CRIMINAL INVESTIGATION (COVERT POWERS) BILL 2011

Second Reading

Resumed from 17 May.

HON GIZ WATSON (North Metropolitan) [5.46 pm]: From one bill to another; here we go! The Criminal Investigation (Covert Powers) Bill 2011 is not very good either! That is a good way to start! I have only 10 pages!

On 5 April 2002, the Prime Minister and state and territory leaders agreed on a number of reforms to enhance arrangements to deal with multijurisdictional crime. A national joint working group was established by the Standing Committee of Attorneys-General and the Australasian Police Ministers' Council to provide for a nationally consistent legal framework and to develop model laws that aid criminal investigations across state and territory borders.

The first step was a discussion paper "Cross-Border Investigative Powers for Law Enforcement," which was published by the national joint working group in February 2003. The NJWG received 19 written submissions in response to the discussion paper. In November 2003, the joint working group produced a 624-page report, "Cross-Border Investigative Powers for Law Enforcement", which contained model laws to be implemented as a minimum standard across all Australian jurisdictions. It should be noted that the model laws were initiated by the "Leaders Summit on Terrorism and Multijurisdictional Crime", as identified in the report.

So far only one bill, the Cross-border Justice Amendment Bill 2009, has passed in this house. It amends the Cross-border Justice Act with implications solely for cross-border justice matters.

The bill before us today implements model laws from the 2003 report for three areas. However, it is does not limit the application of the provisions to cross-border matters. The bill will also see new provisions available for police operations in Western Australia without any cross-border implications. These operations are defined in clause 7 as "local controlled operations".

The bill proposes changes to three areas of law enforcement: controlled operations; assumed identities; and witness identity protection. A "controlled operation" is an undercover operation that authorises an undercover law enforcement officer to engage in unlawful conduct under controlled conditions to investigate serious offences. An "assumed identity" is a false identity that protects an undercover operative engaged in investigating crimes and infiltrating organised crime groups; and "witness identity protection" provides for the protection of the true identity of a covert operative and of other protected witnesses who give evidence in court.

The bill goes beyond the agreed minimum standards of the model laws. The second reading speech reads —

> … several significant modifications to provide our police with the necessary tools and flexibility to disrupt and frustrate contemporary organised crime groups.

In future, undercover agents will not be liable for any offences they might commit in their role infiltrating a crime network. According to clause 23, after the granting of a controlled operations order, an officer will be allowed to engage in the controlled conduct; in other words, an officer will be allowed to break the law. Clause 27 gives the officer protection from criminal responsibility.

The provisions of this bill will be applicable to not only WA Police, but also the Department of Fisheries and the Australian Crime Commission, plus any other government agency that functions as a law enforcement agency. I note that we might be dealing with some amendments in this regard, which we welcome. These special law enforcement provisions can be made for any offence that carries a minimum sentence of three years' imprisonment or offences that are prescribed by regulation, without being bound to a minimum penalty restriction. Again, I am pleased to see that there are some amendments to address that issue.

The bill was referred to the Standing Committee on Uniform Legislation and Statutes Review, and the committee tabled its report on 6 March this year. The committee made four findings, three narrative-form recommendations and 25 statutory-form recommendations. The executive summary of the committee's report identified the following concerns —

> … No qualitative external oversight of the agencies' use of the powers and investigation into the conducting of their operations will occur. A gatekeeper is an essential tool for combatting the spectre of corruption around those who will exercise the extraordinary powers provided by the Bill.
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> … The Committee is of the view that the power to conduct a controlled operation or assume an identity for the purpose of conducting a controlled operation should be used judiciously to deal

> with proportionately serious matters or matters where normal methods of law enforcement are, for particular reasons, ineffective.
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> … The Committee has a particular concern that the creation of new offences in subsidiary legislation for which a controlled operation may subsequently be undertaken is an inappropriate delegation of legislative power from the Parliament to the Executive. The creation of new offences is a subject matter that should remain within the purview of the Parliament and to propose otherwise, diminishes the sovereignty of the Western Australian Parliament.

I share the committee's views in this regard, but I will also raise some additional issues.

The current Western Australian law allows for controlled operations under the Royal Commission (Police) Act 2002 and under division 5 of part 4 of the Corruption and Crime Commission Act 2003, and also for the use of controlled operations in integrity testing under division 4 of part 6 of the Corruption and Crime Commission Act. A media article entitled "Premier's wish for CCC to probe organised crime" written by Cortlan Bennett and published on PerthNow on 29 September 2011 states —

> **WEST Australian Premier Colin Barnett will push ahead with a bid to expand the Crime and Corruption Commission's "extraordinary powers" to fight organised crime, despite high-level opposition.**
>
> Mr Barnett says a bill to empower the CCC to investigate organised crime directly will be introduced soon, despite a parliamentary committee and others rejecting the recommendation.
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> In a report tabled in state parliament today, the CCC joint standing committee—headed by Liberal MLC Nick Goiran—said the corruption commission was served well by its powers to investigate WA police and other civil servants.

I note the contribution that we heard earlier from Hon Nick Goiran on this bill. I found myself agreeing with his contribution wholeheartedly. That says to me thank goodness we have some lawyers in this place who understand the implications of legislation such as this and thank goodness we have a Legislative Council committee system that can put the time and effort into thoroughly examining this sort of legislation, unlike the bill we have just dealt with. The report referred to in the media article was debated recently, and I will come back to that later.

This bill will give exceptional powers to the police to enable them to combat organised crime, but, at the same time, the Premier wants organised crime to be investigated by the Corruption and Crime Commission. These messages are exceedingly confusing and warrant a range of further questions. If there is one thing that is problematic with this legislation, it is that we have not sorted out the fundamental questions of whose role it will be to investigate serious crime in the state and, indeed, who will be the gatekeeper for these sorts of exceptional powers. Until those two questions are answered, I do not think this Parliament should be considering anything like this legislation at this point.

I have a number of questions. First, what evidence is there that existing WA laws are not sufficient to deal with organised crime? I made the same point in the debate on the previous bill about the additional powers it provided to supposedly stamp out organised crime. How do the roles of police and the CCC interact in addressing organised crime? It seems to me that we are doing this completely out of order. If we are going to deal with the issue of providing additional and very significant powers, we first need to resolve the question of how the CCC and the police deal with serious organised crime. If this bill is passed, is it possible that a covert or undercover agent—I cannot think of the right term at this point—engaged by the CCC could be surveilling an undercover agent from WA Police and each would potentially be committing crimes to gain credibility with each other? What would the scenario be in that case? Regardless of which agency—the CCC or the police—gets to finally tackle organised crime, it will have a financial implication for the state. Estimates have been suggested in an article by Katherine Fenech dated 9 September 2010 in WAtoday. It states —

> The CCC estimated it would need $42 million over five years to establish an organised crime fighting arm and $9.4 million each year to run it.

That is an incredibly expensive proposition. If we enact a bill such as this, how will we know that we have been successful in reducing and combatting organised crime? If we are contemplating spending $42 million over four years to run an organised crime–fighting arm, how will we know that that money will be spent wisely? If those powers go to the CCC, what additional funds will be needed for WA Police to implement the bill if it goes through unamended?

I want to make some general observations in relation to the issues covered by the bill that were raised in the national joint working group discussion paper. Page iii of that report states —

> In order to investigate crime, police must be given effective powers. However, these powers must be balanced against the rights of individuals, such as the right to privacy and the right to a fair trial.

According to the Minister for Police, the main aim of this bill is to disrupt and frustrate contemporary organised crime groups. However, organised crime is neither defined nor mentioned in this bill. According to the long title, this bill applies to any type of criminal investigation and intelligence gathering in relation to criminal activity. I am concerned about this apparent oversight, as a suitable definition of "organised crime" is easily available. For example, in the Queensland Police Powers and Responsibilities Act, the following definition appears —

> **organised crime** means an ongoing criminal enterprise to commit serious indictable offences in a systematic way involving a number of people and substantial planning and organisation.

By contrast, the WA Police website has a very different definition. Under the subtitle "What is organised crime?", it states —

> Organised crime is when two or more people work together to carry out some type of criminal activity in order to profit.
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> Criminal activity includes illegal drug manufacturing, drug trafficking and distribution, extortion and sexual exploitation. Organised criminal activities may involve public official corruption, falsification of records, money laundering and the use of violence.

Basically, any criminal activity becomes organised crime as soon as more than one person is involved, if we are to accept that definition from WA Police. The WA Police definition does not require the offence to be a serious indictable offence and it does not require the need for substantial planning and organisation. I do not know what status the definition on the website has.

Sitting suspended from 6.00 to 7.30 pm

The DEPUTY PRESIDENT (Hon Col Holt): Welcome back, members. I welcome our Olympic athletes in the gallery tonight.

Hon GIZ WATSON: On 17 August 2009, the commonwealth Parliamentary Joint Committee on the Australian Crime Commission reported the legislative arrangements to outlaw serious and organised crime groups. The report provided the following snapshot of organised crime in Australia. Chapter 2.5 of the report states —

> There is a long history of organised crime in Australia and, according to Dr Andreas Schloenhardt, an Associate Professor at the University of Queensland specialising in organised and transnational criminal law, it is widespread in its reach:
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> > Organised crime can be found across the country and even regional centres and remote communities are not immune to the activities of criminal organisations.
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> In its current manifestation, organised crime in Australia exhibits a number of features that largely reflect patterns in organised crime internationally. Unsurprisingly, an enduring feature of organised crime is that it is primarily motivated by financial gain. Further, it generally involves systematic and careful planning, the capacity to adapt quickly and easily to changing legislative and law enforcement responses and the capacity to keep pace with, and exploit, new technologies and other opportunities.
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> The Australian Crime Commission (ACC) likens organised criminal 'enterprises' to conventional businesses in the kinds of measures they adopt to ensure good business outcomes—risk mitigation strategies, the buy-in of expertise (legal and financial for example), and remaining abreast of market and regulatory change. The principal difference is, of course, that their business activities and profits are illicit.
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> The impact of organised crime on Australia is significant. The ACC concluded that at a conservative estimate organised crime cost Australia $10 billion in 2008. These costs include:
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> > Loss of legitimate business revenue;
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> > Loss of taxation revenue;
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> > Expenditure fighting organised crime through law enforcement and regulatory means; and
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> > Expenditure managing 'social harms' caused through criminal activity.

I might just pause at that point, because it is interesting that two of those points, loss of legitimate business revenue and loss of taxation revenue, indicate that not all organised crime fits the stereotype of bikies or other gangs. Just as much, organised crime is conducted by people in suits and ties. The point I made in a previous speech was that those sorts of groupings of organised criminals are not so readily available. They do not run

around down the pub with leather jackets and tattoos indicating who they are; they run around the stock exchange and probably do not indicate if they belong to a particular grouping of organised criminals.

The report goes on to say at chapter 2.9 —

> Serious and organised crime not only results in substantial economic cost to the Australian community but also operates at great social cost. Organised crime can threaten the integrity of political and other public institutional systems through the infiltration of these systems and the subsequent corruption of public officials. This, in turn, undermines public confidence in those institutions and impedes the delivery of good government services, law enforcement and justice. Along with this are the emotional, physical and psychological costs to victims of organised crime, their families and communities.

Chapter 3.56 of the report regarding investigative powers in Western Australia states —

> The WA Corruption and Crime Commission (CCC) was established in 2004 by the Corruption and Crime Commission Act 2003 (WA) to combat organised crime by authorising and monitoring the use by WA Police of exceptional powers in organised crime investigations, and to reduce the incidence of misconduct in the public service.
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> The CCC has extensive investigative powers, including coercive powers, telephone intercept and surveillance powers, running controlled operations, and the ability to use and authorise the use of assumed identities. In its organised crime function, the CCC has the authority to authorise and monitor the use of these exceptional powers by WA Police.
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> The Corruption and Crime Commission Act also authorises the CCC to issue 'fortification warning notices' and 'fortification removal notices' which are enforceable by the WA Police.
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> The (then) Opposition introduced a Bill in November 2007 which would have allowed the CCC to investigate serious crime independently of the WA Police, however the Bill was not passed by the Legislative Assembly and lapsed.

We have several concerns regarding this bill, including but not limited to the following issues. Firstly, it should be clarified whose role it is to combat organised crime before any operational amendments are proposed. If it remains a role for the police, this role needs to be properly defined and limited in the act. The proposed bill does not even contain a definition of "organised crime". The bill's application should be clearly limited to organised crime, which must be defined in the bill to avoid any ambiguity. Secondly, there is the issue of safeguards for controlling operations in other laws. I am concerned about the lack of safeguards for controlled police operations within this bill. Thirdly, the bill makes these law enforcement tools available for offences that are not serious offences. The proposed minimum penalty limit for any offence to attract the application of these provisions is three years' imprisonment. Other states such as Queensland have chosen to increase the minimum penalty to seven years. I am concerned that the application of the provisions in this bill could be made for far lesser crimes by regulation. I am sure we will discuss that in more detail when we get to the committee stage. Fourthly, the definition of "suspect" in clause 5 is of concern. The bill states —

> **suspect** means a person reasonably suspected of having committed or being likely to have committed, or of committing or being likely to commit, a relevant offence;

The definition of "suspect" in this bill is a lot wider than in other acts that allow for controlled operations. My question to the minister would be: on what basis will police decide whether a person is the suspect if an offence has not been committed?

Fifthly, deviation from model laws should not be allowed. The police have not made a case for why the additional provisions are necessary for successful police operations. Locally controlled operations should not be allowed. The bill should be limited to provisions agreed to under the mutual recognition or operations provisions.

In terms of retrospectivity, retrospective authorisations should not be lawful. The provisions give protection from criminal responsibility for controlled conduct during authorised operations. It is limited to the controlled conduct as prescribed in the authorisation. However, due to the ability to get retrospective orders, the provisions actually give a blank cheque to law enforcement officers to break the law when they see fit. Again, we would argue very strongly that this is not in the interest of the rule of law. Unlawful conduct should be strictly limited through safeguards. An independent oversight of these safeguards is necessary. This point has been made by other members in their contributions to this bill. These proposed law enforcement provisions have far-reaching consequences, but the bill does not contain any provision for a review of this particular act. Therefore, we cannot support the bill in its current form.

I will mention a few more details of this bill with regard to independent oversight. Clause 41 gives the Parliamentary Commissioner for Administrative Investigations, the WA Ombudsman, the right to inspect records of the law enforcement agency. In our view, inspecting the records does not give an oversight status. Section 122 of the CCC act limits the CCC as to what can be done and must not be done in controlled operations and what skills a person carrying out such a controlled operation has to have to become involved.

Under section 51, the CCC can issue directions as to limitations on the exercise of exceptional powers; however, this bill does not contain such limitations. My question to the minister is: why have the safeguards for controlled operations in the CCC act not been reflected in this bill? The Tobacco Products Control Act 2006 is another current law that provides for controlled operations. It allows a controlled purchase operation against a person suspected of one or more offences of selling tobacco to underage smokers. The controlled operations are well defined in the act and are limited to people who are suspected of having already committed an offence.

In Queensland, other independent bodies have been entrusted with oversight and monitoring functions, such as the public interest monitor and the Controlled Operations Committee. My question to the minister is: has this government given any consideration to the establishment of a public interest monitor; and, if yes, what is the outcome of those considerations?

The uniform legislation committee had concerns similar to the ones that I have raised and, on page 21 of its report, made the following finding —

> **Finding 1: The Committee finds that a gatekeeper is an essential tool for combatting the spectre of corruption by those who will exercise the extraordinary powers provided by the Criminal Investigation (Covert Powers) Bill 2011.**

And I wholeheartedly agree with that. It is fundamental to consideration of legislation such as this; that is, if someone or some body does not provide that function, there is no way the Greens could support legislation such as this to give further powers to the police.

In terms of the validity and duration of a controlled operation's authority, under commonwealth law a covert operation is limited to three months unless it is extended for a further three months by the Administrative Appeals Tribunal. Clause 16 proposes a period of six months for a longer covert operation in Western Australia. The Commonwealth Ombudsman is the oversight agency for the Australian Crime Commission and on 23 March 2011, the Ombudsman tabled a report in the federal Parliament about long-term controlled operations. At page 2 of that report, it found that —

> the most significant issues related to:
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> - the ACC exceeding the maximum permitted duration of controlled operations and not seeking external review by the … (AAT)
> - inaccurate reporting of illicit goods involved in controlled operations by the AFP
> - the AFP not identifying on the certificate the activities permitted or the civilian participants in the controlled operation.

The original proposal contained in the national joint working group discussion paper on the draft model law was for six months and this was shortened to three months in the final report, which recommended a three-month duration in the final model laws. Extending the period of validity beyond six months can be authorised by the chief officer as a variation in clause 18. No external agency is proposed to be involved. Clauses for variation can be upon the own initiative of the chief officer or upon application of a law enforcement officer under clause 19. An urgent variation of authority is limited to seven days and can be made orally. However, I would argue that in these days of electronic communications, it is questionable why an urgent variation application under clause 19(3) still has a place and such important authorisations can still be made orally at all. Mobile phones could be used, as could SMS messages and emails, which would allow for written verification of the evidence provided. The issue of whether urgent non-formal applications can be made was discussed in the working group report at page 8, which recommended that non-formal applications have only a seven-day validity, whereas long-term authorities require a proper formal application and assessment. The proposed laws for WA do not follow the model laws in this respect. Therefore, my questions to the minister are: could he please provide reasons for the proposed variation from the model laws in this particular application, and why do covert operations in WA need a different time frame from covert operations of commonwealth agencies? The orders, in our view, should be limited to three months as they are under commonwealth law.

I want to put on the record that the commonwealth law was amended in February 2010 to provide for a maximum of 24 months for a controlled operation, but the Administrative Appeals Tribunal must still approve extensions every three months. The committee did not make any comments on the time period for which

authorisation remains valid, but focused on the retrospective authorities that it objected to. I will make some comments about retrospectivity in a little while.

In terms of limitations to law enforcement agencies—clause 3, the definition—and the use of revisions by the fisheries department and the Australian Crime Commission, I understand these tools are very valuable to the police because they allow the police to work outside the rules of law; however, applications to other agencies should be limited. I am interested to hear from the minister what offences are anticipated will be the target of any investigation by the fisheries department and the minimum penalty for these offences.

I welcome the committee's report and recommendation 1 at page 21 that it proposes to delete making these powers available to the fisheries department for the following reasons, which are listed on page 20 of the report; namely, that WA would be the only state where these powers would be available to the fisheries department, that under current laws a ministerial exemption for a controlled operation can already be conducted, and that of the seven operations conducted since 2007, four have resulted in successful prosecutions. And there has been no evidence of organised crime in fisheries and my investigation reveals that the only indication seems to be whatever "emerging trends" means —

A member interjected.

Hon GIZ WATSON: We do not know what that actually means. I may just throw in that I have some indication, valid or not from my previous job, of potential involvement in bringing drugs into the country by some fishing operations.

Hon Sue Ellery: That was your job?

Hon GIZ WATSON: My job was community networking about marine and coastal issues, and the member would be amazed what people would tell me when asked what happens in the fishing industry. There is a little bit of an underbelly there! I suppose this is the frustration for legislators; that is, there is an indication of serious crime involvement in this area or that area, but we have to base our decisions on a bit more than "emerging trends". Nevertheless, we strongly argue that these powers should not be extended to fisheries officers.

Hon Adele Farina interjected.

Hon GIZ WATSON: Absolutely; yes, that is right. Those activities would fall under criminal law anyway. The fact that a person may be using a fishing boat to carry them out is neither here nor there.

The committee found that the inclusion of the fisheries department in the definition of "law enforcement agency" to be ill-considered and unprepared; and the committee concluded that these powers should not be conferred on fisheries, stating in its report —

> **Recommendation 1: 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. This may be effected in the following manner:**

And then there is a proposed amendment.

The Australian Crime Commission generally investigates commonwealth or state offences that have a federal aspect. I will quote from page 3 of the second reading speech —

> It is also authorised to investigate state offences without a federal aspect and consequently may utilise the powers in this bill.

My question to the minister is: what offences is it authorised to investigate without any federal aspect, and under what law?

Although the minister wants to limit law enforcement operations to law enforcement agencies defined to include WA Police, the fisheries department and the Australian Crime Commission, this limitation is not reflected in the bill. The bill in fact allows law enforcement operations to be conducted by not only law enforcement agencies, but also any other government agency under the definition in clause 3. This is a concern to us and I will move an amendment to the definition to ensure that the conducting of law enforcement operations is limited to law enforcement agencies. This issue was addressed in the briefing that I attended last year at which additional information was provided and for which I am grateful. The definition allows the disclosure of any assumed identity to another government agency that is not a law enforcement agency. This provision is necessary because clause 75 of the Criminal Investigation (Covert Powers) Bill 2011 makes the disclosure of an assumed identity an offence. Despite this explanation I remain concerned about government agencies being included in the definition of "law enforcement operation" in clause 3 and I will move an amendment to delete those words.

With regard to retrospective authority, clause 25 makes provision for retrospective authority for local controlled operations only. This authority is to be granted by the chief officer. I am concerned that this provision has the

potential for bad decisions to be made on operational matters and for those bad decisions to be covered up by retrospective approval for those operations. Neither the model law nor the Corruption and Crime Commission Act provide for retrospective authorisation. Clause 25(1) provides that the chief officer may retrospectively authorise unlawful conduct engaged in during the course of local controlled operations but that it is not available for cross-border controlled operations. I note that the Standing Committee on Uniform Legislation and Statutes Review shared these concerns and recommended the deletion of these provisions. Perhaps in the minister's response he might indicate what safeguards are in place regarding this provision. Only the statutory provisions on covert operations in New South Wales provide for retrospective authorisations. No other states have included such authority. Recommendation 26 of the committee proposed a simple solution to the problem, which is to delete clause 25, and we support that recommendation. Also, the committee report raised concerns about the time frames relevant to retrospective authorities and makes a suggestion that the Joint Standing Committee on the Corruption and Crime Commission oversee retrospective authorities. I note with interest that the chair of that committee was not terribly keen to take up that offer. The challenge in this area of law is who provides the checks and balances and who is in the position to deal with what is often highly confidential information.

Hon Adele Farina: There need to be checks and balances.

Hon GIZ WATSON: Absolutely. That is why when dealing with this kind of legislation we have to be very careful about how we set up those checks and balances. I commend Hon Nick Goiran for his contribution to this debate, which was very useful. He has obviously taken some time to consider the full ramifications of the legislation.

Although the bill contains a safeguard in clause 26 and requires the notification of the Ombudsman for each retrospective authority within seven days of it being made, the bill does not give the Ombudsman any measures should he consider the authority be granted without proper reason. This is an oversight without any teeth. A breach would come to the attention of the minister or Parliament, if indeed at all, only some considerable time afterwards. The oversight of retrospective authorities through the Corruption and Crime Commission is warranted if the government has not agreed to the provisions being deleted.

With regard there being no limitations to serious offences, finding 3 of the standing committee's report suggests limiting these tools to the most serious crimes. The committee stated in its report —

> The Committee is of the view that the power to conduct a controlled operation or assume an identity for the purpose of conducting a controlled operation should be used judiciously to deal with proportionately serious matters or matters where normal methods of law enforcement are, for particular reasons, ineffective.

The bill makes these enforcement tools available for offences that are not serious offences. The proposed minimum penalty limit for any offence to carry the application of these provisions is three years. Other states such as Queensland have chosen to increase the minimum penalty to seven years. I am concerned that by regulation the application of the provisions in this bill will be available for considerably lesser crimes. Opening the minimum requirement to a lower benchmark for regulations is not in the interests of Parliament, and Parliament needs to ensure that the covert operations are limited to serious offences and organised crimes and do not become available to the police as a daily tool for ordinary offences. To ensure that only serious crimes trigger the application of covert operations, the definition of "relevant offence" in clause 5 needs to be amended to reflect the need for a serious crime, as is stated in both the second reading speech and the public intention of this bill.

The bill does not contain any subsidiary recommendations such as that these tools are to be measures of last resort and used only when other investigative measures have failed. The discretion of the police officers as to whether to use these tools is very wide, despite requiring the involvement of high-ranking decision makers. The committee raised concerns about this aspect of the proposed subsidiarity and judicial involvement in these operational decisions at paragraph 10.14 in the report. Finding 3 states —

> **The Committee finds that the controlled operations powers being proposed in the Criminal Investigation (Covert Powers) Bill 2011 should only be used judiciously to deal with proportionately serious matters or matters where normal methods of law enforcement are, for particular reasons, ineffective.**

In other bills, the government establishes a specific decision-making authority through the appointment of a current or retired judge. My question to the minister, who I am sure is paying close attention, is: why does the decision making rest solely with the police in this instance, and why is the decision maker not obliged to consider whether less intrusive methods of investigation should be pursued prior to the issue of a surveillance device, warrant or other tools under this bill? I made a comment in a recent debate about lazy policing. This type of provision is exactly the same thing. Time and again when debating this sort of bill I have seen that without careful vigilance from the upper house in particular, bills of this type contain other provisions that are not clearly

stated in the second reading speech or in the public debate. That has occurred in bills of this type that were drafted by the police or whoever drafts these bills or gives the drafting instructions. Often it is the upper house that says that the bill is about providing exceptional powers for particular circumstances that the government thinks are the most serious of circumstances. However, when we read what the bill actually does, we find that it is not like that at all. It is an ambit claim to give the police exceptional powers in the most ordinary of circumstances. That is a very dangerous route to go down. Quite frankly, as a legislator, alarm bells ring every time I see bills that look like this one. There have been many instances when an attempt has been made to get legislation through the Parliament that, on the face of it, is about dealing with the really nasty people out there, such as organised criminals, bikies and those sorts of people who are antisocial elements in our community. I am not suggesting that those people are not antisocial, and they should be brought to justice for the crimes that they commit. However, we cannot go down this route of eroding the checks and balances in the system and giving additional powers to the police.

This might be the point at which to consider the history of the police service. Ninety per cent of the time WA Police does a fantastic job, but there are many examples in the police service when injustices have been committed, people have been imprisoned wrongly and there have been serious instances of corruption. We have had royal commissions into whether there has been any corruption in the WA police service but not one police officer has ever been brought to book for any of those matters. If I am to fall over the line on this matter, I will fall over the line to say that the police have to make a very clear case for why they should be entrusted with further powers because over the years I have seen that once these powers are put in their hands, they will simply put their hands out for more. We already have an exceptional array of tools and powerful legislation in Western Australia that assists the police in their activities. I am very reluctant to give them any more powers, particularly any that involve making legal what would otherwise be illegal activities. We are on a very slippery slope in that regard; hence, we certainly cannot support this bill as it stands.

The next issue that I want to raise relates to breaching privacy laws. The standing committee proposes to amend the limitations to the Freedom of Information Act and the State Records Act so that records can be obtained 30 years after a decision is made. Again, we think that is a very fair and reasonable amendment for transparency and accountability and is totally applicable to the application of covert powers. Gathering information as an undercover agent could also be a breach of privacy, and no doubt it is. That is the kind of balance that we have to strike in legislation. A breach of privacy principles limits the allowable collection of personal information, whether it is recorded on paper, in a form or by way of audio. Collection of such data needs to be undertaken in a manner that is lawful, fair and not unreasonably intrusive. Gathering intelligence and the protection of privacy are two opposing aims. For example, Queensland's existing front-end accountability requirements, such as the public interest monitor and the controlled operations committee with respect to covert powers, are protected. Queensland will also retain a higher relevant offence threshold that must be under investigation to access these powers.

With regard to the role of the Ombudsman, although the act does not state that the Ombudsman has to produce a report to Parliament on such investigations, we understand that such a report is one of the statutory obligations of the Ombudsman. I wonder whether the minister in his response might confirm that the Ombudsman not only presents his report to the minister about the inspections, but also includes the outcomes of those inspections in his report to Parliament. I assume that is by way of an annual report but, if not, perhaps the minister could clarify that as well. Recommendation 23 of the standing committee's report enters into a similar discussion, and clarification is definitely required in this regard. Extending the role of the Ombudsman to conduct not only inspections but also investigations goes some way towards addressing some of the shortcomings of this bill, but I have noted the contributions of other members about the role of the Ombudsman in this proposed new role.

Clause 110 deals with the Misuse of Drugs Act amendment. Undercover officers do not necessarily have to be police officers. However, if a criminal is recruited to function as an undercover police officer, several questions are raised as to how that would work. For example, who will make the decisions to recruit someone as an undercover police officer and on what basis? How will it be ensured that these people have the right training to conduct the operations appropriately? I will go into that clause in more detail when we get to the committee stage.

Clause 27 prevents a victim of crime from making a claim for compensation under the Criminal Injuries Compensation Act 2003 in the event the offence had been committed under the authority issued under the bill. The standing committee raised the question about the fundamental legislative principles that it usually considers; that is, does the legislation have sufficient regard to the rights and liberties of individuals? The committee came to the conclusion that there is no basis for excluding the making of compensation claims, which led to recommendation 14 from the committee, which we will be supporting. Other provisions that the committee investigated, as set out in its report, made a lot of sense. We are very grateful to the standing committee for having done an exceptional job of examining this piece of legislation.

We cannot support the bill in its current form as these law enforcement tools are already available to the Corruption and Crime Commission for use in relation to organised crime. The bill breaches important human rights principles, such as the right to a fair trial and the right to privacy. The proposed application of the bill is too far-reaching and the threshold offences required for the application bill are too low.

With those comments, I conclude by saying that Parliament has a really important job to be very cautious in providing exceptional powers to the police or the CCC because, inevitably, these powers transgress civil liberties. It is up to Parliament to decide where that balance should sit. I strongly argue that it is up to every member of Parliament to take a very strong interest in this legislation because when we provide powers to spy on people—in this day and age, very effectively spy on people—it reaches a level of sophistication that has never been available before. We have recent history in this state of people who have had their phones tapped and their premises bugged and are then required to front the CCC where they are presented with the evidence, and bang, they are tried before they have even had a chance to respond, and they do not even know what they are responding to. These are significant powers that can have huge impacts on individuals. Sure, they might be excellent powers to prosecute wrongdoers but occasionally—not that occasionally; unfortunately, too frequently—the powers can impact on individuals, including individuals who choose to take their life because they are so devastated by being named following covert operations. These are really serious matters.

I thank the members of the Standing Committee on Uniform Legislation and Statutes Review for doing the job that they have done. I notice that that committee presented a unanimous report. These issues transcend party political positions or policies. It is about getting that balance right between the rights of the individual to privacy and how far we as a community provide exceptional powers to enforcement agencies to transgress that. It is a really serious issue. This bill is well outside what I think are the proper checks and balances of those exceptional powers. I do not think the case has been made as to why these are needed and I do not think this government has applied itself to the overall question of who is the authority that is dealing with organised crime in this state. Who are the gatekeepers? Who is keeping an eye on whom? I have been part of enough parliamentary inquiries to have noted the tensions between the police and the CCC. Arguably, we need to have those tensions because one is keeping an eye on the other. But we cannot continue to go hell for leather, saying that we are going to somehow smash organised crime and it does not really matter what we do to get there because there are consequences. This bill as it stands at the moment has some significant consequences. I hope, perhaps by the end of this debate and at the end of its progression through this house, we might amend this bill to put back in place the proper checks and balances. With those comments, I will sit down. I certainly cannot support the bill in its current form.

HON ADELE FARINA (South West) [8.09 pm]: I am pleased to speak on this very important Criminal Investigation (Covert Powers) Bill 2011, the ramifications of which need to be understood by all members of this place before we vote on the bill. I am pleased to commend the sixty-ninth report of the Standing Committee on Uniform Legislation and Statutes Review to the house. I would like to thank the members of the committee for their excellent work and attention to detail in analysing the bill and preparing the report for the house. I also acknowledge the work of the committee staff and the support they provided to the committee in the preparation of this report and, indeed, in the undertaking of the inquiry. This report represents the last report prepared by the committee under its old terms of reference, which provided the committee with a full ambit to review and inquire into a bill that stood referred to the committee. I am sure that members who take the time to read the report will appreciate the value that is added to debate on the bill in this place as a result of the full and proper inquiry able to be undertaken by the committee on this bill. This house is a house of review, and the committee has sought to provide members with a detailed understanding of the bill so that they can carry out their review function to the fullest and best of their abilities.

I also note that this is the last report on which two former members of the committee, Hon Liz Behjat and Hon Nigel Hallett, served on the committee. I take this opportunity to put on the record my sincere appreciation to both members for the roles that they played on the committee and the invaluable contribution that they provided to the committee through numerous inquiries that we undertook together. I am sorry to see that both those members are no longer members of the committee, and I wish them well in their future endeavours on other committees.

I note from the supplementary notice paper that the government has indicated a willingness to adopt a number of the committee's recommendations. I am pleased that yet again the committee has delivered a well-considered and thought-provoking report that has given the government cause to review its position. The result will be, I hope, much better legislation. However, there remain significant concerns with the bill, which I trust the government will address during the consideration of the bill.

I also acknowledge the submission of the Joint Standing Committee on the Corruption and Crime Commission and that committee's excellent fifteenth report, which was submitted as part of its submission to the Standing Committee on Uniform Legislation and Statutes Review inquiry into the bill. I commend the Joint Standing

Committee on the Corruption and Crime Commission's submission and report to the house. I urge those members who have not yet taken the time to read both the submission and the report to do so. The work of that committee is of a high standard and assisted our committee to a great extent in our consideration of the bill.

The implications and ramifications of this bill are significant. The bill provides extraordinary powers to the WA Police and the WA Department of Fisheries. The bill provides for the WA Police and the WA fisheries department officers to engage in controlled operations. A controlled operation permits the authorised law enforcement agencies to authorise their authorised law enforcement officers to commit criminal offences without incurring criminal responsibility. This is a significant matter. The bill also permits them to create and use assumed identities and to restrict evidence that may be given in legal, executive and parliamentary proceedings to protect investigations and participants.

The giving of these extraordinary powers is indeed a serious matter. An extraordinary power or powers permitted under this bill should be used only under extraordinary circumstances and should be open to a high level of scrutiny to avoid the possibility of corruption. If this bill is passed in its present form, when the WA Police wants to access extraordinary powers, it will no longer have to make an application to the Corruption and Crime Commission, the current gatekeeper of access to these powers. The Commissioner of Police will be authorised to make these determinations himself, with no independent body providing input or assessing the justification for the use of the extraordinary powers. Further, the same right is being extended to the Director General of the Department of Fisheries. This is an extraordinary power to put in the hands of the Director General of the Department of Fisheries. Under the bill, he will have the power to authorise fisheries officers to commit actions that would otherwise be criminal, with no independent gatekeeper to authorise the use of such extraordinary powers. The implications of this are serious and significant.

The bill proposes the use of extraordinary powers—powers that, as I have said, should be used only in extraordinary circumstances—and it expands the range of officials who would be able to use such powers and removes the independent gatekeeper from the decision-making process about whether it is appropriate and necessary in the circumstances to use extraordinary powers. Further, it removes the full and proper oversight of and monitoring role in the use of these extraordinary powers.

Unfortunately, the time available for me to speak will not enable me to do justice to all the issues raised by the bill that have been addressed by the Standing Committee on Uniform Legislation and Statutes Review and, indeed, the Joint Standing Committee on the Corruption and Crime Commission. I urge members to read the reports of these committees and acquaint themselves with the issues that they have identified, as the impact for the community, if the bill is passed in its current form, will be significant. As I have said, time will not allow me to cover all the issues canvassed by the committee report, so I will address some of the key issues and trust that I will be able to canvass other issues during the consideration of the bill in detail.

The premise for the need for the bill is outlined in the second reading speech, and it states that the need for the extraordinary powers is to combat organised criminal networks and a belief that such organised criminal networks have reached macro-economic proportions and are on the rise. The two agencies, the WA Police and the fisheries department, were unable to provide to the committee convincing evidence of an increase in organised crime, despite every opportunity being provided to both agencies. Perhaps the government may be able to provide this information to the house in its response to the second reading addresses. As has been pointed out by Hon Giz Watson, the second reading speech states that this bill targets organised crime, yet nothing in the bill limits it to organised crime, and it refers to dealing with serious offences. However, we know that it is not limited to serious offences either because not only has it taken a step lower than was proposed by the model law in looking at offences with seven years' imprisonment or more—in this case we are referring to offences with imprisonment of three years or more as being relevant offences—but also it enables the executive to prescribe offences that have a penalty of imprisonment of less than three years, which can be very minor offences indeed.

The second argument was the decision in Ridgeway v The Queen. In this case the High Court decided that the importation of heroin by law enforcement officers was illegal and, therefore, evidence of that importation should have been excluded from the trial on the grounds of public policy. In deciding, the court weighed up the public interest in discouraging unlawful conduct by law enforcement officers against the public interest in the conviction of wrongdoers and concluded that the nature and degree of the law enforcement officers' unlawful conduct and the fact of the unlawful importation of the drug by police created an element of the offence charged against Ridgeway, being possession of a prohibited import. This case highlighted the High Court's concern with administratively sanctioned unlawful conduct that led to a culture of inducing people to commit crimes, which was then normalised by those active in law enforcement. The High Court acknowledged that sometimes law enforcement officers need to engage in a range of activities, in some cases illegal, to uncover organised crime and recommended that the problems relating to the conduct of controlled operations should be addressed by introducing regulating legislation.

That is the background to the bill. The form and extent of that legislative power is a matter for the Parliament to determine and what we as legislators must turn our minds to in consideration of the bill.

I turn to recommendation 1 of the committee report. The committee's first recommendation is that the Department of Fisheries should be excluded from the definition of "law enforcement agency". This is not a decision that the committee took lightly. The hearing with the Department of Fisheries officers was most unenlightening as to the need for the Department of Fisheries to have such extraordinary powers, and illustrated a high level of confusion amongst officers of the department as to what activities the powers in the bill would actually allow their officers to undertake, and in fact whether all the powers under the bill were needed by the fisheries officers. It did not instil any comfort in the committee members that the fisheries department was ready for, or should ever be entrusted with, these extraordinary powers.

The Director General of the Department of Fisheries' statement that the ministerial exemption under which controlled operations are currently undertaken was operating very well raised further questions as to whether the department needed the powers at all. The fisheries department indicated that its real interest in the bill was the assumed identities power, which again only begged the question why the rest of the exceptional powers were being provided to the department in the absence of the department being able to provide any evidence of emerging trends of organised crime in fisheries. Under the legislation, fisheries officers would be authorised to deal with the exchange of fish for firearms and/or drugs—areas that are beyond the knowledge and expertise of fisheries law enforcement officers. The committee formed the view that it would be more appropriate for the Department of Fisheries to make an application to the chief officer of WA Police for the granting of a controlled operation authority or assumed identity, especially given that the Department of Fisheries' mandate is for serious commercial fishing offences, not drug trafficking offences; WA Police are ex officio fisheries officers; and the Director General of the Department of Fisheries in his proposed capacity of chief officer does not have expertise in drug or firearms trafficking and/or management and/or other aspects of the Criminal Code, yet the legislation gives him the power to issue a retrospective authority for their possession under the Criminal Code.

The committee also noted that the Commissioner of Police had concerns about the fisheries department straying into areas perhaps better suited to WA Police and how to deal with that. He considered possibly swearing fisheries officers in as special constables so that they have the powers and the legitimate authority to have those things when they are authorised to do so. He stated to the committee —

Otherwise, it seems to me that it is going to be quite messy unless the police are involved.

It was interesting that it appeared that the Commissioner of Police had not had an opportunity to exercise his mind to some of the questions put by the committee until such time as they were put by the committee and that in doing so, he recognised that there would be some serious issues with fisheries law enforcement officers having such exceptional powers. As a result, the committee was of the view that the whole consideration of whether the fisheries department should have extraordinary powers, as proposed under the bill, had been fairly ill-conceived and poorly thought out. As a policy position of government, it needed much further work and there were issues that would create tension between the Department of Fisheries and WA Police that needed to be sorted before a bill came before this house to approve such extraordinary provisions for the Department of Fisheries. As a result, the committee formed the view that there really is no basis for the fisheries department to have the extraordinary powers that are proposed under the bill and that the Department of Fisheries should be excluded from the definition of "law enforcement agency"—that is, recommendation 1 of the committee report.

At recommendation 2, the committee addresses issues associated with the definition of "relevant offence" under the bill. "Relevant offence" means an offence against the law of this jurisdiction punishable by imprisonment for three years or more. However, it does not stop there. The definition goes on to provide that a relevant offence also means an offence against the law of this jurisdiction that is prescribed for the purposes of this definition. This means that the executive may, by way of regulation, add to the list of relevant offences—this can extend to every offence listed in the Criminal Code—and extend the scope and use of exceptional powers for not only serious offences, but also the most minor offences, which I think many in this place would agree is extreme and unnecessary.

This raises the important question of parliamentary scrutiny. Expanding the scope of the application of the legislation by regulation avoids parliamentary scrutiny. Although Parliament has the opportunity to disallow regulations, it is not the same as the power to scrutinise and review amendments to legislation. The power to disallow does not provide the same level of scrutiny or the possibility of amendment to restrict or vary its operations. These are exceptional powers and any decision to extend the scope of offences that carry a term of imprisonment of less than three years should be carefully scrutinised by amendment to the legislation and not by regulation. I again make the point that the second reading speech states that this legislation is needed to combat an increase in organised crime and we need these tools to combat serious offences. The government cannot make that argument and then also contain in the bill a provision that states we should extend the application of this

legislation to offences that carry a term of imprisonment of less than three years, which are minor offences and which are well less than what was ever intended by the model law and by the uniform scheme when it was first contemplated.

The committee expressed the concern that the breadth of the definition of "relevant offence" diminishes the role of Parliament in the creation of new offences by delegating this role to the executive. The committee also expressed concern that the power to prescribe offences is considerable, with no criteria provided for the exercise of this power. This is another important factor: the bill provides for the executive, by regulation, to add to the list of relevant offences, yet provides no guidance or criteria as to what additional offences could be added by way of regulation. At the very least the bill should offer that, but the committee would prefer not to see additions made to the list of relevant offences by way of regulation. The committee suggests a number of methods to address its concerns at page 25 of the report, such as the use of a schedule to the bill or restricting the categories of offences that can be added by regulation. The justification given by the executive that amendments to legislation by way of regulation is simple and quicker is, in the view of the committee, not a justification. That is basically saying, "We don't believe that the Parliament should have the time it needs to scrutinise amendments to the law. You make the initial law and then trust the executive to change it at its will to expand the scope quite broadly, and we're supposed to just take that on trust." I do not think that the people who elected us to this place expect us to pass laws that then hand over the lawmaking power to the executive. If a lawmaking power through delegation is handed to the executive, it should be very clearly itemised and very clearly restricted in the legislation, and this bill does not provide for that. The role of the Parliament should not be avoided or usurped for the ease of the executive; the role of the Parliament is to scrutinise and hold the executive to account. This role should not be curtailed, especially when dealing with exceptional powers legislation.

Recommendation 2 of the committee is that the definition of "relevant offence" be amended to exclude the prescribing of additional relevant offences in regulation. The committee also provides an alternative recommendation, should recommendation 2 not be supported; that is, that clause 5 be amended to provide for greater scrutiny of the prescription of relevant offences by way of affirmative resolution. When that was put to the Commissioner of Police, he indicated a preparedness to support such a proposal. I am interested to hear the government's view on this important issue of maintaining the scrutiny function of this house.

The committee made similar recommendations—namely, recommendations 4 and 5—in relation to the definition of "sexual offence", the detail of which can be found on page 29 of the report. Given the time restrictions that I have to talk to the committee report, I will not detail all those.

Clause 9 of the bill provides that the State Records Act 2000 and the Freedom of Information Act 1992 do not apply to investigations, operations, activities or records under the principal act. The committee has previously brought to the attention of the house the Information Commissioner's concerns about the recent trend to include such provisions in uniform schemes. The committee shares the Information Commissioner's concerns. Time does not permit me to detail these concerns and I commend pages 30 to 34 of the committee report to members and the Information Commissioner's submission to the committee, which the committee has attached to the report.

At recommendation 6, the committee recommends, for the reasons detailed in the report, that clause 9 be deleted. I trust that the government will respond to the committee's recommendation; and, if it does not support the recommendation, that the government will provide comment why it does not support the concerns expressed by the Information Commissioner. I also note that the committee provides an alternative course of action at recommendation 7 and seeks the minister's comments on the concerns raised by the Information Commissioner at recommendation 8. Clauses 12 and 15 of the bill address the process for authorising controlled operations. The committee makes two recommendations at pages 35 and 37 of the report, being recommendations 9 and 10, that seek to clarify the process, and I understand that the department has indicated support of these amendments and I would appreciate hearing confirmation of that point from the government, or if it has not been confirmed, the reasons why.

Clause 25 is a critical provision of the bill that provides for the granting of retrospective authorisation of unlawful conduct and it raises a fundamental legislative principle that the committee routinely considers; that is, does the bill impose obligations retrospectively? Interestingly, neither the model law nor the Corruption and Crime Commission Act provide for retrospective authorisation. The power to provide a retrospective authorisation cannot be delegated by the chief officer, which is a necessary precaution to the use of this extraordinary power and does not extend to cross-border controlled operations. Clause 25(2) provides that —

> If a participant in an authorised operation engages in unlawful conduct (other than controlled conduct) in the course of the operation, the principal law enforcement officer for the operation may, within 24 hours after the participant engages in that conduct, apply to the chief officer for retrospective authority for the conduct.

The committee was concerned with the word "may" used in that provision, which implies a discretion that could result in an application not being made within the stated 24 hours, and that no upper time limit was provided or suggested in the legislation. Although the committee acknowledged that in some circumstances keeping within a 24-hour limit may not always be possible, it still felt that the time limit should not be open-ended as the bill is currently drafted and, accordingly, the committee has recommended at recommendation 11 a minor amendment that provides, in exceptional circumstances, for the chief officer to consider an application made at a time longer than 24 hours. Again, my understanding is that the police indicated to the committee a willingness to accept this recommendation, and I would be interested to hear confirmation on that point from the government.

Clause 25(7) is a very interesting provision. It seeks to limit the circumstances in which retrospective approval may be granted, and at face value it seems a very reasonable restraint. However, the committee expressed some concern that this provision may in fact place law enforcement officers at greater risk. The argument for retrospective approval is that organised crime networks often test police officers operating in controlled operations under assumed identities in an effort to expose whether the person is in fact an undercover police officer by asking them to commit offences that they believe the police officers would not engage in. The need for retrospectivity is that one cannot reasonably predict how the undercover police officer may be tested. Therefore, the police are arguing that because police officers are tested and it cannot always be predicted how they will be tested. It is impossible, when giving the authority for a controlled operation, to foresee all the possible tests that a police officer could be subjected to. Therefore, the need for retrospective authority uncovers that circumstance in which a police operative may be put in a position in which they are being tested, and that that was not a foreseen event when the authority was initially given. In those circumstances, rather than exposing the operation or themselves, and putting themselves and the operation at risk, a police officer may engage in unlawful activity and then seek a retrospective approval. At face value I fully understand the sense in that, but paramount in our minds at all times needs to be the protection of the operatives in these operations.

The issue with clause 25(7) is that it actually states the criminal activity for which retrospective approval cannot be granted. In my view this places operatives, undercover law enforcement officers, at direct risk of being challenged to commit the very offences for which the legislation states retrospective approval can never be granted. I personally struggled with this. As members know, I have a brother-in-law and a sister-in-law who are police officers and although they do not operate in this area, the idea that we are placing any person in a position in which they could be putting their lives at risk is something that this house needs to take very seriously. I understand on the face of it the very sound reasons those limitations were incorporated into the bill; it is to say that there are certain offences such as sexual offences or murder that will never be sanctioned in a retrospective approval. But let us not kid ourselves, criminals can read the law; they engage lawyers who can read the law. They will pick up this bill and they will understand those criminal activities for which retrospective approval can never be granted. As I said at the committee hearing—I have probably watched a few too many crime movies!—we can bet our bottom dollar that organised criminals will understand exactly what this bill means and if they want to test operatives within their networks, they will look to this very provision and test them in respect to one of these offences. That places the operation at risk and places the operative at risk. Therefore, we need to think very seriously, first, about the whole retrospective activity, which is not provided in the model law, and why we are going down this path when it is not incorporated in the model law; and also, whether we are actually providing police officers with the protection that it alleges we intend to provide through this provision or whether we are actually placing them at greater risk. Having put that out there, I will leave it to members to contemplate and to come to their own views. The committee was very concerned about this issue and spent quite a bit of time deliberating about how to handle it. The committee made the following general findings about clause 25 —

- It is not a feature of the Model Law yet the policy of the Bill is to enter into a uniform scheme to avoid fragmentation and complexity amongst participating jurisdictions' corresponding laws. Deviations lose that principle of uniformity essential to the operation of any national scheme.
- The equivalent of clause 25 has been used only twice in 14 years in NSW.
- It is anticipated by Western Australia Police that clause 25 will be rarely used in Western Australia.
- NSW is the only other jurisdiction to include the equivalent of clause 25.
- The testing of operatives is foreseeable.

The very fact that this provision has been included is because WA Police and the drafters of this legislation foresee that operatives will be tested. The issue then is: do we then want to put out there that there are certain crimes for which retrospective authority will never be granted? We can bet our bottom dollar that they are the very sorts of tests that our operatives will be subjected to in the field, and I have real concerns about placing

operatives, police officers and other law enforcement officers in a high-risk situation. As a result, recommendation 12 states —

> **The Committee recommends that clause 25 of the Criminal Investigation (Covert Powers) Bill 2011 be deleted from the Bill.**

On balance, the committee recommended at recommendation 12 that a retrospective authority provision be excluded from the bill because the risk to operatives was too great to be sanctioned by Parliament. Appreciating this may not be what the government would entertain, the committee, in its usual thorough fashion, also recommended at recommendation 13 that if clause 25 is to be retained, greater oversight is needed for the exercise of retrospective approvals. Understanding the government's position and opposition to that oversight power being retained within the Corruption and Crime Commission, a view that the committee had some very serious concerns about, the committee looked for other options and suggested that the terms of reference of the Joint Standing Committee on the Corruption and Crime Commission could be extended to encompass that oversight function for clause 25, should the government persist in its view that the CCC should not continue to maintain an oversight role in relation to use of exceptional powers. The important fact that I want to drive home is that parliamentary oversight of extraordinary powers is critical. It is important and it should be incorporated in the bill. Clauses 27 and 35 to 41 deal with the protection for participants from criminal responsibility, disclosure of operational information, reporting and record keeping, and inspection. I do not have time to detail those provisions, but I trust I will have a chance to address those during the committee stage.

I turn to part 3 of the bill, which provides for the granting of assumed identities. The committee had concerns with a couple of issues. One was that the bill provides for the granting of assumed identities for the training of persons for the purposes of taking on an assumed identity and for administration functions in support of that function. The committee struggled to understand why we would need to extend the assumed identities roles to training, particularly given that that activity is currently undertaken by police and there does not appear to be any issue with the way it is undertaken. The committee noted that the creation of an assumed identity merely for training purposes or administrative support diminishes the integrity of the births, deaths and marriages register, which would be altered in those circumstances, and the WA Police said the model law provisions were not considered adequate, but even the Minister for Police queried his own staff about why assumed identity could not be role played and questioned whether it is needed for training purposes. The committee repeats its claim that any deviation from the model law fragments the uniformity of the scheme and introduces complexity; this is not a uniform aspect of the law that occurs in every other jurisdiction. The committee is of the view that on balance WA Police has not provided convincing evidence of the need for the two deviations. The integrity of the births, deaths and marriages register is already compromised and to compromise it further merely for training purposes or administrative support diminishes the integrity of the register even further. For this reason the committee made recommendation 22 that —

> … 48(2)(a)(ii) and (iii) of the Criminal Investigation (Covert Powers) Bill 2011 be deleted.

I am running out of time, so I will have to be very selective about what I pick up next. Perhaps I might turn to a section of the report that I know the Clerk has a particular interest in. I thank the Clerk for attending before the committee as a witness and providing very important support to the committee. Clause 80 of the bill raises a fundamental legislative principle that the committee routinely considers: does the bill have sufficient regard to the institution of Parliament and, in particular, does the clause affect parliamentary privilege in any matter? Clause 80 states —

> In this Part, unless the contrary intention appears —
>
> …
>
> ***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 either or both Houses of Parliament or by the Government of the State to inquire into any matter;

The committee noted that the definition of "court" deviates from the model law in a very significant way. The model law limits the definition to including any tribunal or authorised person by law or consent of parties to receive evidence. However, unlike other jurisdictions, WA Police expanded the definition to allow for maximum protections to operatives and protected witnesses when giving evidence, information or producing documents. The rationale for clause 80 is the need to extend the protection to any proceeding that a person is required to attend and give their name. A further justification is that it is in line with the definition of "court" in the Witness

Protection (Western Australia) Act 1996 and the Corruption and Crime Commission Act. Although that is true of the Witness Protection (Western Australia) Act 1996, it is not true of the Corruption and Crime Commission Act. Sections 114, 134, 152, 153, 208 and 209 of the CCC act do not expressly prescribe for the houses of Parliament or its committees. In fact, section 114, for example, states that —

> (1) In this section —
>
> ***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

Clearly, the definition of "court" in those sections, although broad, does not apply to Parliament or its committees when read with section 3(2) of the Corruption and Crime Commission Act, which reinforces that nothing in that act —

> … affects, or is intended to affect, the operation of the Parliamentary Privileges Act 1891 or the Parliamentary Papers Act 1891 and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable exclusively by a House of Parliament, unless that House so resolves.

I will quote from the information provided to the committee at page 63 of the report, for those who are following intently. The view of the WA Police was —

> *In the context of the issues of parliamentary privilege, what it is about is protecting the identity of the actual person, not preventing any publication of evidence that they may give. So I do not know to what extent there will be any problems with parliamentary privilege.*
>
> *For example, the name of the person giving evidence is not published or included in any report, the information given by the operative is subject to parliamentary privilege; however, their identity is protected.*
>
> *I do not know whether it is likely that the operative's true identity would have any bearing on the evidence they would give; it is more a case of the evidence they are giving than their identity.*
>
> *It is not about putting any sort of restrictions in terms of parliamentary privilege about what evidence they may give to parliamentary committees et cetera but about protecting the true identity of who it is.*

Further, WA Police advise that no other jurisdiction expressly prescribes parliamentary committees in their respective definitions of "court" and —

> *possibly not contemplated by the JWG on model laws as they would not have foreseen the necessity for operatives to give evidence at parliamentary committee hearings but rather concentrated on the traditional places an operative would be called to give evidence (usually criminal proceedings). Western Australia included Parliamentary Committees to assure that a mandated provision would assure the protection of an operative's true name.*

Although the explanatory memorandum states that its definition "is broad to ensure maximum protection to operatives when giving evidence", the committee is of the view that the inclusion of Parliament and its committees diminishes the sovereignty of the Western Australian Parliament. As a fundamental principle, it would be in only the rarest and most extraordinary of cases that Parliament would decide to set some limit on its own operations and legislate so as to limit itself in some way.

Arguably, the intent of clause 80 is to waive parliamentary privilege and impacts on article 9 of the Bill of Rights 1689. Article 9, which is incorporated as section 1 in the Parliamentary Privileges Act 1891, provides that —

> … freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

By article 9 each house of Parliament, its committees, members and attending witnesses are able to operate without their proceedings being interfered with in any way. Arguably, clause 80, which seeks to limit this freedom, is fundamentally obnoxious and inconsistent with article 9. The report goes on to say —

> Article 9 established the right of the Parliament to determine what matters were to be considered by it. 'Proceedings in Parliament' includes evidence before a committee, submissions made and the report of that committee. A related question arises as to its impact on section 7 of the *Parliamentary Privileges Act 1891*, which limits the ground on which a person can refuse to answer a Parliamentary inquiry due to the matter being of "*a private nature*" and "*not affecting the subject of inquiry*" with the House determining whether that refusal will be accepted. If clause 80 was applied to proceedings in the Parliament, section 7 would be diminished.

Concealing the true identity of an operative who may appear before the Parliament is directed at two public interests:

- protecting the personal safety of the operative witness (their family and associates); and
- enhancing the efficacy of the controlled operations by preserving the cover of an operative and providing some security for other police officers when participating in controlled operations.

The competing public interests are the right of an accused to be tried fairly and the conduct of criminal proceedings in public. Limitations on the latter have potential to undermine public confidence in court proceedings. The same is true for Parliamentary inquiries.

The assumed identity provisions will deny a "court" (here, the Parliament or a committee), any role in evaluating whether there is a need to protect the true identity of a witness and in balancing that need against other competing interests, such as the interests of justice. In contrast, sections 114, 134, 152, 153, 208 and 209 of the CCC Act allow the Commission to ask an operative to reveal their true identity. The Committee finds it extraordinary that a person with an assumed identity within the Department of Fisheries or Western Australia Police appearing before a Parliamentary committee cannot be asked to reveal their true identity, yet can if before the CCC.

The following clauses in Part 4 of the Bill give context to the term "court".

- Clause 87(3) defines a person involved in a proceeding to include "the court" (which would include members of the Parliament) and "any other officer of the court or person assisting the court in the proceeding"; (this would include all parliamentary staff, including Hansard).
- Clause 90(8) provides for a "court" (again being a Parliamentary committee) to make orders suppressing the publication of anything said in a hearing and how subsequent transcripts are to be dealt with in order to protect the operative's true identity and location.
- Clause 93(4) allows for appeals to a court that has jurisdiction to hear and determine appeals from a judgment given pursuant to clauses 86 and 90. If, in a parliamentary committee hearing, the operative is asked to identify him or herself and refuses, the clause allows the person to seek an adjournment of the proceeding and apply to a court for a judgment on appeal against the decision to give or refuse leave or to make or refuse to make an order. The person leaves the committee hearing and goes to court. At that stage, there is interference in the processes of a Parliamentary committee by another court.

The Committee is of the view that clause 80(c) seeks to constrain the Parliament in the conduct of its inquiries and places conditions on the access by Parliamentary committees to certain information. In so doing, this fundamentally undermines both the powers and immunities of parliamentary committees and the rights of unfettered access to persons by parliamentary committees.

A particular feature of Parliamentary inquiries is their power to compel evidence, which exists independent of any explicit prescription as an aspect of the power to legislate. The Bill may necessarily impose a limit on the general power to inquire—so that compulsory inquiries cannot be conducted into matters beyond the Parliament's legislative competence. As noted, legal and police submissions to the JWG were that:

> the criteria were too light—every covert operation would meet the test; and
>
> it is inappropriate for the Executive to take over a judicial function.

These criticisms apply equally to the Executive's usurpation of Parliamentary privileges.

The requirement that a Parliamentary hearing must be held in a closed "court" is not in accord with the power of the Parliament to fundamentally determine its own process.

Further, to override the operation of Parliamentary privilege by making Parliamentary committee operations bound by a statute:

> setting conditions of access between parliamentary committees and their witnesses,
>
> dictating the manner in which parliamentary committees must hear evidence, and
>
> making any disclosure of a witness's identity a criminal offence,

> is a departure from the long-standing supremacy of Parliamentary privilege and a significant trespass on the powers, privileges and immunities of the Houses and their committees and on the rights of witnesses of the Parliament.
>
> To date, there are no known instances where a committee has requested an individual to disclose their real identity. As to whether a committee would ever inquire into the identity of an individual, this is highly unlikely. Parliamentary committees have been known to respect the wishes of persons appearing before them by using non-identifying information in tabled reports. In comparison, Western Australia Police wish to retain clause 80(c) on the cryptic basis that they "have had some experience in relation to disclosure of details relating to covert operatives who appeared before a parliamentary committee". Western Australia Police said:
>
> > A previous Parliamentary Committee did not heed a confidentiality agreement and allowed the names of covert operatives to be published. The Western Australia Police seeks to assure that the protection of an operatives name cannot be left to chance and that future administrative errors cannot occur or result in harm to an operative.

[Leave granted for the member's time to be extended.]

Hon ADELE FARINA: Further —

> It is the Committee's view that Western Australia Police has not justified the definition of "court" in clause 80 as it applies to the Parliament and its committees. The Committee therefore makes the following recommendation.
>
> > Recommendation 25: The Committee recommends that clause 80(c) of the Criminal Investigation (Covert Powers) Bill 2011 be amended.

The report goes on to detail how that would be amended to effectively remove the application of that provision to parliamentary committees. I think all members in this house who understand the importance of parliamentary privilege and the operation of this house and parliamentary committees would agree that this is one amendment that we all should support, because there is a deep need to protect parliamentary privilege and the operations of this house and to keep very separate the operations of this house and the courts.

In view of the fact that my time is up, I do not propose to go through the rest of the report. That really makes the essence of the concerns of the committee clear to the house. I will address other issues during consideration of the bill in detail. I again commend this report to the house. I also commend report 15 of the Joint Standing Committee on the Corruption and Crime Commission. They are both excellent reports.

HON PETER COLLIER (North Metropolitan — Minister for Energy) [8.57 pm] — in reply: I thank honourable members for their contribution to the debate on the Criminal Investigation (Covert Powers) Bill 2011. I think we have had a fairly forensic discussion about the merits or otherwise of this bill. A number of questions have been asked by various members, which I would like to go through now. However, it is quite evident from the comments that have been made that there is quite a degree of interest in this bill. There will be a lot of questions that will go beyond the scope of those that I will be able to respond to in my response. Having said that, I will do the best I can to identify those specific areas. What I do not cover will be covered in much more detail at the committee stage.

As I said, I thank honourable members very much for their contributions. I appreciate the concerns that have been raised by several members. I would like to think that we will be able to placate some of those concerns, although I doubt, as far as Hon Giz Watson is concerned, we will be able to get across that threshold level. Having said that, I respect her views on this piece of legislation. As has been identified, the aim is to develop model laws for criminal investigation across state and territory borders. The objectives of the model law are to enable the seamless cross-border investigation of serious offences.

A number of issues were raised by various members. First of all, Hon Kate Doust asked a question about what sorts of offences can and cannot be committed in a controlled operation. Clause 12(1)(g) sets out the threshold for unauthorised unlawful conduct, known as controlled conduct, that can be committed during a controlled operation. Any controlled conduct cannot —

(i) seriously endanger the health or safety of any person; or

(ii) cause the death of, or serious injury to, any person; or

(iii) involve the commission of a sexual offence against any person; or

(iv) result in unlawful loss of or serious damage to property (other than illicit goods).

Clause 25(7) does not allow retrospective authority to be granted that breaches any of these thresholds. Any offences may be committed with the exception of offences that fall within one of these above-mentioned categories.

Hon Kate Doust also asked a question about how a child considered a suspect in dealing with illicit goods will be dealt with in a controlled operation. All members of the undercover police unit are also sworn members of police, so they will have received training in their responsibilities under the Young Offenders Act 1994. There is already a range of processes in place for how police deal with young children, whether they are suspects or whether they have been charged with offences. As mentioned, there are quite a lot of provisions under the Young Offenders Act 1994 in terms of how police engage with children. These provisions will still apply in the context of how police engage with young children who are suspected of committing a criminal offence. This issue does not have a direct effect on offences under the Fish Resources Management Act 1994—the FRMA. Hon Kate Doust also asked how this bill has regard to the best interests of children. The thresholds previously mentioned in clauses 12(1)(g) and 25(7) protect any person, which includes children under 18. The term "sexual offence" used in clauses 12(1)(g)(iii) and 25(7)(c) was defined in clause 5 of the bill during drafting because the model laws did not define this term to deliberately exclude offences related to child pornography. This will enable WA Police to infiltrate paedophilic circles in order to gather evidence of offences. During controlled operations, planning and assessment of the impact of the investigation on the type of person and those associated with the target is undertaken; if relevant, this will include assessment of the impact of juveniles on planning to ensure that any impact is negated or, if unavoidable, minimised.

Hon Kate Doust also inquired, given clauses 9 and 45, how people will have access to information if something goes wrong in a covert operation. Clause 33(1) requires the principal law enforcement officer to report to the chief officer any loss of or damage to property that occurs as a direct result of a controlled operation. Clause 33(2) obliges the chief officer to take all reasonable steps to notify the owner of the property of the loss or damage. Clause 37 requires the chief officer twice yearly to submit a report to the independent inspection entity about controlled operations conducted in the previous six months, which includes details of any loss of or serious damage to property or any personal injuries occurring as a direct result of the controlled operation. Clause 38 requires the inspection entity to prepare an annual report of the work and activities of the agency. This annual report is tabled in Parliament. Clause 32(1) provides a right to compensation to an innocent third party who suffers loss of or damage to their property.

Finally, Hon Kate Doust asked a question about the concerns raised by the Clerk of the Legislative Council in his submission to the Standing Committee on Uniform Legislation and Statutes Review with regard to clause 80(c) of the bill and the definition of "court". The definition of court as contained in the model laws was considered to be too restrictive, as it described a court to include any tribunal or person authorised by law or consent of parties to receive evidence. During drafting, this definition was extended to include an inquiry or other hearing, person or place that has the power to require the production of documents or the answering of questions that may not in every instance amount to evidence per se. An example of this is when an operative or officer in charge of a covert unit is called before a committee to give information about how certain matters are administered by the agency, such as witness protection or informant management, as recently required by the Joint Standing Committee on the Corruption and Crime Commission. It is still necessary in these instances for the officer in charge of such units to attend to those inquisitorial-type sittings using his assumed name so that his true identity is protected.

A response to concerns raised by the Clerk of the Legislative Council in his submission to the Standing Committee on Uniform Legislation and Statutes Review with regard to this clause can be discussed during the committee stage of the bill.

Hon Kate Doust asked another question about how covert operatives in a controlled operation prepare in terms of training and scenario planning for their work in the field. Clause 12(2) of the bill provides that a person must not be authorised to participate in a controlled operation unless the chief officer is satisfied that the person has the appropriate skills or training to participate in the operation. An operative must successfully complete the undercover operative training course. All of this training is accredited and the operative must reach a certain standard of certification. Each operative undertakes a rigorous selection course that involves constant observation by training staff and a psychologist who monitors behaviours and responses to each scenario the operative is presented with. Department of Fisheries undercover operatives receive training from the WA Police undercover policing unit and in-house training from an experienced former police officer now working with the DOF serious offences unit.

The very honourable Nick Goiran asked a couple of questions specifically about the adding of additional relevant offences under the three-year imprisonment threshold by way of amending statute rather than by regulation. This recommendation is not in accordance with the model laws. The joint working group that produced the final report agreed after a process of extensive consultation that each jurisdiction should be able to

prescribe certain offences that fall below the three-year threshold. Crimes change, crime trends change and challenges change. It may be that in the future organised crime changes the way it conducts its business and starts engaging in offences below the three-year threshold. Police need to be able to respond quickly to that without having to wait for an amendment to go through the Parliament.

Hon Nick Goiran also asked a question about the testing of undercover operatives that can be anticipated and therefore a prospective authorisation given; that is, there is no need for retrospective authorities. The intent of retrospective authority is to protect a participant in a controlled operation against scenarios that may arise and that were unforeseen at the time of the planning of the controlled operation and issue of the authorisation. The retrospective authority covers the unexpected. The extent of criminality of any given organised crime group should not be subjected to guesswork. The original controlled operations planning will have to contain every hypothetical scenario that a group or individual may be involved in or connected to, if prospective authorisation is granted without the capacity to approve certain unlawful behaviour retrospectively. This is particularly problematic for the Department of Fisheries because the prime target of the operation will be fish-related offending, and other testing of an operative may occur outside the scope of the Fish Resources Management Act 1994. Retrospective authority may also cover conduct that may be committed or discovered during a controlled operation. It is not always possible to predict what future offences the operative may need to undertake—for example, when a controlled operation targets drug supply and is approved for that purpose and the operative is given a handgun to deliver to another criminal entity. Because that controlled conduct was not identified in the controlled operations approval, it is therefore not authorised. It will not always be operationally possible to seek a variation to the original authority to cover the behaviour and therefore the evidence of the supply of the handgun may be jeopardised.

A retrospective authority is not intended to replace the normal application and approval process, and it is expected that retrospective authorisations will be infrequently applied for. However, the new provisions will help ensure that evidence of criminal activity is not later rendered inadmissible at court. This retrospective authority will also provide a greater level of officer safety, as the operative will be able to maintain his cover and not react inappropriately in a criminal setting to a situation that would normally compromise the operative by way of a refusal to commit a particular act.

Finally, Hon Nick Goiran asked whether further amendment is desirable to define in the bill which senior executive service officers of the Australian Crime Commission are appropriate officers to be authorising controlled operations. It is a very pertinent question.

Hon Nick Goiran interjected.

Hon PETER COLLIER: The answer is: consultation with the ACC, WA branch, has been conducted and the ACC has requested the initial opposition be maintained; that is, to avoid making reference to any particular position or titles because they may change over time, and this is what caused the problem in the first place. The ACC also argued that it is important for there to be as much consistency as possible between the proposed state provisions of the bill and the current commonwealth provisions found in section 15GF of the Crimes Act 1914. The proposed amendment is consistent with the delegation provision in the commonwealth act. So there!

Hon Nick Goiran: Are you trying to provoke me?

Hon PETER COLLIER: The member thought that I did not know.

Hon Nick Goiran: Do you really want me to answer that?

Hon PETER COLLIER: No. Hon Linda Savage enquired whether the three-year threshold for a relevant offence had set the bar too low. She felt that the ability to prescribe further offences in regulations without any criteria to justify these further offences exacerbated the problem.

The Criminal Investigation (Covert Powers) Bill 2011 implements model legislation. The threshold of three years' imprisonment contained in the definition of "relevant offence" was a compromise reached by the joint working group responsible for developing the model laws after extensive consultation with all jurisdictions. During this consultation the range of thresholds canvassed included Queensland at one end of the spectrum, for its use of controlled operations of serious indictable offences, and New South Wales and Victoria at the other end, which prefer an all-offences approach. The JWG considered all submissions and concluded that the model bill should retain a three-year offence threshold. The JWG also agreed after consultation on the discussion paper that jurisdictions should be able to prescribe certain offences that fall below the three-year threshold. As a guide, the JWG intended that prescribed offences be limited to the following categories: child pornography, gaming, fishing, firearms, prostitution and corruption. These are areas that fall under the three-year threshold in some jurisdictions but which the JWG believe are sufficiently serious to include in the model bill. The Commissioner of Police gave an assurance at the hearing of the Standing Committee on Uniform Legislation and Statutes Review held on 17 January 2012 that any relevant offences added by amendment to regulations that fell outside of these six categories would be subject to a process in which people could be satisfied that what we are

suggesting is in fact necessary and useful. The commission of offences under the three-year threshold by serious and organised offenders is often the precursor to more serious and organised offending. The ability to target differing levels of offending is critical to undercover work and infiltrating organised groups.

Hon Giz Watson asked a number of questions and I will try to go through most of them now. If I do not resolve the issues, I request that the member have some patience and we will deal with them at the committee stage. There was an issue with organised crime, which was raised by a couple of members. Organised crime is only one area in which the legislation will be a benefit. The legislation is targeted at any person who engages in criminal activity, which means the commission of an offence by one or more persons. The bill aims to investigate or gather intelligence on criminal activity and to frustrate criminal activity by any person.

Hon Giz Watson enquired about the report of the Joint Standing Committee on the Corruption and Crime Commission into the police's use of informants and controlled operations. Is that correct?

Hon Giz Watson: Yes.

Hon PETER COLLIER: That report is the fifteenth report of that committee and is related to the old regime, which is the Misuse of Drugs Act and the Prostitution Act, and did not take into account the draft bill, which has much more rigorous application, approval and oversight provisions. I imagine that the member might want to address that more fully in committee.

Hon Giz Watson: Yes.

Hon PETER COLLIER: The offence threshold in Queensland is seven years. However, it has a schedule of some 30 offences below the threshold, of which 15 have a penalty of three years or less, including fines. This undermines the high threshold. If we adopt seven years, we will allow another participating jurisdiction to come to Western Australia and investigate an offence that WA Police cannot investigate. The joint working group decided on a balance between Queensland, Victoria and New South Wales, which have no threshold, and arrived at the figure of three years. All jurisdictions have this threshold for cross-border investigations, except the Northern Territory, which is yet to enact the legislation, and Queensland, which has agreed to be part of the national scheme. The prescription of offences under three years will be limited to offences considered serious enough or that are a precursor to more serious offending.

With regard to the hesitation about the retrospective authorities—clause 25—under the safeguards contained in this provision, only the Commissioner of Police can grant a retrospective authority and this power cannot be delegated. The chief officer—the Commissioner of Police—must be satisfied that the participant believed on reasonable grounds that there was a substantial risk to the success of the operation or a substantial risk to the health and safety of a participant, or a substantial risk that evidence would be lost, amongst other factors, before granting an authority. A retrospective authority cannot be granted for conduct that seriously endangers the health or safety of a person, causes the death of or serious injury to a person, or involves the commission of a sexual offence.

Hon Adele Farina: Just to clarify, you said that only the Commissioner of Police as the chief officer of WA Police could issue a retrospective authority. Does the bill also not provide for the chief officer of the Department of Fisheries?

Hon PETER COLLIER: There is an amendment.

Hon Adele Farina: But the bill as it is currently drafted provides for that?

Hon PETER COLLIER: It does, yes.

There are some additional amendments. An additional supplementary notice paper has been distributed.

Hon Adele Farina: Part of one. I understand that it is a work in progress.

Hon PETER COLLIER: I apologise; I thought it was the completed version. This has been a moving feast. The previous supplementary notice paper covered the amendments that reflect some recommendations from the Standing Committee on Uniform Legislation and Statutes Review. I thank Hon Adele Farina for her very thorough contribution and the committee for the work it has done. Ideally, as a result of a number of amendments that have been suggested the government will accept some but not others. I will not go into anything specific that Hon Adele Farina has mentioned at the moment because it was specific to the report and is probably best left to the committee stage. The two amendments that are subsequent to the original supplementary notice paper regard the Department of Fisheries. The first empowers the Commissioner of Police to be the approving authority for controlled operations conducted by the Department of Fisheries and the use of assumed identities by that department, and the second amendment empowers the Corruption and Crime Commission to be the inspecting entity for controlled operations in lieu of the Ombudsman. They are the two additional amendments. Even though I have answered a number of questions, I am sure there are still a lot more questions

to be answered. Ideally, at the end of this process, which I am sure will be a very colourful and worthwhile committee stage, we will have an improved bill. Having said that, I thank all members for their contributions and I commend the bill to the house.

Question put and passed.

Bill read a second time.

Point of Order

Hon GIZ WATSON: We have just received 20 pages of further amendments. I have had words with the Deputy Leader of the House that we should wait until at least tomorrow before we go into the committee stage. There is no way we can consider an extra 20 pages of amendments on the run on such an important bill.

The DEPUTY PRESIDENT: I do not see that as a point of order.

As to Committee Stage

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [9.20 pm] — without notice: I move —

That consideration of the bill in committee be made an order of the day for the next sitting of the house.

This motion simply reflects the wishes of the honourable member. Between now and when we have an opportunity to resume sitting, members can examine and digest the new supplementary notice paper. That seems only reasonable.

Hon Giz Watson: Thank you.

Question put and passed.