chief” and insert —  
authorising

No 12

Page 10, line 4 — To delete “chief” and insert —  
authorising

No 13

Page 10, line 10 — To delete “chief” and insert —  
authorising

No 14

Page 10, line 33 — To insert after “have” —  
been

No 15

Page 11, line 11 — To delete “chief” and insert —  
authorising

No 16

Page 11, line 15 — To delete “chief” and insert —  
authorising

No 17

Page 11, line 20 — To delete “chief” and insert —  
authorising

No 18

Page 11, line 27 — To delete “chief” and insert —  
authorising

No 19

Page 12, line 12 — To delete “chief” and insert —  
authorising

No 20

Page 12, line 23 — To delete “chief” and insert —  
authorising

No 21

Page 12, line 27 — To delete “chief” and insert —  
authorising

No 22

Page 13, line 18 — To delete “be” and insert —  
be, or is likely to be,

No 23

Page 14, lines 28 to 30 — To delete the lines and insert —

(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.

No 24

Page 15, line 6 — To delete “chief” and insert —  
authorising

No 25

Page 15, line 7 — To delete “chief” and insert —

**Extract from *Hansard***

[ASSEMBLY — Thursday, 15 November 2012]

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authorising

No 26

Page 15, line 11 — To delete “chief” and insert —  
authorising

No 27

Page 15, line 16 — To delete “chief” and insert —  
authorising

No 28

Page 16, line 4 — To delete “chief” and insert —  
authorising

No 29

Page 16, line 30 — To delete “chief” and insert —  
authorising

No 30

Page 17, line 5 — To delete “chief” and insert —  
authorising

No 31

Page 17, line 7 — To delete “chief” and insert —  
authorising

No 32

Page 17, line 11 — To delete “chief” and insert —  
authorising

No 33

Page 17, line 15 — To delete “chief” and insert —  
authorising

No 34

Page 17, line 24 — To delete “chief” and insert —  
authorising

No 35

Page 18, line 11 — To delete “chief” and insert —  
authorising

No 36

Page 19, lines 16 to 18 — To delete the lines and insert —

(6) The authorising officer must, as soon as practicable after making an urgent variation of authority, make a record in writing of the particulars referred to in subsection (5) relating to the variation of authority.

No 37

Page 19, line 20 — To delete “chief” and insert —  
authorising

No 38

Page 19, line 23 — To delete “chief” and insert —  
authorising

No 39

Page 20, line 17 — To delete “jurisdictions specified in the authority; or” and insert —  
jurisdictions; or

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No 40

Page 20, lines 18 and 19 — To delete “jurisdictions specified in the authority,” and insert —  
jurisdictions,

No 41

Page 21, line 7 — To insert after “hours” —  
(or any longer period that the authorising officer may, in exceptional circumstances, allow)

No 42

Page 21, line 8 — To delete “chief” and insert —  
authorising

No 43

Page 21, line 11 — To delete “chief” and insert —  
authorising

No 44

Page 21, line 12 — To delete “chief” and insert —  
authorising

No 45

Page 21, line 14 — To delete “chief” and insert —  
authorising

No 46

Page 21, line 17 — To delete “chief” and insert —  
authorising

No 47

Page 21, line 22 — To delete “chief” and insert —  
authorising

No 48

Page 22, line 30 — To delete “chief” and insert —  
authorising

No 49

Page 23, line 3 — To delete “A chief” and insert —  
An authorising

No 50

Page 23, line 4 — To delete “Parliamentary Commissioner” and insert —  
Corruption and Crime Commission

No 51

Page 23, line 10 — To delete “Parliamentary Commissioner” and insert —  
Corruption and Crime Commission

No 52

Page 23, line 10 — To delete “chief” and insert —  
authorising

No 53

Page 23, line 12 — To delete “Parliamentary Commissioner’s” and insert —  
Corruption and Crime Commission’s

No 54

Page 26, line 1 — To delete “chief officer of” and insert —  
authorising officer for

No 55

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Page 26, line 8 — To delete “chief” and insert —  
authorising

No 56

Page 28, lines 26 and 27 — To delete “an authorised operation” and insert —  
a controlled operation for which an authority is or was in force

No 57

Page 29, after line 11 — To insert —

- (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; or

No 58

Page 30, after line 8 — To insert —

- (g) details (to the extent known) of any loss of or serious damage to property, or any personal injuries, occurring as an indirect result of the operation;
- (h) information as to whether —
  - (i) in the course of the operation, any participant engaged in unlawful conduct (other than controlled conduct that the participant was authorised to engage in for the purposes of the operation); and
  - (ii) any unlawful conduct (other than controlled conduct) was engaged in during the operation; and
  - (iii) any person is, because of section 31, not criminally responsible for ancillary conduct (as defined in that section); and
  - (iv) any variations were made to an authority for the operation; and
  - (v) any of those variations were to extend the period of validity of the authority; and
  - (vi) any retrospective authority was granted in respect of the operation; and
  - (vii) any urgent authority was granted in respect of the operation; and
  - (viii) any conditions of an authority for the operation were breached.

No 59

Page 30, line 12 — To delete “Parliamentary Commissioner” and insert —  
Corruption and Crime Commission

No 60

Page 30, line 18 — To delete “chief officer,” and insert —  
authorising officer for the agency,

No 61

Page 30, line 20 — To delete “chief officer,” and insert —  
authorising officer for the agency,

No 62

Page 30, line 24 — To delete “chief officer; and” and insert —  
authorising officer for the agency; and

No 63

Page 30, lines 25 and 26 — To delete “chief officer; and” and insert —  
authorising officer for the agency; and

No 64

Page 30, line 29 — To delete “chief officer,” and insert —  
authorising officer for the agency,

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No 65

Page 31, line 11 — To delete “chief officer” and insert —  
authorising officer for the agency

No 66

Page 31, line 16 — To delete “Parliamentary Commissioner” and insert —  
Corruption and Crime Commission

No 67

Page 31, line 31 — To delete “Parliamentary Commissioner” and insert —  
Corruption and Crime Commission

No 68

Page 32, lines 14 to 16 — To delete the lines and insert —

(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).

No 69

Page 32, lines 22 and 23 — To delete “Parliamentary Commissioner” and insert —  
Corruption and Crime Commission

No 70

Page 33, lines 10 and 11 — To delete “chief officer;” and insert —  
authorising officer for the agency;

No 71

Page 35, line 20 — To delete “Parliamentary Commissioner” and insert —  
Corruption and Crime Commission

No 72

Page 35, lines 25 to 28 — To delete the lines and insert —

(2) For the purposes of an inspection under this section, the Corruption and Crime Commission —

- (a) after notifying the chief officer of the law enforcement agency, may enter at any reasonable time premises occupied by the agency; and
- (b) is entitled to have full and free access at all reasonable times to all records of the law enforcement agency that are relevant to the inspection; and
- (c) may require a person employed or engaged in the law enforcement agency to give the Corruption and Crime Commission any information that the Corruption and Crime Commission considers necessary, being information that is in the person’s possession, or to which the person has access, and that is relevant to the inspection.

(2A) 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.

No 73

Page 35, lines 30 and 31 — To delete “Parliamentary Commissioner” and insert —  
Corruption and Crime Commission

No 74

Page 35, line 31 — To delete “Parliamentary Commissioner” and insert —

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Corruption and Crime Commission

No 75

Page 36, line 1 — To delete “Parliamentary Commissioner” and insert —  
Corruption and Crime Commission

No 76

Page 37, lines 3 to 12 — To delete the lines and insert —  
*senior officer* means —

- (a) in relation to an authorising officer or chief officer who is the Commissioner of Police — a police officer of or above the rank of Commander; or
  - (b) in relation to an authorising officer or chief officer who is the Chief Executive Officer of the Australian Crime Commission —
    - (i) an SES employee as defined in the *Australian Crime Commission Act 2002* (Commonwealth) section 4(1); or
    - (ii) a person holding a prescribed office in the Australian Crime Commission;
- or
- (c) in relation to a chief officer who is the chief executive officer of the fisheries department — a fisheries officer holding a prescribed office in the department.

No 77

Page 37, line 14 — To delete “of a” and insert —  
of an authorising officer or

No 78

Page 37, line 16 — To delete “chief officer of” and insert —  
authorising officer for, or chief officer of,

No 79

Page 37, lines 17 and 18 — To delete “of the agency any of the chief officer’s” and insert —  
any of his or her

No 80

Page 40, line 14 — To delete “chief officer of” and insert —  
authorising officer for

No 81

Page 41, line 2 — To delete “chief” and insert —  
authorising

No 82

Page 41, line 30 — To delete “chief” and insert —  
authorising

No 83

Page 42, line 1 — To delete “chief” and insert —  
authorising

No 84

Page 42, line 5 — To delete “chief” and insert —  
authorising

No 85

Page 42, line 9 — To delete “chief” and insert —  
authorising

No 86

Page 42, line 15 — To delete “chief” and insert —  
authorising

No 87

Page 43, line 27 — To delete “chief” and insert —  
authorising

No 88

Page 44, line 2 — To delete “chief” and insert —  
authorising

No 89

Page 45, lines 13 to 15 — To delete the lines and insert —

- (7) 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 (5) relating to the authority.

No 90

Page 45, line 30 — To delete “chief” and insert —  
authorising

No 91

Page 46, line 5 — To delete “chief” and insert —  
authorising

No 92

Page 46, line 11 — To delete “chief” and insert —  
authorising

No 93

Page 46, line 17 — To delete “chief” and insert —  
authorising

No 94

Page 47, lines 12 to 14 — To delete the lines and insert —

- (10) The authorising officer must, as soon as practicable after making an urgent variation of authority, make a record in writing of the particulars referred to in subsection (9) relating to the variation of authority.

No 95

Page 47, line 16 — To delete “chief” and insert —  
authorising

No 96

Page 47, line 17 — To delete “chief” and insert —  
authorising

No 97

Page 47, line 20 — To delete “chief” and insert —  
authorising

No 98

Page 47, line 26 — To delete “chief” and insert —  
authorising

No 99

Page 48, line 2 — To delete “chief” and insert —  
authorising

No 100

Page 48, lines 25 to 27 — To delete the lines and insert —

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



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No 101

Page 48, line 29 — To delete “chief” and insert —  
authorising

No 102

Page 48, line 30 — To delete “chief officer or a delegate of the chief” and insert —  
authorising officer or a delegate of the authorising

No 103

Page 49, line 5 — To delete “chief” and insert —  
authorising

No 104

Page 49, line 8 — To delete “chief” and insert —  
authorising

No 105

Page 50, line 18 — To delete “chief officer” and insert —  
authorising officer for a law enforcement agency

No 106

Page 50, line 26 — To insert after “officer” —  
of the law enforcement agency

No 107

Page 50, line 29 — To insert after “officer” —  
of the law enforcement agency

No 108

Page 51, lines 23 and 24 — To delete “an authority granted under section 48 authorises” and insert —  
the authorising officer for a law enforcement agency grants an authority under section 48  
authorising

No 109

Page 51, line 25 — To delete “who grants the authority” and insert —  
of the law enforcement agency

No 110

Page 55, line 8 — To delete “chief officer of” and insert —  
authorising officer for

No 111

Page 55, line 10 — To insert after “officer” —  
of the law enforcement agency

No 112

Page 56, lines 22 and 23 — To delete “an authority granted under section 48 authorises” and insert —  
the authorising officer for a law enforcement agency grants an authority under section 48  
authorising

No 113

Page 56, line 24 — To delete “who grants the authority” and insert —  
of the law enforcement agency

No 114

Page 61, line 11 — To delete “both Houses” and insert —  
each House

No 115

Page 61, lines 18 to 20 — To delete the lines and insert —

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(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).

No 116

Page 63, lines 15 to 22 — To delete the lines and insert —

- (a) in relation to an authorising officer or chief officer who is the Commissioner of Police — a police officer of or above the rank of superintendent; or
  - (b) in relation to an authorising officer or chief officer who is the Chief Executive Officer of the Australian Crime Commission —
    - (i) an SES employee as defined in the *Australian Crime Commission Act 2002* (Commonwealth) section 4(1); or
    - (ii) a person holding a prescribed office in the Australian Crime Commission;
- or
- (c) in relation to a chief officer who is the chief executive officer of the fisheries department — a fisheries officer holding a prescribed office in the department; or

No 117

Page 63, line 28 — To delete “of a” and insert —  
of an authorising officer or

No 118

Page 64, line 1 — To delete “A chief officer of” and insert —  
An authorising officer for, or chief officer of,

No 119

Page 64, line 2 — To delete “of the agency any of the chief officer’s” and insert —  
any of his or her

No 120

Page 65, lines 22 and 23 — To delete “or by either or both Houses of Parliament”.

No 121

Page 65, after line 27 — To insert —

***court proceeding*** means any criminal, civil or other proceeding before, or inquiry, reference or examination by, a court, and includes an arbitration;

No 122

Page 66, after line 8 — To insert —

***parliamentary committee*** means a committee or other body established by either or both Houses of Parliament to inquire into any matter;

***parliamentary proceeding*** means any proceeding before, or inquiry, reference or examination by, a parliamentary committee;

No 123

Page 66, lines 16 to 18 — To delete the lines and insert —

***proceeding*** means a court proceeding or a parliamentary proceeding;

No 124

Page 67, lines 12 to 18 — To delete the clause.

No 125

**New Clause 84A**

Page 70, after line 14 — To insert —

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**Division 2A — Provisions applicable to court proceeding**

**84A. Application of Division**

- (1) This Division applies in relation to a court proceeding in which an operative is, or may be, required to give evidence obtained as an operative.
- (2) To remove any doubt, this Division does not affect the operation of the common law in relation to the protection of the identity of a person who is not an operative who gives or intends to give evidence in a court proceeding.

No 126

Page 70, line 17 — To insert after “to a” —  
court

No 127

Page 72, lines 17 to 19 — To delete “(including any applications relating to the proceeding, such as those referred to in sections 86, 88 and 90)” and insert —  
(including any application relating to the proceeding, such as an application for an order under paragraph (b) or an application under section 86 or 90)

No 128

Page 77, after line 8 — To insert —

**Division 2B — Provisions applicable to parliamentary proceeding**

**93A. Application of Division**

This Division applies in relation to a parliamentary proceeding in which an operative is, or may be, required to give evidence obtained as an operative.

**93B. Witness identity protection certificate to be given to Parliament**

- (1) A witness identity protection certificate for an operative in relation to a parliamentary proceeding must be given —
  - (a) to the Clerk of the House of Parliament that established the parliamentary committee concerned; or
  - (b) if the parliamentary committee concerned was established by both Houses of Parliament, to the Clerk of each House of Parliament,before the operative gives evidence in the proceeding.
- (2) The certificate must be given at least 14 days before the day on which the operative is to give evidence, unless in the circumstances it is not reasonably practicable to do so.
- (3) The person who gives the certificate must give a copy of it to the operative before the day on which the operative is to give evidence.

**93C. Effect of witness identity protection certificate**

- (1) This section applies if a witness identity protection certificate for an operative is given in accordance with section 93B in relation to a parliamentary proceeding.
- (2) If this section applies —
  - (a) the operative may give evidence in the proceeding under the assumed name, or court name, stated in the certificate; and
  - (b) subject to any resolution passed under section 93D(4) —
    - (i) a question must not be asked of a witness, including the operative, that may lead to the disclosure of the operative’s true identity or where the operative lives; and

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- (ii) a witness, including the operative, cannot be required to (and must not) answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives; and
  - (iii) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives.
- (3) For the purposes of subsection (2)(b)(iii), a person involved in a proceeding includes —
- (a) a member of the parliamentary committee; and
  - (b) a party to the proceeding; and
  - (c) a person given leave to be heard or make submissions in the proceeding; and
  - (d) a lawyer representing a person referred to in paragraph (b) or (c) or a lawyer assisting the parliamentary committee in the proceeding; and
  - (e) any other person assisting the parliamentary committee in the proceeding; and
  - (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.
- (4) If this section applies, any evidence given by the operative in the proceeding must be given in private.

**93D. Disclosure of operative's true identity or location despite certificate**

- (1) In this section —
- relevant House*, in relation to a parliamentary committee, means —
- (a) if the parliamentary committee was established by a House of Parliament — that House; or
  - (b) if the parliamentary committee was established by both Houses of Parliament — each House.
- (2) This section applies if a witness identity protection certificate for an operative is given in accordance with section 93B in relation to a parliamentary proceeding.
- (3) The parliamentary committee may seek the authorisation of the relevant House —
- (a) to ask a question of a witness, including the operative, that may lead to the disclosure of the operative's true identity or where the operative lives; or
  - (b) to require a witness, including the operative, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives; or
  - (c) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives.
- (4) The relevant House may pass a resolution authorising the doing of anything mentioned in subsection (3)(a), (b) or (c).

- (5) However, the relevant House must not pass a resolution unless satisfied about each of the following —
- (a) there is evidence that, if accepted, would substantially call into question the operative's credibility;
  - (b) it would be impracticable to test properly the credibility of the operative without allowing the risk of disclosure of, or disclosing, the operative's true identity or where the operative lives.

**93E. Restrictions on content of reports to Parliament**

If a witness identity protection certificate for an operative is given in accordance with section 93B in relation to a parliamentary proceeding, the parliamentary committee must not disclose in a report to a House of Parliament —

- (a) the operative's true identity or where the operative lives; or
- (b) information that may lead to the disclosure of the operative's identity or where the operative lives.

**Division 2C — Other matters**

No 129

Page 77, lines 17 to 21 — To delete the lines and insert —

- (3) If the chief officer cancels the certificate —
- (a) after it has been filed in a court and before the matter has been finalised by the court, the chief officer must immediately give written notice to the court and each party to the proceeding that the certificate has been cancelled; or
  - (b) after it has been given to the Clerk of a House of Parliament and before the matter has been finalised by the parliamentary committee concerned, the chief officer must immediately give written notice to the Clerk that the certificate has been cancelled.

No 130

Page 78, after line 23 — To insert —

- (3) Nothing in this section limits or otherwise affects the operation of the *Parliamentary Privileges Act 1891*.

No 131

Page 81, line 8 — To delete the line and insert —

- (i) an SES employee as defined in the *Australian Crime Commission Act 2002* (Commonwealth) section 4(1); or

No 132

Page 82, after line 6 — To insert —

**101A. Review of Parts 2 and 3**

- (1) The Minister must carry out a review of the operation and effectiveness of Parts 2 and 3 as soon as is practicable after the end of the period of 5 years beginning on the day on which this Act receives the Royal Assent.
- (2) The Minister must prepare a report based on the review and must cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared and, in any event, not later than 18 months after the end of the period referred to in subsection (1).

No 133

Page 84, after line 10 — To insert —

**Part 7A — Criminal Injuries Compensation Act 2003 amended**

**106A. Act amended**

This Part amends the *Criminal Injuries Compensation Act 2003*.

**106B. Section 13 amended**

In section 13(5) delete “section 27.” and insert:

section 27 or the *Criminal Investigation (Covert Powers) Act 2012* section 27, 31 or 34.

**106C. Section 16 amended**

In section 16(5) delete “section 27.” and insert:

section 27 or the *Criminal Investigation (Covert Powers) Act 2012* section 27, 31 or 34.

**106D. Section 17 amended**

In section 17(5) delete “section 27.” and insert:

section 27 or the *Criminal Investigation (Covert Powers) Act 2012* section 27, 31 or 34.

No 134

Page 89, line 16 — To delete “34D” and insert —

34D or 34K

No 135

Page 89, after line 21 — To insert —

**Subdivision 1 — Terms used**

No 136

Page 90, after line 13 — To insert —

*court* includes —

- (a) a tribunal or other body established or continued under a written law and having a power to obtain evidence or information;
- (b) a Royal Commission established under the *Royal Commissions Act 1968*;
- (c) a commission, board, committee or other body established by the Governor or by the Government of the State to inquire into any matter;

*court proceedings* means any proceedings in a court;

No 137

Page 90, after line 17 — To insert —

*parliamentary committee* means a committee or other body established by either or both Houses of Parliament to inquire into any matter;

*parliamentary proceedings* means any proceedings before a parliamentary committee;

No 138

Page 90, after line 25 — To insert —

*proceedings* means court proceedings or parliamentary proceedings;

No 139

Page 91, after line 17 — To insert —

**Subdivision 2 — Non-disclosure certificates for protected persons**

No 140

Page 91, line 23 — To delete “court,” and insert —

court or in parliamentary proceedings,

No 141

Page 91, lines 27 to 29 — To delete the lines and insert —

- (3) The Commissioner may give a certificate for the protected person in relation to the proceedings and —

- (a) file a copy with the court; or
- (b) give a copy to the Clerk of the House of Parliament that established the parliamentary committee concerned or, if the parliamentary committee concerned was established by both Houses of Parliament, to the Clerk of each House of Parliament,

as the case requires.

No 142

Page 92, after line 17 — To insert —

**Subdivision 3 — Provisions applicable to court proceedings**

**34CA. Application of Subdivision**

This Subdivision applies in relation to court proceedings in which a protected person is, or may be, required to give evidence.

No 143

Page 98, after line 6 — To insert —

**Subdivision 4 — Provisions applicable to parliamentary proceedings**

**34I. Application of Subdivision**

This Subdivision applies in relation to parliamentary proceedings in which a protected person is, or may be, required to give evidence.

**34J. Effect of non-disclosure certificate**

(1) In this section —

*person involved*, in proceedings, includes —

- (a) a member of the parliamentary committee; and
- (b) a party to the proceedings; and
- (c) a person given leave to be heard or make submissions in the proceedings; and
- (d) a lawyer representing a person referred to in paragraph (b) or (c) or a lawyer assisting the parliamentary committee in the proceedings; and
- (e) any other person assisting the parliamentary committee in the proceedings; and
- (f) a person acting in the execution of any process or the enforcement of any order in the proceedings.

(2) This section applies if a non-disclosure certificate for a protected person is given under section 34A(3)(b) in relation to parliamentary proceedings.

(3) If this section applies, in the proceedings —

- (a) a question must not be asked of a witness, including the protected person, that may lead to the disclosure of the protected person's protected identity or protected address or both; and
- (b) a witness, including the protected person, cannot be required to (and must not) answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the protected person's protected identity or protected address or both; and
- (c) a person involved in the proceedings must not make a statement that discloses, or may lead to the disclosure of, the protected person's protected identity or protected address or both.

- (4) The parliamentary committee may disclose to each party to the proceedings —
  - (a) that a non-disclosure certificate for a person who may be required to give evidence in the proceedings has been given; and
  - (b) what the certificate states.
- (5) If the parliamentary committee makes a disclosure about the non-disclosure certificate under subsection (4), the committee must also inform the parties of the effect of the certificate.
- (6) This section applies despite any other Act, but subject to section 34K.

**34K. Disclosure of protected person's identity despite certificate**

- (1) In this section —

*relevant House*, in relation to a parliamentary committee, means —

- (a) if the parliamentary committee was established by a House of Parliament — that House; or
  - (b) if the parliamentary committee was established by both Houses of Parliament — each House.
- (2) This section applies if a non-disclosure certificate for a protected person is given under section 34A(3)(b) in relation to parliamentary proceedings.
  - (3) The parliamentary committee may seek the authorisation of the relevant House —
    - (a) to ask a question of a witness, including the protected person, that may lead to the disclosure of the protected person's protected identity or protected address or both; or
    - (b) to require a witness, including the protected person, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the protected person's protected identity or protected address or both; or
    - (c) for a person involved in the proceedings to make a statement that discloses, or may lead to the disclosure of, the protected person's protected identity or protected address or both.
  - (4) The relevant House may pass a resolution authorising the doing of anything mentioned in subsection (3)(a), (b) or (c).
  - (5) However, the relevant House must not pass a resolution unless satisfied about each of the following —
    - (a) there is evidence that, if accepted, would substantially call into question the protected person's credibility;
    - (b) it would be impracticable to test properly the credibility of the protected person without allowing the risk of disclosure of, or disclosing, the protected person's protected identity or protected address or both.

**34L. Restrictions on content of reports to Parliament**

If a non-disclosure certificate for a protected person is given under section 34A(3)(b) in relation to parliamentary proceedings, the parliamentary committee must not disclose in a report to a House of Parliament —

- (a) the protected person's protected identity or protected address; or
- (b) information that may lead to the disclosure of the protected person's protected identity or protected address.

Mrs L.M. HARVEY: I move —



That amendment 1 made by the Council be agreed to.

**Ms M.M. QUIRK:** This amendment effectively makes the Commissioner of Police the authorising officer in the context of any applications made by the fisheries department, whereas previously it was the chief executive officer. Is that correct?

**Mrs L.M. HARVEY:** That is correct.

**Ms M.M. QUIRK:** Is this an amendment brought up by the committee or a government amendment?

**Mrs L.M. HARVEY:** The Standing Committee on Uniform Legislation and Statutes Review opposed fisheries officers being part of this legislation altogether. This is a government amendment to include fisheries officers but to have the Commissioner of Police be the authorising officer for fisheries officers' covert operations.

**Ms M.M. QUIRK:** In other words, the committee recommended that the fisheries department not be included. The committee's recommendation has been rejected but then for some reason the Commissioner of Police has been put in. I just want to know what the rationale for that is.

**Mrs L.M. HARVEY:** As with many pieces of legislation in this place, this is a compromise perspective where we are still allowing fisheries officers to conduct covert investigations and to take on the assumed identities as per this legislation. However, in order for those operations to be authorised, they now need to be authorised by the Commissioner of Police rather than the CEO of the fisheries department. Indeed, a number of amendments on the notice paper relate to the removal of the CEO of the fisheries department as the authorising officer for the fisheries aspect of this legislation. The authorising officer needs to be the Commissioner of Police.

**Ms M.M. QUIRK:** The issue I have with this is that, presumably, the reason that a Department of Fisheries officer will go to the Director General of Fisheries is that there is a line of authority. If, for example, a fisheries officer does something wrong, he is effectively sanctioned by his departmental head. I am a bit concerned that now a fisheries officer will effectively go to the commissioner and there will be no direct discipline or sanctions. The commissioner has no authority in relation to that officer.

**Mrs L.M. HARVEY:** Any disciplinary matters in relation to the fisheries officers would be dealt with under the Public Sector Management Act in any event. This amendment makes the Commissioner of Police the authorising officer for the operations that will put together by the Department of Fisheries.

**Mrs M.H. ROBERTS:** I am looking at the sixty-ninth report of the Standing Committee on Uniform Legislation and Statutes Review, which was finished in March 2012, so I wonder why this matter, with almost 150 amendments, has been brought on at this late stage. Recommendation 1 in the committee report states —

The Committee recommends that in terms of the implementation of the policy decision to include "*the fisheries department*" in the definition of "*law enforcement agency*" in the Criminal Investigation (Covert Powers) Bill 2011, the Department of Fisheries should be excluded.

It then suggests how that might be done. Why has the minister chosen not to exclude the fisheries department?

**Mrs L.M. HARVEY:** There are a couple of aspects. Yes, indeed, the committee report is from March 2012 and this legislation has been debated over a long period of time in the other place. With regard to the recommendation in that report, the government believes that it is important that fisheries be part of this legislation. The Australian Crime Commission reports that there is some crossover between crime and fisheries operations. We think it is important that fisheries be part of this. Indeed, with legislation regarding the trafficking of fish, there is a need —

**Mrs M.H. Roberts:** Did you say "trafficking of fish"?

**Mrs L.M. HARVEY:** Yes; it is an offence to traffic in fish.

**Mr J.R. Quigley:** Trapping or trafficking?

**Mrs L.M. HARVEY:** I will need to get the actual wording for that! Basically, it is illegally catching fish and selling it on the black market. Indeed, there is often a crossover between those activities and organised crime. The Australian Crime Commission has documented the crossover between fisheries and organised crime. We think it is important that fisheries be part of this legislation, but we also believe it is appropriate that the Commissioner of Police be the authorising officer for those covert investigations of fisheries to ensure that each of those departments knows whether the investigations are occurring in the other department's space.

**Mr J.R. QUIGLEY:** I wonder how the minister has arrived at the cut-off point. We know from Corruption and Crime Commission investigations in Western Australia that the trafficking also extends to Australian wildlife and that officers within the Department of Environment and Conservation have been complicit in the trafficking of Carnaby's cockatoo eggs and other precious wildlife.

**Ms M.M. Quirk:** And numbats.

**Mr J.R. QUIGLEY:** What is the rationale of extending it to fisheries but not to DEC? Why is the priority for fish but not for Carnaby's cockatoos and numbats, as the member for Girrawheen helpfully added?

**Mrs L.M. HARVEY:** We are certainly not precluding the Department of Environment and Conservation from seeking to be part of this legislation at some later point. If we look at the report of the Standing Committee on Uniform Legislation and Statutes Review on this legislation, we can see that under the Fish Resources Management Act 1994, the serious offences unit has already loosely been conducting undercover operations into the more serious fisheries offences. That committee sought those offences to be included in this legislation. We believe it is appropriate that should fisheries be conducting those sorts of operations, they are authorised by the Commissioner of Police under this legislation. This legislation provides some parameters within which fisheries should be compelled to operate.

**Ms M.M. QUIRK:** We debated this point long and hard when it was last in the chamber. Can the minister clarify this for me? A covert device or whatever can be used by a fisheries officer in accordance with the legislation; nevertheless, the officer now has to go to the Commissioner of Police to get it authorised. Can the investigation just be conducted by fisheries officers without seeking authorisation from the commissioner? In other words, is there no other police involvement other than the commissioner authorising it?

**Mrs L.M. Harvey:** That is correct. Fisheries officers can conduct their own investigations and their own covert operations but they need to be authorised by the Commissioner of Police. Under this legislation, they also need to report on those operations.

**Ms M.M. QUIRK:** In that context, does a minimum term of imprisonment need to be imposed in relation to a specific offence before covert operations can be deployed?

**Mrs L.M. Harvey:** The more serious of the trafficking offences under the Fisheries Act come with a term of imprisonment of four years but the limit proposed in this amendment still stays at three years or more—an offence against the law of the jurisdiction prescribed for the purposes of this definition which we come to in further amendments.

**Ms M.M. QUIRK:** For the purposes of what the commissioner is authorising the fisheries officers to do, what sort of fisheries offences would come within the three-year penalty that is being committed under this legislation?

**Mrs L.M. HARVEY:** They would be under the Fish Resources Management Act 1994—the offence of trafficking in a commercial quantity of priority fish.

**Mrs M.H. Roberts:** Is that a three-year offence or more than three?

**Mrs L.M. HARVEY:** It attracts a term of imprisonment for four years or up to 10 years for some offences.

**Ms M.M. Quirk:** I am asking what offences carry the three-year penalty and will be included. We understand about trafficking.

**Mrs L.M. HARVEY:** Offences under the Fisheries Act carry terms of imprisonment of four years and 10 years. We come to the other offences under different acts further along in the amendments.

**Ms M.M. Quirk:** I am talking about the Fisheries Act. There must be offences that carry penalties of three years or more that would be caught within the ambit of this legislation.

**Mrs L.M. HARVEY:** The penalty for trafficking in a commercial quantity of priority fish for an individual for a first offence is imprisonment of four years and for a subsequent offence, imprisonment for 10 years. There is not an offence that prescribes three years.

**Ms M.M. Quirk:** Is that anywhere under the Fish Resources Management Act?

**Mrs L.M. HARVEY:** That is the only offence that fits the threshold of the legislation.

**Ms M.M. QUIRK:** I have one other question on this preliminary clause. I understand that when this legislation went to the Legislative Council, there were a number of government amendments unrelated to the report of the committee. I gather there are something like 143 of those. How many were government amendments independent of any recommendations of the committee, and why were they not included when the matter first came into this house?

**Mrs L.M. HARVEY:** The compromise position of the fisheries department being part of this legislation and changing the definition of the authorising officer to be the Commissioner of Police rather than the chief executive officer of the fisheries department are government amendments, and they relate to about 80

consequential amendments as part of this legislation as a result of that one change. There is another amendment of the government in changing the oversight of these operations from the Ombudsman to the Corruption and Crime Commission. That relates to around 20 government amendments. There are also government amendments—this is also a compromise position—around the protections for the operatives in consideration also of the preservation of parliamentary privilege. Those amendments relating to parliamentary proceedings account for about 15 of the government amendments. I have not separated them for the purposes of the council message; we are considering them as we go through.

**Ms M.M. Quirk:** It might speed up things later. But, minister, just before you sit down, what I am asking is: how many amendments were put in of your own motion, not related to the recommendations of the committee?

**Mrs L.M. HARVEY:** About 115 of these amendments are government amendments that have come from the compromise position that we have come to on the legislation. They are not —

**Ms M.M. Quirk:** When you say “compromise”, is that a compromise with the legislation committee?

**Mrs L.M. HARVEY:** It is a compromise regarding the recommendations of the committee that the government disagreed with, so we have worked with those members in the other place to come to a point at which this legislation can be suitable.

**Ms M.M. Quirk:** What I am asking is: are any amendments that the government has put in not a result of committee recommendations?

**Mrs L.M. HARVEY:** Indeed, the amendments to do with changing the oversight body from the Ombudsman to the CCC are government amendments that have nothing to do with the recommendations of the committee.

**Ms M.M. Quirk:** I will ask about that when we get to those sections. Thank you.

**Mrs M.H. ROBERTS:** One of the things that is noted in the report of the Standing Committee on Uniform Legislation and Statutes Review is that the bill provides for mutual recognition so that the release from criminal responsibility and the restriction of evidence of equivalent authorities issued by law enforcement agencies of other jurisdictions are given effect in Western Australia. What I am asking the minister is: given the recommendation of the Standing Committee on Uniform Legislation and Statutes Review and given the provisions related to mutual recognition, can the minister point me to any other states that have implemented similar criminal investigation covert powers legislation in which they have included their fisheries department in the legislation?

**Mrs L.M. HARVEY:** Similar legislation in South Australia and Victoria includes fisheries officers as part of the legislation.

**Mrs M.H. ROBERTS:** Is the minister also able to advise whether any other state agencies are included in the South Australian and Victorian legislation?

**Mrs L.M. HARVEY:** I have not examined the South Australian and Victorian legislation, so I cannot tell the member whether other government agencies are included in the legislation, but I can tell the member that the fisheries departments are included in the legislation that covers these operations, and the Australian Crime Commission is included in the legislation covering covert operations in other jurisdictions.

**Mrs M.H. ROBERTS:** The minister said that South Australia and Victoria include their fisheries departments. Can she advise me whether the authorising officer under their legislation is the Commissioner of Police or whether he is the chief executive officer of their respective fisheries departments? I ask this question because this clause is about an amendment to what was initially put before us in the Assembly. When this was debated in the Assembly it was approved by the Assembly and put to the opposition that it was appropriate for the chief executive of the Department of Fisheries to be the authorising officer for the fisheries department. That has been changed and justified because of the Standing Committee on Uniform Legislation and Statutes Review, despite the fact that that committee does not support fisheries being in the bill. I want to know whether there is a precedent in either the South Australian or Victorian legislation for having the Commissioner of Police, rather than the CEO of the departments, as the authorising officer.

**Mrs L.M. HARVEY:** I am advised that in the other jurisdictions that include the fisheries departments as part of their covert powers legislation, the executive officer of the fisheries department is the authorising officer. We have chosen to have the Commissioner of Police as the authorising officer for covert operations that fisheries in this state will be conducting.

**Mrs M.H. ROBERTS:** That takes me to my initial point that I do not think the minister actually answered; that is, why has she chosen to change the legislation in this state, which is different from what is being done in South Australia and Victoria? There is no point saying it is what the uniform legislation committee wants because that committee does not want fisheries to be in the bill at all.

**Mrs L.M. HARVEY:** I am advised that in those jurisdictions the operations are authorised by their fisheries departments and then the police are advised of those operations. For the reasons I outlined previously, we believe it is appropriate to include fisheries as part of this Criminal Investigation (Covert Powers) Bill. The government believes that the authorising officer for those operations should be the Commissioner of Police.

**Mrs M.H. ROBERTS:** When I look at amendment 1 on the notice paper, where it refers to the authorising officer in subparagraphs (a) and (b), there is reference to the “Australian Crime Commission—the Chief Executive Officer of the Australian Crime Commission”. I note, for example, that there is a federal fisheries department or the equivalent. Maybe it is within a large department; I am not sure, but there are certainly significant commonwealth responsibilities in terms of fishing, so I am wondering why the commonwealth has not seen fit to include its fisheries department or whatever its name is. I understand it is a vastly bigger operation, with much more significant powers and responsibilities, than the state agency. I would have thought that department certainly would have knowledge of any of the trafficking offences that the minister was talking about. Why is there not some move to have the federal fisheries agency involved, even though the Australian Crime Commission is involved?

**Mrs L.M. HARVEY:** The commonwealth fisheries department is not included in this legislation because it is empowered under commonwealth legislation, and it is not, therefore, empowered to interrogate fisheries offences that are covered under state legislation, whereas the Australian Crime Commission is enabled under this legislation to also investigate, within the parameters of this legislation, matters that fall under its jurisdiction within the states. So, the Australian Crime Commission under its legislation can investigate commonwealth and state matters. This legislation provides a framework for the Australian Crime Commission to operate within those parameters within this state. The federal fisheries department is not so enabled under its legislation at a federal level, and that is why it is not included in this legislation.

**Mrs M.H. ROBERTS:** There are, of course, a variety of offences that can be committed against the commonwealth fisheries legislation. Are those offences dealt with by that agency or by the Australian Crime Commission?

**Mrs L.M. HARVEY:** The Australian Fisheries Management Authority, which is empowered under the commonwealth legislation, does not have Western Australian representation. The state fisheries department is the authorised authority that targets black market trafficking of fish within our jurisdiction. That is why it is part of the legislation.

**Ms M.M. QUIRK:** I seek some clarification. If a fisheries officer gets authorisation from the Commissioner of Police, is it contemplated that they will then do a joint exercise with the police, or will it be an individual operation without any police supervision?

**Mrs L.M. HARVEY:** There will be a number of ways in which this could work. The Department of Fisheries could put together its own covert operation, in which case that would be put together by the serious offences unit within the Department of Fisheries and authorised by the chief executive officer of fisheries, or director general of fisheries, who would then seek authorisation from the Commissioner of Police to proceed should they need aspects of this legislation in order to continue with their operation. There will be other operations that will be a joint initiative between the police and Department of Fisheries, in which case both the CEO of fisheries and the Commissioner of Police will sign off on the aspects of that operation that will be covered under their separate jurisdictions.

**Mr J.R. QUIGLEY:** The minister has just said that the Commissioner of Police can be the authorising officer on an operation that is being conducted by the Department of Fisheries—that was one of the alternatives that the minister has put. Does that not expose the commissioner in the sense that he is the authorising officer but has no control over the fisheries officers in the exercise of the considerable covert powers and sting operations that could be conducted under this legislation? Someone could go to the Corruption and Crime Commission and complain about the Commissioner of Police, who has authorised this operation, when it all happened without the commissioner, or anyone in his agency, knowing of an alleged abuse of power.

**Mrs L.M. HARVEY:** The Commissioner of Police is the authorising officer for the overall covert operation that the CEO of fisheries will have authorised. But the CEO of fisheries is still responsible for managing the conduct of the officers in the serious offences unit and ensuring that they comply with this legislation; and, indeed, those officers are subject to the Public Sector Management Act and would need to make sure that they are complying with the legislation and with the conduct prescribed and expected of those officers.

**Mrs M.H. ROBERTS:** I understand that the Leader of the House has a little issue with this legislation being proceeded with, and I understand that the government actually wanted to move to some other legislation. I just

**Extract from *Hansard***

[ASSEMBLY — Thursday, 15 November 2012]

p8803b-8823a

Mrs Liza Harvey; Mrs Michelle Roberts; Mr John Quigley; Ms Margaret Quirk; Dr Kim Hames

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seek clarification from the Leader of the House about whether he wants to adjourn consideration of this legislation now or whether we will proceed with this bill at this time.

**Dr K.D. HAMES:** What was supposed to happen was that consideration in detail of this legislation was meant to come after the conclusion of the second reading debate on the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012. Unfortunately, somebody did not stand up, so I need to adjourn consideration of this legislation and finish that—which the member for Mindarie tells me will not take very long—and then come back to this legislation.

Debate adjourned until a later stage of the sitting, on motion by **Dr K.D. Hames (Leader of the House)**.

[Continued on page 8825.]