16 December 2011

Chair
Uniform Legislation and Statutes Review Committee
Parliament House
PERTH WA 6000

Dear Chair

Criminal Investigation (Covert Powers) Bill 2011

Introduction

1. Thank you for the opportunity to make a submission to the Uniform Legislation and Statutes Review Committee's Inquiry into the *Criminal Investigation (Covert Powers) Bill 2011* (**Covert Powers Bill**).

2. I will confine my comments to Part 4 of the *Criminal Investigation (Covert Powers) Bill 2011* relating to the witness identity protection and the wide definition of "court". However, I note the model Bill is a result of a High Court decision in *Ridgeway v The Queen* (1995). The provisions make illegal actions legal in some situations in order to protect covert operatives be they law enforcement officers or civilians with previous criminal records. In *Ridgeway v The Queen* the court stated that the importation of heroin by law enforcement officers was illegal and therefore the evidence of that importation should have been excluded from the trial on the grounds of public policy.

3. As highlighted in my submission to the Standing Committee on Procedure and Privileges on the *Evidence and Public Interest Disclosure Legislation Amendment Bill 2011*, I have drawn attention to proposed legislation that may adversely impact on proceedings in Parliament by waiving parliamentary privilege.

4. As quoted in my submission to the Standing Committee on Procedure and Privileges:

> *It would only be in the rarest and most extraordinary of cases that the Parliament would decide to set some limit on its own operations, and legislate so as to limit itself in some way.*[1]

[1] The Senate report on the provisions of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 to the Privileges Committee for inquiry and report.

PARLIAMENT HOUSE·PERTH WESTERN AUSTRALIA 6000
TELEPHONE: +61 8 9222 7222 FACSIMILE: HOUSE +61 8 9222 7809 COMMITTEES +61 8 9222 7805
EMAIL (GENERAL OFFICE): council@parliament.wa.gov.au

5. Recently it appears the Government has announced policy or introduced a bill without apparently being sufficiently aware of the impact of the initiative upon the fundamentals of the constitution. If history teaches us anything, it is that we should never take for granted the fundamental principles of constitutional law.

6. In particular, officers in the Attorney General's Office seem to have a view that the Parliament should not be treated any differently than a court of law. An example of this is the State Counsel's statement, in his submission dated 17 November 2011, when expressing concern about setting out journalists' rights before Parliament and its committees in standing orders rather than in provisions within the Bill:

> "*In my respectful opinion, the clearest expression of the true and abiding will of Parliament in a democracy is the enactment of legislation.*"

7. In my opinion, the intent of the Covert Powers Bill is to waive parliamentary privilege.

Historical background to Parliamentary sovereignty

8. In Britain between about 1200 and 1900 AD, there was a long slow struggle between the monarch and the parliament. As the **power of the British Parliament slowly increased, the power of the monarch decreased.**

9. During the Middle Ages, the monarch of England enjoyed great power while the parliament had almost no power. The king and the British Parliament frequently clashed. In 1642, King Charles I ordered the arrest of five powerful leaders of the majority in the House of Commons with the charge of treason (plotting against the king). The king sent his sergeant-at-arms to the Parliament to arrest the five members. The Speaker of the House of Commons commanded the Members to remain in attendance.

10. The king subsequently went to the House of Commons, attended by an armed escort, to seize the five members. He entered the chamber alone, the first sovereign ever to cross the Bar (and the last), and said '*By your leave, Mr Speaker, I must borrow your chair a little*'. When asked by the king if any of the five members were present, the Speaker delivered his historic reply and defence of parliamentary privilege on bended knee:

> *May it please your majesty, I have neither eyes to see nor tongue to speak in this place but as this house is pleased to direct me whose servant I am here; and humbly beg your majesty's pardon that I cannot give any other answer than this is to what your majesty is pleased to demand of me.*

11. In forcing his way into the Commons chamber, Charles I was guilty of a breach of privilege and violated the traditional law, which entitles every man to be tried by his peers. Since then, it has been a Westminster custom that monarchs (and/or their representatives) do not enter the lower house of parliament.

12. A long struggle between the Stuart kings and the English people and their Parliament during the 17th century was finally resolved by the introduction of the Bill of Rights in 1689. This English Act of Parliament (with the long title An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown) made the monarchy conditional on the will of Parliament and provided freedom from arbitrary government.

Twenty-first century

13. What we see today is **the power of the Parliament slowly decreasing, whilst the power of the executive increases.**

14. The WA Inc Royal Commission[2] stated, "*The causes of a decline in the effectiveness and reputation of the legislature in Westminster systems are well understood. They lie chiefly in the dominance of the party machines in the work of elected representatives*".[3]

15. Whilst many will argue, quiet rightly, the provisions of the Criminal Investigation (Covert Powers) Bill 2011 are necessary to protect operatives, should that be at the expense of the long struggle to obtain the Bill of Rights and the fundamental constitutional principles of the people and its Parliament?

16. How does the Parliament fulfil its responsibilities regarding *openness, accountability and integrity* when the right of parliamentary sovereignty and privilege are set aside to ensure the powers of covert operatives are not identified?

17. In the WA Inc Royal Commission, the Commissioners stated:

> *"Our findings and observations provide compelling evidence that this fundamental purpose has not always been uppermost in the minds of our elected and appointed public officials, in some instances far from it. They equally demonstrate that the present institutional arrangements for the conduct of government cannot be relied upon either to ensure that government will be conducted for the public's benefit or to provide reassurance to the public that it is being so conducted.*
>
> *"At the very least, it must be said that the Parliament, the public's representative forum, has failed to provide an effective check on the executive arm of government. The Parliament, no less than the public, was kept ignorant of many of the matters which led to the establishment of this Commission and which have had such adverse consequences for every person in the State. It must bear some direct responsibility for this state of affairs.[4]"*

18. The WA Inc Royal Commission report further stated:

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3 Para 5.2.1 Page 5-5

4 Paragraph 27.2.1 and 27.2.2

"Of course, in any particular case, the question whether a proposal serves the public interest is the very stuff of politics, requiring open and vigorous debate. This makes for a healthy society. But when government seeks to "live by concealment", to adapt a phrase used in evidence by Mr David Parker, it can be anticipated that instances will occur where official power and position are both misused and abused[5].

The Parliament has the first responsibility to promote the realisation of the three goals of openness, accountability and integrity upon which our system of government depends. Because it is the principal institution which carries responsible government into effect on behalf of the public, its role as an accountability agency for the public is one which has particular Importance.[6]

Unless the Legislative Council assumes the explicit role of a House of Review, then it is unlikely that the Parliament itself will be able to exact that level of accountability which is necessary to avoid a repetition of events similar in their effects to those into which we have inquired. It is also unlikely that it will be able to give representative and responsible government true meaning in this State."[7]

19. The Commission also stated:

"In earlier parts of this report the Commission referred to the constitutional obligation of the Parliament to scrutinise and review the actions of the officials and agencies of government. It is for the Parliament to make responsible government a practised reality. It has a crucial role to play in acquiring and in publicly disseminating information about the actions and activities of the executive and administrative arms of government. In the success it has in gaining access to information, the Parliament itself should play a central role in securing open government in this State."

20. Parliamentary sovereignty (also called parliamentary supremacy or legislative supremacy) is a concept in the constitutional law of some parliamentary democracies. In the concept of parliamentary sovereignty, a legislative body has absolute sovereignty, meaning it is supreme to all other government institutions—including any executive (government) or judicial bodies.

21. The terms "constitutional law", "executive" (government) and "judicial bodies" are:

Constitutional law is the body of law, which defines the relationship of different entities within a state, namely, the executive, the legislature and the judiciary. Constructive relationships between the three arms of government—the executive, the legislature and the judiciary—are essential to the effective maintenance of the constitution and the rule of law.

Executive comprises the Queen, a Governor, an Executive Council, Ministers and Departments.

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[5] Paragraph 27.2.11
[6] Paragraph 5.1.4
[7] Paragraph 5.1.5

> Judicial body is a court or any tribunal, body or person invested by law with judicial or quasi-judicial powers, or with authority to make any inquiry or to receive evidence

22. When the Western Australian Royal Commission on Government[8] considered parliamentary privilege, it was its opinion that there should be no changes in the law, and in particular, there should be no general or specific power to waive Article 9 of the *Bill of Rights*. "Any diminution or qualification of Parliament's immunities would", it believed, "eventually erode the rights and freedoms of every citizen". .

23. As Enid Campbell[9] states:

> *Australian parliaments have not shown any inclination to remove or "qualify" the protections accorded by Article 9 of the Bill of Rights 1689. The freedoms enshrined in Article 9 are undoubtedly the most important of the privileges of parliaments and are essential in parliamentary democracies.*

24. Parliamentary Privilege as defined in the *Parliamentary Privileges Act 1891* (**PPAct**) is the *privileges, immunities and powers* set out in this Act. Section 7 of PP Act provides the "power" to order any person to attend the House, or to any Committee and require any question to be answered other than on the ground that the same is of a private nature and does not affect the subject of inquiry. This would not be the position if the Bill's provisions were applied to proceedings in Parliament.

25. In the UK Joint Committee on Parliamentary Privilege 1998-99[10] the committee took the view that parliamentary privilege should not be codified in statute as that would place its interpretation in the hands of the courts. Codification would be a radical departure from the long established principle that *"it is for the courts to judge of the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise". (R v Richards; Ex parte Fitzpatrick and Browne* per Dixon CJ, speaking for the whole Court,).

The Issues with the Bill

26. Part 4 of the Covert Powers Bill aims to protect the true identity of covert operatives who give evidence in court. The provisions include protection for law enforcement, security and intelligence officers and other authorised people (including foreign law enforcement officers and civilians authorised to participate in controlled operations) who are granted an assumed identity.

27. The chief officer of a law enforcement agency is able to give a witness an identity protection certificate which enables a witness to give evidence under a false name without disclosing his or her true identity, in order to protect the personal safety of the witness or his or her family. The chief officer must be satisfied that disclosing the person's true identity would endanger them, or somebody else, or would prejudice current or future investigation or security activity.

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[8] Report, No1 (1995) 369.
[9] Parliamentary Privilege, p68.
[10] page 96

28. In my opinion, definition of *"court"* in clause 80(c) waives parliamentary privilege by prohibiting parliamentary committees from asking certain questions of a covert operative witness. I also canvas other clauses and the potential unintended consequences.

29. The provision of clause 47 allow for a law enforcement officer or any other person to use an assumed identity and clause 12 enables a civilian may be a covert operative who may have prior convictions and outstanding charges.

30. The definition of court in clause 80(c) includes 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.**

31. Based on the advice by Bret Walker SC (dated 18 November 2001) to the Standing Committee on Procedure and Privileges on the *Evidence and Public Interest Disclosure Legislation Amendment Bill 2011*, I suggest the court definition would apply to committees of the Parliament.

32. Interestingly, the Covert Powers Bill is based on a *"model law"*, however no other Australian jurisdiction has included this expanded definition. Other jurisdictions have restricted the definition of court as to:

    include any tribunal or person authorised or consent of parties to receive evidence.

33. This is the same situation as the *Evidence and Public Interest Disclosure Legislation Amendment Bill 2011* (that provides journalists protection from being asked to disclose their source from a committee of this House), which does not apply in any other Australian jurisdiction. As you are aware, the Standing Committee on Procedure and Privileges on the *Evidence and Public Interest Disclosure Legislation Amendment Bill 2011* recommended that those provisions should not apply to Parliament.

34. The provisions in the Covert Powers Bill allows covert police investigations in which law enforcement officers and civilians can be authorised to engage in unlawful conduct using an assumed name (that is, a false name). An officer in charge of an operation (not an authorising officer) can empower specific persons, including law enforcement officers and civilian informants, to engage in unlawful conduct, no matter how insignificant an offence is involved. The assumed identity provisions will deny courts any role in evaluating whether there is a need to protect the true identity of witnesses and in balancing that need against other competing interests, like the interests of justice.

35. The definition of an operative means a person who is or was a participant in an authorised operation (controlled operation) or who is authorised to acquire and use an assumed identity under the Bill. An operative may also be a law enforcement officer (or in some cases an authorised civilian) acting under the direction of a law enforcement officer. The definition also includes for the purposes of obtaining a witness identity protection certificate, a law enforcement officer using an assumed identity for the purposes of a law enforcement operation (as defined in clause 3 of the Bill).

35. A 'party' to a proceeding means for a criminal proceeding, the prosecutor and each accused person; or for a civil proceeding, each person who is a party to the proceeding; or

for **any other proceeding, each person who may appear or give evidence in the proceeding.**

36. Clause 83(3) provides that where the chief officer of a law enforcement agency gives a witness identity protection certificate it cannot be appealed against, called into question, quashed or invalidated in any court.

37. Operatives under clause 87(2) are able to give evidence using their assumed or court name. The 2007 report of the Senate Standing Committee on Legal and Constitutional Affair into the *Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006* made the following observations:

> *The witness will appear in person to give evidence, be cross-examined and have their demeanour assessed by the court. However, their real name and address will be withheld from the court as well as the defence. Details relating to the credibility of the witness, drawn from the statutory declaration, will appear on a certificate of protection issued by the decision-maker, and made available to the defence. This will mean that the defence is restricted in their ability to question the credibility of the witness, as only those details revealed on the certificate will be available.* [23]
>
> *The decision to protect the identity of a witness is final, and cannot be appealed against or otherwise challenged in any court. However, the court at which the protected witness appears will have the power to give leave or make an order that may lead to the disclosure of the operative's true identity or address. An application for leave must be made in closed court. However, the court may only make such an order or give leave if it is satisfied that:*
>
> *a. there is evidence that, if accepted, would substantially call into question the operative's credibility;*
>
> *b. it would be impractical to properly test the credibility of the operative without allowing for possible disclosure of their identity or address; and*
>
> *c. it is in the interests of justice for the operative's credibility to be tested.*

38. Clause 87(3) ensures that a person involved in a proceeding is prevented from making a statement that discloses or may lead to the disclosure of the operative's identity or where the operative lives. A *"person involved in a proceeding"* is defined in this clause to include:

    a. the court; **(this would include members of Parliament)**

    b. a party to the proceeding;

    c. a person given leave to be heard or make submissions in the proceeding;

    d. a lawyer representing a person referred to the above or a lawyer assisting the court in the proceeding;

e. any other officer of the court or person assisting the court in the proceeding; **(This would include staff of a committee)**

f. a person acting in the execution of any process or the enforcement of any order in the proceeding.

39. Subject to clauses 89 and 90, a question must not be asked of a witness, including the operative that may lead to the disclosure of the operative's true identity or where the operative lives. A witness, including the operative, cannot be required to (and must not) answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives. A person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives.

40. In clause 90 (9) it provides a court may make orders in regards to:

- suppressing the publication of anything said;
- how transcripts are to be dealt with; and
- any other order to protect the operative's true identity,

any contravention of an order provides a penalty of 10 years imprisonment and a summary conviction penalty of a fine of $24000 or imprisonment for 2 years.

41. The second reading speech indicates the contravention is an indictable offence. It is unclear, however, as to how the offence would be prosecuted in relation to a parliamentary committee without the use of proceedings in parliament.

42. Clause 93(4) allows for appeals to a court that has jurisdiction to hear and determine appeals from a judgement given pursuant to clauses 86 and 90. This would allow a person before a committee to seek an adjournment of 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.

43. It is an offence in clause 96 for any person to do something (the disclosure action) that discloses, or is likely to lead to the disclosure of, the true identity of an operative for whom a witness identity protection certificate has been given or where the operative lives unless the certificate has been cancelled prior to the disclosure action.

44. An offence will not be committed if the disclosure action is required under clause 89, authorised under clause 90 or permitted under clause 95. The penalty for a disclosure under this clause is 10 years imprisonment with provision for summary conviction of 2 years imprisonment or a fine of $24,000.

45. In my opinion, if a member of a committee discloses the identity of an operative in the Committee or House, that member may be charged under the provision of clause 95.

46. At first glance, one could ask what is wrong with the policy of the Bill. When considered in the context of recent history it becomes apparent. In 2006, *The West* reported that Mr Marquet, a former Clerk of the Legislative Council, knew a person since 1992 who sold drugs (presumably, before he became an operative). In 2000 and 2001, it is suggested this person supplied the drug speed to Mr Marquet. *"The man, who cannot be identified for legal reasons, was an operative code named T3 during the 2003 royal commission into allegations of police corruption in WA and since then used by the Corruption and Crime Commission."*

47. In the same newspaper of that day, another article stated that Ms Rayner, an acting commissioner of the Corruption and Crime Commission (**CCC**), was charged with corruption and attempting to pervert the course of justice for allegedly warning Mr Marquet that he was being bugged by the CCC.

48. Without proper checks and balances in place it is easy to see how covert operatives or others could act in illegal ways or at the very least interfere with proceedings in Parliament. If these types of situations related to a proceeding in parliament, under this legislation it may adversely affect any parliamentary inquiry. I do not suggest the examples above are directly relevant, but rather they demonstrate generally how easily investigation by a law enforcement agency can take unexpected turns. No doubt, there are a number of scenarios in which the activities of a covert operative and a Member of Parliament may intersect and either relate to or result in inquires by committees, if the CCC's history is anything to go by.

49. I note the Law Council in its submission to the Senate Committee also raised concerns about the secrecy provisions generally[11]. The Law Council was opposed to any change that denies courts 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. Further, the Law Council raised the concern the provision have the potential to impact substantially on the right of an accused. This is because an accused person's ability to defend himself or herself may be significantly prejudiced if he or she is not permitted to discover the role and character of those giving or providing evidence against him or her.

50. The question to ask, is there sufficient safeguards against corruption and misuse?

51. Notwithstanding the various reports of Royal Commissions into the Police in Australian jurisdictions over the past few decades there continues to be reports of corruption. (see Appendix 1)

CCC Act and 27A and 27B issues

52. The Covert Powers Bill's definition of court is also different to that used in the CCC Act. Section 114 of the CCC Act provides:

    (1) In this section —

[11] Submission on the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006 to the Legal and Constitutional Affairs Committee 19 January 2007 at page 25.

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

(2) If, in proceedings before a court, the identity of an officer of the Commission in respect of whom an assumed identity approval is or was in force may be disclosed, the court must, unless it considers that the interests of justice otherwise require —

(a) ensure that such parts of the proceedings as relate to the real identity of the officer are held in private; and

(b) make such orders as to the suppression of evidence given before it as, in its opinion, will ensure that the identity of the officer is not disclosed.

(3) In particular, the court —

(a) may allow an officer in respect of whom an assumed identity approval was or is in force to appear before it under the assumed identity or under a code name or code number; and

(b) may make orders prohibiting the publication of any information (including information derived from evidence before it) that identifies, or might facilitate the identification of, any person who has been or is proposed to be called to give evidence.

(4) A person who discloses information in contravention of an order in force under this section is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

53. Clearly the definition of court in s.114 does not apply to committees of the House. Further, section 3(2) of the CCC provides *"That nothing in this 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"*.

54. So a covert operative under the CCC Act can be asked to reveal their real identity whilst a covert operative within the Fisheries Department or Police Force cannot be asked to reveal their true identity.

55. If the matter related to parliamentary privilege, and the CCC refers an allegation pursuant to section 27A of the CCC Act 2003 then under section 27B it requires an inquiry by the Privileges Committee to be undertaken by the CCC. What power does the CCC have in asking the operative of the Fisheries department or Police Force to identify their real identity?

Privilege and Waiver

56. The WA Inc Royal Commission sought to waive parliamentary privilege for its inquiry. The Royal commission reports stated:

> *It transpired from that meeting that the Commission would be obliged to pursue its inquiry without the assistance in evidence of any reference whatever to the proceedings in either House or any committee of the Parliament. It was asserted by the representatives of the Parliament that article 9 of the Bill of Rights 1689, as traditionally understood and applied, required nothing less.*
>
> *Article 9 forms part of the law of Western Australia by virtue of the Parliamentary Privileges Act 1891. It reads as follows:*
>
> > *"That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament."*
>
> *In its context, the importance of this provision to the Parliament in Westminster cannot be overstated. It represented the culmination of a long period of conflict between the King and Parliament extending over centuries and finally established the superiority of the law of Parliament over the common law and the independence of the High Court of Parliament over the courts in Westminster Hall. The conviction which sustained the House of Commons during this struggle was that it was not fighting for its own privileges and benefit but in its representative capacity for the sake of the people as a whole. Erskine May, 20th ed. (1983) at p. 77 cites the following passage from White, Eng Const. p. 440:*
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> > *"There could be no assured government by the people, or any part of the people, unless their representatives had unquestioned possession of this privilege ..."*
>
> *At p 82, Erskine May makes the perceptive observation that the privilege which formerly protected members against action by the Crown now serves largely as protection against their prosecution by individuals or corporate bodies. Consistently with this trend, sight may have been lost of the original conception of the privilege as a protection devised in the interests of the public, rather than for the protection of the individual member against the public.*
>
> *By letter of 6 May 1991, the President of the Legislative Council, in a very courteous and reasoned reply, concluded that he was unable to accept that the suggested resolution would have legal effect and provide the Commissioners with the powers sought. His letter continued:*
>
> > *"Despite the difficulties that may be encountered in the course of taking evidence as a result of the view I have taken, I am bound to restate, as the Commissioners have said already, that the Commission is an arm of the Executive Government and I would be very slow, for that reason alone, to*

> *concede that art 9's application to the Commission's proceedings may be removed, no matter how pressing the public interest may be."*

Then on 8 May 1991, the two presiding officers addressed a joint letter to the Chairman of the Commission, reading as follows:

> *"In the course of a phone conversation between you and the President, you asked whether we, as the Presiding Officers, would seek counsel's opinion on the lawfulness and effectiveness of a purported waiver of article 9 privileges and immunities by resolution of both Houses.*
>
> *The intent of the waiver would be to remove any impediment that might otherwise arise by operation of article 9 to the use of parliamentary evidence relevant to the proceedings of the Royal Commission.*
>
> *We have considered your request very carefully but have concluded that even should a contrary opinion be available, it would not persuade us to change our stated view of the matter. In this type of situation, we feel obliged to take account of the precedents and opinions expressed in other Parliaments, particularly the House of Commons and those in Australia.*
>
> *We are satisfied that our view coincides with those in the other Parliaments referred to, and for that reason, must decline your request with regret."*

Conclusions

57. I would encourage this committee to uphold a cornerstone of constitutional law and recommend that clause 80(c) of the Bill be deleted.

58. Specifically, the Bill seeks to place conditions on the access by parliamentary committees to certain information, and in so doing, fundamentally undermines both the powers and immunities of parliamentary committees and the rights of unfettered access to witnesses by parliamentary committees.

59. The law of parliamentary privilege protects proceedings in Parliament from being questioned or impeached in any place outside of Parliament. The principle has a long and consistent history. It took its first statutory form in 1689 in article 9 of the Bill of Rights. Because of this principle, the Houses and committees, members and witnesses of the Parliament are able to operate without their proceedings being questioned or interfered with in any way. Any statutory provision that seeks to limit this freedom is therefore fundamentally obnoxious to this general principle.

60. It would only be in the rarest and most extraordinary of cases that the Parliament would decide to set some limit on its own operations, and legislate so as to limit itself in some way.

61. However, there is a second policy included in the Bill, namely, to override the operation of parliamentary privilege by making parliamentary committee operations bound by a statute, by setting conditions of access between parliamentary committees and their witnesses, by dictating the manner in which parliamentary committees must hear evidence and by making any disclosure of a witness's identity a criminal offence.

62. This second policy is a major 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.

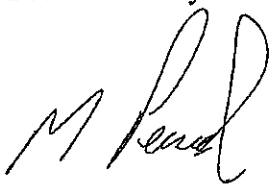
63. The question that should always be asked with any proposed statutory provision is *"what is the need for the provision and what is the evil which it seeks to remedy?"* One of the oldest rules of statutory interpretation, the mischief rule, has at its core the question, *"what is the mischief or defect which is not provided for in the law as it stands at present?"*

64. 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, it would be highly unlikely.

65. There is no justification that has been put forward for these provisions. In my view, they are unnecessary. They are addressing a problem that does not exist. To date committees have not needed to identify an individual's real name.

66. The Bill would remove from the Parliament its responsibility to promote the realisation of the three goals of openness, accountability and integrity upon which our system of government depends.

Yours sincerely



Malcolm Peacock
Clerk of the Legislative Council
Att: Appendix
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Appendix 1

i. Has corruption in the Police and Fisheries ceased since the royal commission into Police? The following articles are from The West regarding corruption in Australia.

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ii. **VICTORIA'S police force is riddled with "deep-seated and continuing corruption" that will only be flushed out by a powerful and wide-ranging royal commission.**

iii. Don Stewart, one of the nation's most respected judicial figures, says Victoria Police and the Bracks Labor Government oppose a royal commission because they do not want the extent of corruption within the force made public.

iv. "They know that it would reveal what they don't want revealed," says the former Supreme Court judge and founding head of Australia's first national crime agency.

v. Dismissing arguments that dirty police are already being driven out of the force through the courts, he says the recent convictions of senior Victorian officers on corruption charges are "the tip of the iceberg".

vi. "The arrest of some corrupt police only proves that corruption is deep-seated and continuing," Mr Stewart says in a book to be published in March.

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vii. A Victoria Police officer has resigned and an undercover operative remains suspended over allegations of fraud and drug offences.

viii. The involvement of an undercover officer in alleged corruption has concerned senior police due to the potential to compromise sensitive operations.

ix. Undercover operatives are privy to sensitive information about how police infiltrate criminal activity, including the location of the covert premises from which the officers may operate.

x. A Victoria Police spokeswoman confirmed to *The Age* that the officers had been suspended and were being investigated by the Ethical Standards Department.

xi. "Victoria Police can confirm that two senior constables are currently suspended from duty pending the outcome of an Ethical Standards Department investigation into drug and dishonesty offences," the spokeswoman said.

xii. "Given the ongoing nature of the investigation, it would be inappropriate to comment further," the spokeswoman said.

xiii. The officer who resigned worked at the Footscray police station and is believed to be in a relationship with the suspended undercover officer.

xiv. It is believed the pair are suspected of committing credit card fraud to fund a heroin habit.

xv. A police source said the pair are suspected to have engaged in heroin use when they were off-duty. The source said no undercover operations had been compromised.

xvi. Senior police are increasingly concerned about illegal drug use by a small number of younger police officers.

xvii. Corruption investigators are also receiving more complaints from the public and other police about officers using drugs.

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xviii. WA Police officers will be forced to reveal whether they are friends with criminals or crooked former officers under a proposal to prevent corruption within the force.

xix. Police Commissioner Karl O'Callaghan said that police were considering creating a database that would list all associations officers and police staff had with people involved in, or suspected of, criminal activity.

xx. The associations would be analysed by the police risk assessment unit and if any were deemed to be inappropriate, the officer could be directed to end the relationship or could even be sacked.

xxi. This could include officers' relationships with friends, sporting teammates or former colleagues but would probably not apply to family members. The proposal would not regulate professional contact with criminals.

xxii. There is no current formal requirement for officers to list such associations, though they face internal sanctions if found to have inappropriate relationships with criminals.

xxiii. Mr O'Callaghan said there was no room in the police force for officers who had unnecessary associations with criminals. He said the proposal, based on a similar strategy put in place by Victoria Police in December, would be discussed by the WA Police executive group in the next fortnight.

xxiv. Mr O'Callaghan said he did not believe there was a big problem with officers associating with criminals but the proposed database would "support both employees in taking steps to protect their reputation, as well as the reputation of, and public confidence in, WA Police as an agency".

xxv. "If an officer thinks they're potentially compromised, then they would tell us about it and we could actually look at it and make a decision on what to do," he said. "The officer could be ordered to do something about it and if they don't comply, we could take action. If police officers are associating with known criminals, they won't be a member of the police as long as I'm commissioner."

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xxvi. Australian Federal Police and Customs agents could face a radical anti-corruption program with internal agents setting up fake drug busts and other bogus crimes to catch bent officers.

xxvii. The Government is considering an aggressive program pioneered in New York with suspect officers put in situations in which they could be tempted to break the rules.

xxviii. They would then be watched covertly to see if they did.

xxix. In the US, the scheme, known as integrity testing, was even used to deliberately provoke police accused of brutality to see if they would lash out and be recorded bashing a detainee.

xxx. The AFP said it was open to the idea but had concerns about fairness and entrapment.

xxxi. But it would want an external agency to carry out the stings rather than its own agents.

xxxii. A typical test in the US would be a bogus drug crime scene with suspect officers called to see if they steal drugs or cash.

xxxiii. WA Labor backbencher Melissa Parke, who chairs the committee considering the integrity tests, said she saw video in New York of an undercover officer being beaten by a policeman suspected of brutality.

xxxiv. The evidence was enough to confirm the officer was heavy-handed with suspects and he was sacked.

xxxv. Ms Parke said integrity tests for Commonwealth agencies had merit, provided checks and balances were in place.

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xxxvi. The corruption watchdog has failed to properly investigate serious complaints about police brutality, a report by the state's Parliamentary Inspector says.

xxxvii. Inspector Chris Steytler launched an inquiry after receiving complaints from people who were dissatisfied with the way the Corruption and Crime Commission had dealt with their complaints about police.

xxxviii. Mr Steytler found that between July 2009 and March 2011 the CCC received 381 complaints that police had used excessive force but it independently investigated only one of them.

xxxix. One case investigated by Mr Steytler involved a man arrested in a Perth entertainment precinct who was tasered by officers along with his girlfriend.

xl. It's alleged he was also kicked by police and later denied medical attention at the police station.

xli. The man and his girlfriend were acquitted of charges brought against them, with the magistrate saying he found the testimony of the arresting officer "extremely evasive" and unconvincing.

xlii. Mr Steytler found that the initial police investigation of their complaints against the officers did not analyse all the evidence and officers had not cooperated with the investigator.

xliii. The CCC requested a further police investigation of the complaints but did not exercise its discretion to conduct its own formal investigation.

xliv. Mr Steytler's report said that was unfortunate for the complainants and the police officers, because an investigation would have seen the police brought to account for misconduct or cleared.

xlv. His report to the joint standing committee on the CCC was tabled in parliament today, recommending the agency make it a priority to investigate thoroughly serious complaints of police misconduct.

xlvi. Committee Chairman Nick Goiran said the committee believed the CCC's highest priority should be preventing and investigating misconduct within the WA Police.

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xlvii. A specialist police officer from the Coffs-Clarence Local Area Command has faced court over corruption and drug charges.

xlviii. At the start of this month 39-year old detective senior constable Anthony Farrell was charged with corruption.

xlix. It is alleged he leaked confidential information to criminals.

l. He is attached to one of the region's specialist commands.

li. At the time of his arrest a search also found substances suspected to be steroids.

lii. The Police Professional Standards Command is investigating the matter.

liii. Farrell faced the Coffs Harbour Local court this week, where his bail was continued and the case adjourned for mention until September the 27th.

liv. A 40-year-old man, who is not a police employee, has also been charged with corruption. The 40-year old, Andrew Macleod from the Coffs Harbour Northern Beaches is charged with making a collusive agreement with New South Wales police.

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lv. **DEBRA Buckskin was a corrupt South Australian police officer who handed over confidential information to a drug dealer, conduct a judge yesterday described as "stomach-turning".**

lvi. Labelled a "disgrace" to honourable police serving the state, Buckskin, the ex-wife of former AFL footballer Fabian Francis, was sentenced in the South Australian District Court to two years and nine months in jail after pleading guilty to two charges of abuse of public office.

lvii. Judge Rosemary Davey said Buckskin, 37, had a "complete disregard" for the ethics and responsibilities she had sworn to uphold when she became a police officer in 1993.

lviii. The court heard that in 2006, Buckskin accessed the details of a witness to an assault involving a member of the Rebels motorcycle club and handed the information over

to the victim, drug dealer Chad Tassone. She also provided Tassone with the identities of vehicle owners.

lix. Tassone died in a car accident in June last year.

lx. Judge Davey said telephone intercepts had recorded Buckskin questioning Tassone about why he did not give a false name to police and that she regretted his crimes did not occur on her "patch" because she could have made calls to "fix it".

lxi. Buckskin had denied the charges until the day she was due to go on trial in October.

lxii. Judge Davey said it was "vital" that the community had confidence in the integrity of the police department.

lxiii. "Your behaviour has eroded that confidence," she said.

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lxiv. Former fisheries minister Jon Ford claims rumours of fisheries officers using truckloads of fish for personal use were rife during his reign and it was likely the "corrupt" practice had been going on for years.

lxv. Mr Ford, the fisheries minister from 2005 to 2008 under the former Labor government, said yesterday he recalled making two inquiries with his department after being repeatedly told of truckloads of fillets going from the North-West to Perth for personal use.

lxvi. Mr Ford claimed fisheries officers dismissed both inquiries and he was told it was likely the fish had simply gone to Perth for further testing.

lxvii. But Mr Ford said he now had serious doubts over those explanations after _The West Australian _revealed on Saturday that fisheries officers were facing allegations of sending 400kg of filleted reef fish from a Department of Fisheries vessel in Broome to the agency's Hillarys headquarters for personal use in July 2008.

lxviii. Fisheries Minister Norman Moore has referred the allegations to the Corruption and Crime Commission and has demanded an explanation.

lxix. Department of Fisheries chief executive Stuart Smith said it had been "standard practice" for the edible remains of research projects to be shared among staff but the practice had stopped and was under review after the allegations of misuse.

lxx. Mr Ford said the claims were extremely serious and he agreed with Mr Moore's decision to refer the matter to the CCC.

News

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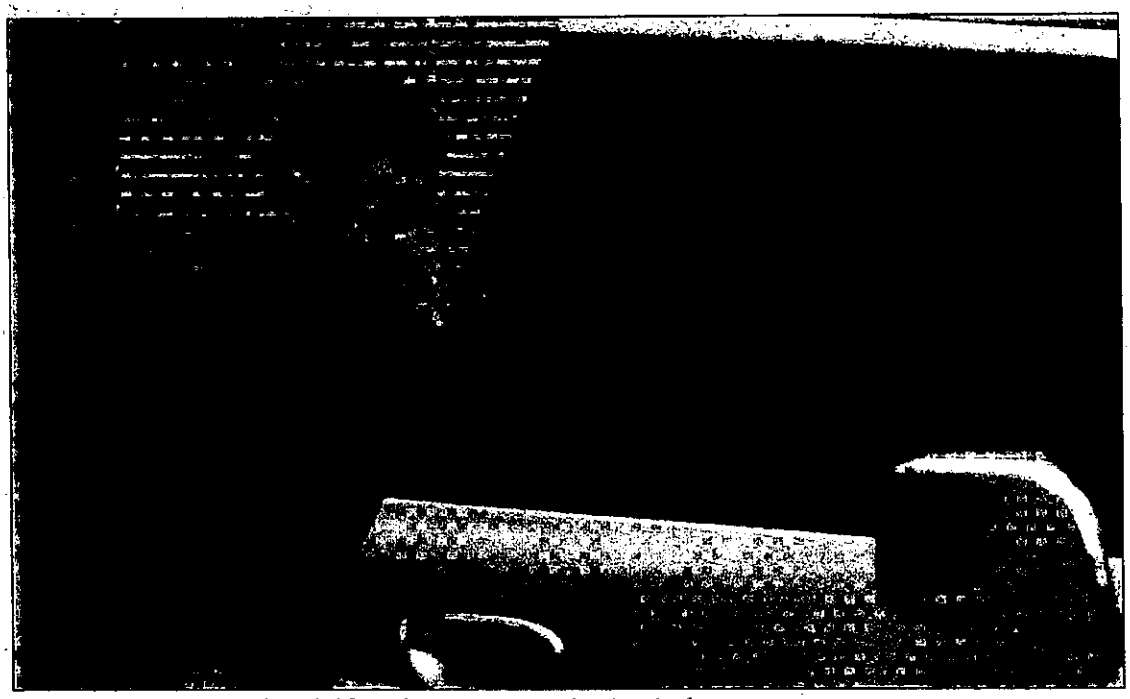
Former top drugs fighter jailed until at least 2024

SYDNEY



Fallen crusader: Mark Standen is led from the NSW Supreme Court yesterday. Picture: Fairfax

During his long career in law enforcement, Mark Standen specialised in fighting the war against drugs.

Yesterday, the former top drug investigator was jailed for at least 16 years after plotting to import a massive haul into Australia.

The former assistant director of investigations for the NSW Crime Commission, 54, showed no emotion when Justice Bruce James set a maximum term of 22 years.

"The anticipated profit from the criminal enterprise was many millions of dollars," the judge said in finding Standen's motive was financial gain.

After the sentencing, Standen — wearing prison greens — turned to his brothers in the NSW Supreme Court public gallery, smiled and gave them the thumbs-up.

In August, he was found guilty of plotting to import 300kg of pseudoephedrine, used to make the illicit drugs speed and ice, between January 2006 and June 2008.

He was also convicted of taking part in the supply of 300kg of the substance and conspiring to pervert the course of justice.

Justice James found Standen was a principal in the plot to import the pseudoephedrine from Pakistan in a container of rice, which arrived in Sydney in April 2008.

In fact, the cargo did not contain the drug but the judge said Standen and his co-conspirators had believed it was in the shipment.

The co-conspirators were Standen's informant James Kinch, an international drugs trafficker, and foodstuffs businessman Bakhos "Bill" Jalalaty.

The trial lasted almost five months and Standen spent 25 days in the witness box, where he "lied without pause", according to the crown.

Much of the crown evidence related to communication between the trio, including emails, phone conversations and text messages.

They used "oblique and coded language" and adopted pseudonyms, including "Maurice" for Standen.

After the container's arrival, Kinch emailed Jalalaty saying it was nice to hear that "the children" were home and that they should be put to bed "until Dr Maurice says that they are fully recovered".

The judge referred to a payment of $47,500 Standen got in 2005 from Kinch, who had links with a Dutch drug syndicate.

The then law enforcement officer was "irretrievably, corruptly compromised" from the time he accepted that money, Justice James said.

The earliest Standen is eligible for release on parole is June 1, 2024.