ROYAL COMMISSION (POLICE) BILL 2002

Declaration as Urgent

MR McGINTY (Fremantle - Attorney General) [2.43 pm]: In accordance with Standing Order No 168(2), I move -

That the Bill be considered an urgent Bill.

MR JOHNSON (Hillarys) [2.44 pm]: The Opposition does not oppose the Bill being declared urgent because it regards it as urgent. I ask through you, Mr Speaker, whether the Bill will be read cognately with the Criminal Code Amendment (Corruption Penalties) Bill 2002 and the National Crime Authority (State Provisions) Amendment Bill 2002.

Mr McGinty: We will accommodate the Opposition in how it wants to deal with those Bills.

Mr JOHNSON: That will be the day! I understand that we will deal first with the Royal Commission (Police) Bill and then deal with the other two Bills.

Mr McGinty: Yes.

Mr JOHNSON: In that case, the Opposition will not oppose this Bill being declared urgent.

Question put and passed.

Second Reading

Resumed from 8 May.

MS SUE WALKER (Nedlands) [2.46 pm]: The Opposition supports the Royal Commission (Police) Bill 2002. It is my understanding that, pursuant to clause 49, this Bill will have a life for only the duration of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. This Bill has been prepared in response to the request of Hon Geoffrey Kennedy, AO, QC for powers that he deems necessary to enable him to properly conduct the royal commission that is afoot in Western Australia. The Attorney General said in his second reading speech that the powers of this Bill are extraordinary and extensive. However, there is little difference between the powers contained in this Bill and those given to royal commissions in other States, most notably the Wood royal commission into the corruption of the New South Wales Police Service and the Fitzgerald inquiry in Queensland. The Opposition agrees with the Government that the powers are necessary because of the nature of the task before the royal commission. As the Attorney General has rightly pointed out, experience in other jurisdictions in which royal commissions have been conducted in response to complaints of criminal and corrupt conduct by police officers has shown that such behaviour is entrenched and systemic, and very difficult to investigate without the particular powers required by Hon Geoffrey Kennedy. It is his view that the work of the commission would be impeded if he were confined to the provisions of the Royal Commissions Act 1968. In his view, the commission needs relevant and appropriate access to modern tools and techniques for the investigation of criminal and corrupt conduct. These include surveillance devices and the mounting of undercover operations. These powers are not available under the Royal Commissions Act. The Opposition is committed to enabling and assisting the commissioner - and the commission - to properly fulfil his role and perform his responsibility, and supports his request by voting for this legislation.

I am a little perturbed that this legislation was not prepared earlier.

The SPEAKER: Members! About 20 different conversations are taking place at the moment. The only contribution I am interested in listening to is that of the member for Nedlands, and I am sure Hansard feels the same.

Ms SUE WALKER: I think it is very strange that this legislation was not prepared much earlier. I wonder why the commissioner had to ask for this legislation. It took 10 or 12 months for the Government to appoint the commission, and the commissioner had to write to the Attorney General in March 2002, prompting the Government to give him the necessary powers. I would have thought that with all the resources, manpower and legal advice available to the Attorney General, he would have been well prepared and ready for this royal commission. I ask the Attorney General whether this has anything to do with his commitment to it. In my view, the commissioner should never have had to prompt the first law officer of this State for the provision of these powers. The second reading speech states that the Labor Government commissioned Hon Geoffrey Kennedy with this responsibility on 12 December 2001. That was last year. In March, the commissioner had to write and

ask for these powers. Similar royal commissions around Australia had these powers. I would have thought that any proper inquiry by the Government into what is needed by the royal commission would have been very simple to conduct. The commissioner should not have had to ask the Attorney General for these provisions, which he now requires urgently.

The Attorney General referred in the second reading speech to the major provisions of this Bill. It contains 11 parts and deals with a number of different Acts. The Royal Commission (Police) Bill 2002 is not amending legislation to the Royal Commissions Act; it is an Act in its own right. It will have a life of its own; that is, for the duration of this royal commission. It can be read in conjunction with the Royal Commissions Act. Part 1 of the Bill is preliminary. Part 2 gives the commission powers to obtain information, documents and other things. These include powers to issue a notice requiring a public authority or public officer to produce information; issue a notice requiring a person to attend before the commission and produce documents and other things; and enter and inspect public premises of a public authority or public officer and take and inspect documents. The Bill also protects witnesses to the commission by providing that statements of information given by way of compliance are not admissible in evidence against the person in civil or criminal proceedings. Legal professional privilege will also apply. However, the qualification is that such material may be used in contempt proceedings against the witness; or in proceedings for an offence under this Bill or the Royal Commissions Act.

Part 3 gives the commissioner the power to issue a warrant of apprehension for a person to give evidence before the commission if he is satisfied the person will not attend voluntarily or is about to leave the State. The commissioner can also apply conditions to the release of a witness to ensure the attendance of that person as a witness. I suspect that will be used if the witness is to give evidence over several days and the commissioner is not sure whether the witness will return to give that evidence. The safety clause is that a witness who is concerned about the conditions or thinks they are too onerous is entitled to apply to the Supreme Court for a review.

Part 4 gives the commissioner the power to prevent or restrict the publication or disclosure of any evidence sought by or given to the commission. This is entirely appropriate. This will include information that may lead to the identification or location of a witness, or the fact that a witness has given or may give evidence before the commission. As pointed out by the Attorney General, these provisions are necessary for the protection of witnesses and their families and to provide assurance to witnesses that they will be protected. Part 4 also allows the commissioner and the officers of the commission to circumvent the provisions of the Anti-Corruption Commission Act, which may otherwise restrict their inquiries. Clause 14(2) states -

> The ACC Act does not apply to prevent the Commissioner or an officer of the Commission authorised for the purposes of this section by the Commissioner from furnishing, divulging or communicating evidence or information, or producing a document, for the purposes of a function of the Commission.

The material furnished or provided by the commission will come within the provisions of clauses 12 and 13, which relate to the restriction or publication of evidence or disclosure. The Ombudsman is also empowered to give evidence and produce documents to the commission that are obtained in the course of or for the purposes of the Parliamentary Commissioner Act 1971. That is entirely appropriate. That information will also come within the provisions of clauses 12 and 13. Telephone intercepts obtained under the Telecommunications (Interception) Western Australia Act 1996 may also be produced lawfully to the commission. As the Attorney General pointed out, that information proved invaluable in the Wood royal commission.

Part 5 of the Bill empowers the commissioner to give notice to the Commissioner of Police or the Ombudsman that a special constable who is an officer of the commission will take over the investigation of a complaint. That special constable will also be empowered to jointly investigate a complaint to the Commissioner of Police.

Clause 22 of the Bill provides that the commissioner is empowered to approve the acquisition and use of an assumed identity or identities by an officer of the commission. This is a very important provision. Part 6 also provides protection from criminal and civil liability to officers who assume false identities. To protect the integrity and safety of those officers, the identity of the officers cannot be disclosed in legal proceedings; however, they can be disclosed if the court considers that the interests of justice require it. I am not sure whether that is the same provision or regulation that applies to undercover police officers in this State, but it seems to be very similar.

In several of the clauses in the Bill, the commissioner may be obliged to provide the Attorney General with a report on different matters under his power; for example, for the approval of assumed identities. From my

understanding of the Bill, when that happens the Attorney General must provide a report to each House of Parliament as soon as is practicable.

Part 7 of the Bill refers to the commissioner having authority or power to authorise what is known as a "controlled operation". Clause 28 of the Bill defines a controlled operation as an operation -

(a) in which one or more officers of the Commission participate for the purpose of obtaining or facilitating the obtaining of evidence of corrupt conduct or criminal conduct by a police officer; and

(b) which involves or may involve a controlled activity.

Such authorisation has to comply with clause 29 of the Bill and the seven broad categories covered by its seven subclauses. Clause 29 states -

(1) The Commissioner may authorise a controlled operation.

(2) The authorisation must -

(a) be in writing;

(b) specify the officer of the Commission responsible for the operation;

(c) specify the names of any officers of the Commission who are authorised to participate in the operation;

(d) identify the controlled operation;

(e) specify the nature of the particular controlled activities in which officers of the Commission are authorised to engage;

(f) specify a period, not exceeding 6 months, for which the authorisation is given;

(g) specify a date and time, being not earlier than its signing, when the authorisation comes into force; and

(h) be signed by the Commissioner.

(3) For the purpose of subsection (2)(d) a controlled operation may be identified by reference to a plan of the controlled operation held by the Commissioner.

(4) A person is sufficiently identified for the purposes of subsection (2)(b) or (c) if the person is identified -

(a) by an assumed identity under which the person is operating; or

(b) by a code name or number, -

Although I have not had to deal with it directly, I know that often happens with police undercover operatives who give evidence under a code name. The Bill continues -

so long as the assumed identity, code name or code number can be matched to the person's identity by reference to documentation kept by the Commissioner.

The Bill further states -

(6) The authorisation may be granted subject to conditions specified in the authorisation.

(7) The Commissioner may, in writing, vary or cancel the authorisation.

(8) Unless it is sooner cancelled, an authorisation remains in force for the period specified in the authority.

That means the duration of the royal commission.

In part 7, clause 30 enables the commissioner to authorise an officer of the commission - this is interesting - to conduct a program to test the integrity of any individual police officer or class of police officers. This involves, pursuant to clause 30(2), an integrity testing program, which may involve an act or omission - by a person who is participating in the program - that offers a police officer whose integrity is being tested the opportunity to engage in behaviour, whether lawful or unlawful, in contravention of the principles of integrity required of a police officer. The commission may furnish to the Attorney General a report relating to these authorisations. This is

not clear from the legislation; "may" does not mean "shall". Perhaps this matter can be discussed at the consideration in detail stage. I am not sure who has the choice of furnishing the report - the Attorney General or the commission. If the commission furnishes the report to the Attorney General, the Attorney General must as soon as practicable furnish a report to the Legislative Assembly and the Legislative Council.

Under the provisions in part 8 the Anti-Corruption Commission can, pursuant to the Surveillance Devices Act 1998, apply to the court for a warrant for the use of a surveillance device. Part 8 of the Bill amends the Surveillance Devices Act, so that the commission will have the same power. Part 8 refers to offences. We will refer to the Attorney General's comments at the consideration in detail stage. The Bill also provides that, for the purposes of the royal commission, references to an offence under the Surveillance Devices Act include references to an act of corrupt conduct and a reference in the Act to a suspected criminal offence. A suspected offence includes reference to suspected corrupt conduct. The Bill contains provisions relating to offences in the Act that I will go through in detail with the Attorney General at the consideration in detail stage. In part 7 the accountability provisions remain in force; that is, the commission may provide a report to the Attorney General and the Attorney General must then provide that information to each House of Parliament.

Part 9 deals with amendments to the Telecommunications (Interception) Western Australia Act. I have already spoken about that provision. Part 10 amends the Prisons Act 1981, and will allow a prisoner to be brought before the commission on the authority of the commissioner. Clause 42(2) contains an amendment to section 22 of the Prisons Act 1981, and states -

> Where the presence of a prisoner is required for the purposes of a Royal Commission, a Commissioner appointed to be the Commission or to be a member of the Commission, or the superintendent of the prison in which the prisoner is confined, may, by order in writing, direct that the prisoner be brought up for those purposes to the place named in the order.

I assume that provision will remain in force only for the duration of the royal commission. Part 11 is a collection of miscellaneous provisions outlined by the Attorney General in his second reading speech. It provides for the Supreme Court to deal with allegations of contempt of the commission and the defences available against such allegations, which include a defence of reasonable excuse. An offence of victimisation has been created that is punishable by imprisonment for five years and a fine of $100 000. That offence is aimed at deterring any person from attempting to subvert the investigative work of the commission. Under that offence, the subversion would include threatening, intimidating, harassing or otherwise interfering with a person assisting the commission or a witness. I have not read the section of the Criminal Code that deals with threats, but those penalties may be a little light on. Provisions in the legislation also ensure that information gained for the purpose of the commission remain secret and cannot be compelled to be produced or divulged in any court, except for the purposes of prosecution or disciplinary measures as a result of the commission's inquiry. Personal protection provisions dealing with civil or criminal liability are also contained in the Bill for the commissioner and any person acting under the direction of the commission. A declaration clarifies that matters created or maintained for the purposes of parts 6 or 7 of the Bill are exempt matters for the purposes of the Freedom of Information Act and the making of regulations.

Although the Opposition supports this Bill, it questions why the commissioner had to write to the Attorney General and request those powers. Yesterday, I just happened to be glancing through the *Hansard* of 2000 and noted a great deal of debate, which is ongoing, about this commission by the Government when it was in opposition. This Government has been tardy in not having this legislation ready earlier. Notwithstanding that, the Opposition supports this Bill.

MR PENDAL (South Perth) [3.08 pm]: I oppose the Bill. In the course of my comments, I want to find the common thread passing through the Bill before us, the legislation that was passed two years ago on the supposed confiscation of criminal assets, and the legislation passed last year that allegedly directed our attention towards the bikies in Western Australia. I find a common thread among all that legislation. I will also draw into my analysis the legislation that we dealt with last week on the elimination of committal hearings in the lower courts. What goes around comes around and we are progressively justifying reasons for setting aside well-established principles of justice, if not law, for some higher cause. The higher cause is that we need to confer these new, oppressive and dangerous powers on officers of the State in order for them to achieve the application of the law. We are spending too much time talking about that and too little time talking about the achievement of justice.

In the first instance, this Bill is disturbing because it virtually legislates in a retrospective manner. The Government, of its own volition, decided to call a royal commission into the Western Australia Police Force - a

move I support. The commission will uncover some improper and corrupt behaviour on the part of a minority and it will ultimately empower the majority in the Police Force, who, by and large, are honest people and do a good job.

I do not have much difficulty with the appointment of the royal commission. However, I have difficulty with the fact that the Government is changing the law after the event. The Executive announced the royal commission many months ago. The royal commission was appointed, and the Governor was asked to sign an instrument that was based on the law as it was at the time. Six months later, before the royal commission has even begun, we are being asked to change the law. We are being asked to change the rules after the game has already started. I have already mentioned that this action does nothing to enhance the Government's so-called commitment to civil liberties and, given the Government's actions, I am surprised that the most conservative of Labor Governments is sponsoring the legislation. The Government's actions are not only conservative but also reactionary. I am stunned to see another link in the chain that is intended to shift the balance away from the individual and into the hands of the already mighty and empowered State of Western Australia.

The Royal Commission (Police) Bill is a dangerous piece of legislation, and that is one of the reasons I oppose it. Regardless of the facts, it is dangerous for the Government to seek to justify the Bill by saying that both the New South Wales and Queensland Parliaments have passed such legislation in order to deal with police corruption in their States. If legislation is ill based, it does not matter whether it is ill based here or in another jurisdiction. If legislation is bad or underpinned by a lack of principle, it will not become cleaner simply because it receives the endorsement of this House and the Legislative Council. It will undoubtedly receive the support of the other House because the Government has the numbers. The Bill is dangerous, and we should not try to assuage our conscience by relying on the fact that other jurisdictions have implemented similar legislation.

I turn now to what I consider to be the Mensaros principle. The late Hon Andrew Mensaros was the member for Floreat. He was a distinguished member of Parliament whose wartime experiences in Hungary modified and moderated many of the things that he did a generation later, both in this place and in our free society. He constantly told new members of Parliament that legislation made in haste would be legislation they would come to regret, because it was bad legislation. We are now being asked not only to confer on the royal commissioner and his staff oppressive and extraordinary powers but also to do so in haste. I will provide a glaring example of the haste that is producing the nonsense, and then an example of the nonsense that will produce what I fear the most. I refer to clause 45, because it is clear that it has been cobbled together as a result of its being lifted from the statutes of the other States, and because the process has not been sufficiently slowed down in order that it be held up to scrutiny. Clause 45 reads -

> **Secrecy**
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> (1) An officer of the Commission must not, directly or indirectly -
>
> (a) make a record of any information . . .
>
> being information acquired . . . by . . . an officer of the Commission.

An officer of the royal commission must not make a record of any information. I do not think that is what was meant. The Bill really intends that an officer of the commission must not make notes or records, other than for the purposes of the royal commission. We are being asked to pass legislation that states that an officer of the commission must not make a record of any information that he collects. Are we saying that all information will be committed to memory? Are we saying that investigators will not use notebooks and will not write things down when they conduct interviews? Are we saying that they will not make video recordings? The literal meaning of clause 45 is to say what I am sure is not intended; that is, that an officer must not make a record of any information for the purposes of the royal commission.

I put it to you, Madam Deputy Speaker, that it is legislation made in haste and is absurd; it is not what the draftspersons would have intended. Unless it is amended, it will make an absolute mockery of an already oppressive piece of law. We will then have the dual problem that not only is the legislation an oppressive piece of law, but also it contains a piece of nonsense that will literally prevent an officer of the royal commission from taking notes - full stop.

I have other reasons for finding the Bill offensive. I refer to clause 32, which could be called the agent provocateur clause. It states that despite any other law, a person who is authorised to participate in an authorised controlled operation or authorised integrity testing program is not criminally liable for any act that person does. This clause will give the immunity of this Parliament to people who will be carrying out acts that otherwise would be illegal. We will be making them legal today. The commission is seeking to test, if I remember

correctly, the integrity of someone by lying, cheating, lying in wait, hiding behind a bush and doing things that up until this moment are improper or unlawful behaviour. We are saying that we want the royal commission to test people's integrity, yet we are giving the commission's officers powers to act with a complete lack of integrity. Today we would make legal, lawful and proper behaviour that up until this minute is illegal and regarded as misbehaviour. Clause 32 would give the person carte blanche protection from criminal liability for taking part in authorising corrupt acts. I can barely believe it. If it were not mildly ethnically frowned upon, one might say that it is Irish. We will test somebody's integrity by doing things that up to this moment are illegal, unlawful or regarded as lacking in proper behaviour.

I refer now to clause 30, which deals with integrity testing. The commissioner may authorise an officer of the commission to test the integrity of any particular police officer or class of police officer. This clause will authorise the placing of official temptations in front of ordinary men and women in the Police Force, whose lives may have been lived impeccably up to that point. They may have never put a foot wrong and discharged their oaths of office to the letter and the spirit, and yet they will now be enticed to commit a criminal act. If evidence existed of any previous criminal act, one imagines they would already have been charged, dealt with at law and weeded out of the Police Service. This clause, however, refers to officers against whom there have been no allegations of misconduct and against whom no evidence has been adduced. Now, they will have the opportunity put in front of them to do something which in the normal course of events would be criminal. If I were to go to a police officer outside the Chamber now and offer him $1 000 to overlook, say, a drink driving offence that has just occurred, I would be committing an act of criminal corruption. This clause will now allow a commission officer to go undercover to an officer of the Police Service and put him or her to the test in a way that, up to that point, he or she has not been found wanting. I find it almost perverse that the law can say that it is wrong for me to bribe a police officer to overlook an offence just committed, while this clause will authorise the royal commissioner to officially bribe, with the sanction of the law, and offer a temptation that that officer may have resisted for his or her entire professional life. I am not amongst those members who feel comfortable with that sort of perversion of the law. I am as much in favour as anyone in this House of rooting out from the Police Service those people whose conduct is less than honest and holds the Police Service up to ridicule and contempt.

The DEPUTY SPEAKER: Members, can some of the discussion in the Chamber cease so that I am able to hear better the member for South Perth, who has the call.

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

Mr PENDAL: I have no truck with anyone in the Police Service who has been involved in corrupt, improper or otherwise illegal behaviour, and I have no difficulty with the notion of a royal commission with the powers that such a commission has historically had to deal with that. I do, however, take exception to the notion that a new series of offences will be created, by which the State will be capable of making to a police officer an offer that, if done under other circumstances, would be a corrupt act warranting charges and probably a jail term for the person making such an offer.

Where does it all end? What does it all mean? It comes back to the view that I have expressed in this Chamber on two occasions in recent times. We are saying that the convenience of the State is more important than anything else. The powers of the State, the sheer weight of numbers at the Government's disposal within the Police Force or the Crown Solicitor's Office and the monetary resources are already skewed against individuals. What are we going to do this coming Thursday? I imagine we will see the introduction of a state budget probably in the order of $12 billion or $13 billion. What will the average person who has to face court on a minor charge do? Would he get much change out of $1 000 to get a lawyer to represent him? I think not. This legislation, the bikies Bill, the criminal confiscation Bill and the Bill to end committal hearings will adjust the balance, but it will not be in favour of the individual. That individual could be you, Madam Deputy Speaker, me or the least enfranchised person in your electorate or in mine. The balance will be adjusted in favour of the State. The balance is with the State already.

The other day I heard the member for Innaloo tell us a tale of woe about the number of people in Western Australia who go to ordinary, simple committal hearings and the biggest problem is that they get there without legal representation. Where is the Bill to correct that balance? Instead, we see another Bill that shifts the balance even further. It is not a Liberal argument and it is not a Labor argument; it is an argument that says that we should look more at protecting an individual against the might of the State and less at re-empowering the State and giving it greater powers. This Bill will give the State's officers the opportunity to tell lies to entice people to behave wrongly. At the risk of being accused of ethnicity, it sounds Irish to me. If, Madam Deputy

Speaker, you did that in the course of your job, you would lose it and you would be in front of the courts; you would be the ex-member for Wanneroo. Yet this Bill will empower members of the public service or the royal commission to do all those things.

I am unmistakably a strong supporter of the Police Union. Every year I get invited to attend the annual dinner because of the police immunity Bill, which I introduced into this House several years ago and which, when the Government adopted it, later passed all stages and is now law. I enjoy attending that dinner and giving whatever little moral support I can as one member. My respect for the Police Force as a whole is basically undiminished, other than for a small percentage, whether they are in politics, the clergy, business or the medical profession. We are always dealing with the minority who make it most difficult for the majority. The irony in this case is that in recent years, the Police Force and other law enforcement agents in Western Australia have said to the previous Government and to this Government that they need more powers and that they must be extraordinary - perhaps even oppressive - powers because they want to turn them against the bikies. We want to turn them against people who have allegedly amassed criminal assets and to ensure others do not have committal hearings and now we want to turn them against the police. Is it not ironic that for several years the police have sought to get this Parliament to pass statutes to assist them to carry out their jobs in trying to capture all the criminals in the community? The issue has gone full circle. We are now being asked by someone else to increase the powers at our disposal to entrap the police. I know that nothing I say will stop the Bill from being passed. The longer I remain a member of Parliament, the more I become aware that it is rarely the case that what is said up front makes any sense. It does not matter which Government is in power, each Government enjoys the power the numbers give it at the time and believes on that basis that any action it takes is right. Things do not turn sour for Governments at that time. Five or 10 years down the track people usually say, "I wish I had listened and seen the point someone made at the time. I see now that those rights that we so eagerly took away from people were rights that we should not have interfered with." Perhaps human nature is why we do not learn that lesson in the beginning. I am certain that we will rue the day that we pass this legislation. I am not saying that the entire Bill is wrong. In other circumstances, and given the amount of time that standing orders demand, I might have been able to give enthusiastic support to our handing greater powers to a royal commission so that it could achieve certain outcomes. However, I cannot do that because although we were given notice of this Bill on Tuesday last week, it is being treated today as an urgent Bill. Gone is the opportunity for the usual scrutiny during which time we could properly refer the Bill to people and receive considered opinions and legitimately drag out debate and, hopefully, seek to modify it. I have no doubt that we run a very big risk in seeking to make laws that step outside of fairly carefully defined bounds that have been developed over many generations and even centuries. That is the case with this Bill as much as it is the case with the three or four statutes to which I referred. We will rue the day they are passed.

At this last minute I make the plea to the Attorney General that it is within his power to stop the Bill in its tracks. If that means holding up the royal commission, I can assure him that the sun will rise tomorrow morning and set tomorrow night. Not much legislation in this place requires the haste that this Bill is being afforded. It is bad legislation and I therefore oppose it.

MR QUIGLEY (Innaloo) [3.33 pm]: I wish to address several points raised by the member for Nedlands and the member for South Perth. I will not go through the entire speech the member for Nedlands made during the second reading debate because she tried to summarise the Bill in the same way as the Attorney General in his second reading speech. However, her effort was B grade compared with that of the Attorney General. I will, nonetheless, address the very unjustified criticism of the Attorney General and Dr Gallop's Government by the member for Nedlands for introducing the Bill at this stage of the royal commission's proceedings. I remind the member for Nedlands that for five years in the face of the pleas of the Police Union (WA) that a royal commission be held, the Liberal Party stood fast and denied the public of Western Australia a royal commission.

Ms Sue Walker interjected.

The DEPUTY SPEAKER: Order, member for Nedlands.

Mr QUIGLEY: I will not take interjections from the chatterbox from Nedlands today.

For five years the Liberal Government led by former Premier Richard Court stood firm against the community's desire and the Police Union's demand that a royal commission be held. The Police Union could see union member after union member - honest copper after honest copper - being felled by the turbid, unethical and useless system called the Anti-Corruption Commission instigated by the Liberal Government.

Mr Ainsworth interjected.

Mr QUIGLEY: I will come to the member for South Perth in a moment.

Mr Ainsworth: I am not the member for South Perth.

Mr QUIGLEY: I am sorry; I thought the member for Roe's interjection came from the back row.

The Liberal Party, which had sought to frustrate the wishes of the community to have the allegations of corrupt -

Ms Sue Walker interjected.

Mr QUIGLEY: The member for Nedlands is trying to silence me because she does not want to hear the truth about the Liberal Party, but I will not be distracted by her dizzy comments.

Mr Day: Did you want a royal commission five years ago?

Mr QUIGLEY: I first called for a royal commission in 1993 and, with the union and its members, I consistently called for a royal commission from 1993 until the election of a Labor Government. With that happy event, we knew that a royal commission would be held. The member for Darling Range, who asked the rhetorical question of whether I sought a royal commission, was a former Minister for Police and well knew from the botched Argyle Diamonds inquiry investigation that I had been calling for a royal commission since then, as had the Police Union, which the Court Liberal Party stood against steadfastly. It did not want police practices laid on the table because it had developed a hopelessly botched system that went nowhere.

Ms Sue Walker interjected.

Mr QUIGLEY: I hear an echo from the forest. There is a guttural rumbling from the deep, dark mist, but it makes no sense and carries no weight, so I will continue.

Several members interjected.

The DEPUTY SPEAKER: Order!

Mr QUIGLEY: The member for Nedlands sought to criticise the Attorney General for not legislating these provisions earlier. I am sure, Madam Deputy Speaker, that you must feel a measure of sympathy for what the judiciary had to put up with when the member for Nedlands practised law before she was elected to Parliament. The member for Nedlands sought to criticise the Attorney General for introducing the Bill at this stage. I remind the member for Nedlands that the former Government committed approximately $40 million to $50 million of taxpayers' money to the Anti-Corruption Commission, a body that was given significant surveillance powers, including 33 telephone intercept lines, as I was told by the member for Girrawheen, who was on the committee. It also mounted several unlawful and hopelessly conducted sting operations that did not lead to a successful prosecution. Considering that over the past four or five years a significant amount of taxpayers funds have been spent on surveillance operations conducted against members of the Western Australia Police Service, it is reasonable to expect the royal commission to liaise with the ACC to see what success it achieved with those surveillance and sting operations. It would have been reckless to duplicate all that work in advance of the royal commissioner giving an indication to the Government that that which had preceded the instigation of the royal commission was insufficient for his purposes. An amount of $40 to $50 million of taxpayers' money had already been spent. It was entirely reasonable. We know that the royal commissioner has liaised with the Anti-Corruption Commission because the ACC has said so. After liaising with the ACC, it was only in March of this year, as I understand it, that the royal commissioner, the former Mr Justice Kennedy, wrote to the Government seeking Wood-type powers to be legislated in Western Australia. What happened? The request was made in March and, as we all know, the Parliament has not sat for a few weeks. The parliamentary draftsman has been working and the legislation is now before the House in a most timely manner. A most pathetic criticism was made by the chattering member for Nedlands -

Ms Sue Walker interjected.

The DEPUTY SPEAKER: Member for Nedlands! It is clear that the member for Innaloo will not accept interjections. The member should seek the call if she desires it.

Mr QUIGLEY: The member made a pathetic suggestion that the Government be criticised for introducing this legislation at this stage of the proceedings. I remind the House that in New South Wales similar legislation was not introduced and passed until beyond the halfway mark of the Wood royal commission. Rather than being in any way tardy, the Attorney General of Western Australia has been careful and responsible. He was careful to wait until after the process of liaison between the royal commission and the ACC had taken place and until he had received feedback from the royal commission as to the adequacy of the preceding four or five wasted years in investigating police corruption. The years were wasted because the former Liberal Government refused to act

and convene a royal commission. Rather than waste four or five years as the Liberal Party did, the Attorney General has acted in a responsible and timely manner in response to the royal commissioner's request.

Mr Pendal: The member may require the help of others with the tribunal.

Mr QUIGLEY: The tribunal has finished with me; it has hit me over the head with a wet lettuce leaf. The Attorney General and the people of Western Australia will soon see the back of the tribunal as lawyers are not capable of properly investigating and policing their own profession. That is a consequence of a public statement by the Attorney General. That is the last interjection I will take.

The Attorney General has moved in a responsible and timely manner. The member for South Perth rose to his feet - in the pompous way that he does - to speak up for individuals. Curiously, less than two years ago and before I became a member of this House, I appeared in court for five honest police officers from the rank of acting deputy commissioner down. I appeared for them at a preliminary hearing in the Court of Petty Sessions in which they were charged with perjury. The Director of Public Prosecutions intervened and stopped the preliminary hearing in its tracks when he learnt that the ACC had not given to his office all the evidence it had gathered during the course of its investigation. Having seen all the evidence, the DPP stopped the preliminary hearing in its tracks. I well remember the then Leader of the Opposition, Dr Geoff Gallop, moving a matter of public interest motion in this House. During that debate, the now Attorney General tabled an opinion by Mr Malcolm McCusker, QC - who was not involved in the case - suggesting that there may have been an attempt to pervert the course of justice by the ACC deciding to withhold relevant evidence from the DPP about the innocent officers.

The member for South Perth now wants to rail about innocent police officers and how the provisions of this legislation will trample on their rights. I remember that debate. He read from notes from the ACC on ACC letterhead. He walked over the reputations of those honest police officers. Police officers sitting in the gallery reported it to me. He claims to have a close liaison with the Police Union (WA), but it abhorred his conduct in ignoring the rights of honest police officers and sticking up for a flawed process in the system. The Liberal Party and the former Liberal Government were at pains to avoid a royal commission because they feared that a royal commission would lay bare the total ineptitude and inadequacy of the ACC - a creature of their own making. They designed the ACC to keep the truth about the Western Australia Police Service from the public. The ACC was structured so that the public of Western Australia would never know what was happening in its Police Service. The Australian Labor Party and the reformist Government of Dr Gallop have kept their election promise - duly mandated by the people of Western Australia - to establish a royal commission. The Liberal Party wanted to avoid doing so and deny the public of Western Australia a royal commission.

The powers sought by the royal commissioner are powers that the royal commission itself seeks. The powers were identified as necessary in New South Wales. Those who criticise and say that somehow the Gallop Government has spoiled the chances of the royal commission proceeding successfully by introducing legislation at this stage - not in anticipation of the royal commissioner's request - should be reminded that in New South Wales and other States such powers were not introduced until royal commissions were halfway through their work. The introduction of this legislation is timely and expeditious. It was entirely appropriate, in spending taxpayers' money, to wait until the royal commission had liaised with the ACC to see how far it had got with its investigations and where its undercover surveillance work and telephone interceptions had taken it. I am saddened to say that these powers are necessary. I am saddened that the royal commission has had to seek these powers because it shows me that the ACC has come up with a great duck egg and that the royal commission has to redo the work because of the ineffectiveness of the body created by the Liberals. Interestingly enough, Hon Derrick Tomlinson, the chairman of the Joint Standing Committee on the Anti-Corruption Commission and the Liberal member for the East Metropolitan Region, is now on the public record - having defended the processes of the ACC during Premier Court's reign - as "fessing up". He has now "fessed up" to the people of Western Australia and said that it would be appropriate to close down the ACC and replace it with a restructured body at the completion of the royal commission. The ACC committee often sits in camera, so I will rely upon his statements that it will be necessary for the Government to dismantle the ACC at the end of the royal commission and establish a body that can effectively monitor ongoing police corruption. That is a significant utterance from the Liberal Party chairman of the Joint Standing Committee on the Anti-Corruption Commission.

Several members interjected.

Mr QUIGLEY: When I was elected to this place, it was anticipated that I would ride a hobbyhorse against the ACC. I have spoken very rarely about it.

Several members interjected.

Mr QUIGLEY: No, I represent the people of Innaloo and do not carry on about single issues. I have not come into this place to attack the ACC. However, the situation in Western Australia was different from that in the other States. New South Wales did not have an ACC or like body preceding its royal commission. It did have the Independent Commission Against Corruption, but it was not targeted at only police corruption, nor did it have the sting or surveillance powers that have been given to the ACC.

Ms Sue Walker interjected.

The DEPUTY SPEAKER: Order!

Mr QUIGLEY: Madam Deputy Speaker, do not be disturbed. The member for Nedlands did not keep quiet when judges called her to order. I sympathise.

Several members interjected.

Mr QUIGLEY: I do not know how she caught this. I understand she had to take extended leave of absence from the Director of Public Prosecutions' office as a result of stress brought on by chronic fatigue syndrome. We did not see the work she did to cause that stress.

Other States did not have a relevant body preceding their royal commissions. Therefore, the royal commissioners needed this power. Unlike the Western Australian royal commissioner, those commissioners did not get it in a timely manner. It was responsible, appropriate and timely that the Attorney wait for the conclusion of this conference, exchange of views or inquiry between the royal commission and the ACC before he sought those powers. I seek an extension.

The DEPUTY SPEAKER: The extension is granted.

Several members interjected.

Mr QUIGLEY: There is no need for the members for Kalgoorlie and Darling Range to applaud. I know they want to hear more. That is why I sought the extension.

Mr Day: The more you say, the bigger the hole you dig for yourself.

Mr QUIGLEY: The Liberal Government dug a hole for itself with the ACC. Members opposite said that there would never be a royal commission while they were in power and that the public of Western Australia was not entitled to an open inquiry into the Police Service; yet they have the gall to say that I am digging a hole for myself. Excuse me! They are the masters of cover-up. If there is a hole, I will shine light into it and expose what is going on. It was not the Liberal Party's Police Service, nor was it Hon Richard Court's Police Service. It belongs to the public of Western Australia, which is entitled to have the service openly examined. I have no doubt from my doorknocking in Innaloo that the Labor Party's promise to establish a royal commission was a significant factor in its election win. People recognised me as the Police Union lawyer and accused me of trying to cover up what was going on. I responded that the Labor Party was promising to establish a royal commission with extensive powers to investigate the Police Service. That is why I won their vote; that is what the public wanted.

I commend this legislation and I praise the Attorney General for responding expeditiously to the royal commissioner's request. I congratulate him, the Treasurer and the Premier for not rushing in to spend public money in advance of the report from the royal commission on whether what had preceded it with the ACC was entirely appropriate.

MR AINSWORTH (Roe) [3.55 pm]: I thank you, Madam Deputy Speaker, for the call.

I support this legislation with some reluctance, which has increased in the past few minutes during the diatribe and personal invective that we have suffered at 100 decibels. Clear evidence has been presented by three royal commissions and investigations in other States that extended powers are necessary. If one were to take the view that the ACC was not doing its job properly - I do not - the need for these royal commission powers would be even more apparent. Not providing them in the original legislation was a mistake, but that is being rectified with this legislation.

Commissioner Kennedy has requested these powers because those provided in the original legislation were insufficient. Members would not have to be extraordinarily bright to work out that that was likely to occur given the history of these royal commissions. The commissioner has asked for powers to do some extreme things. Given the nature of his investigations, it is vitally important that the commission be conducted in a way that ensures public confidence. At the end of the process, the public must be confident that the commission's findings, whatever they might be, about the Police Service of Western Australia are accurate. If police officers

are found to have acted inappropriately, they should be identified and proper steps should be taken to bring them to book. The worse thing that could happen would be for the commission to bring down a questionable finding as a result of insufficient resources or powers. The whole process would have been a waste of time and money.

The integrity of the Police Service and public confidence in it are so important that the royal commission should not be denied any reasonable powers. The vitally important role that the commission will perform and the imperative of total public confidence in the process justifies the royal commission's having powers that in most other situations would be seen as extreme and in excess of what was required for a public investigation. Those powers are justified in this case. My only regret is that the powers were not included in the original legislation. The National Party supports the legislation, but with those concerns.

MR BIRNEY (Kalgoorlie) [3.58 pm]: Madam Deputy Speaker, I was genuinely disappointed that you gave the call to my friend the member for Roe rather than to me, notwithstanding the important points he made. I was hoping to respond to my evangelistic, gum-banging, preaching friend from Innaloo and to address some comments he made during his 30-minute speech. I was anticipating reading to him comments he made about royal commissions in 1992. I was going to save them until the final part of my contribution, but I am eager and excited and cannot help reading them now. If the member for Innaloo is wallowing in his office, perhaps on his chaise longue -

Ms Sue Walker: He is in the bar.

Mr BIRNEY: Yes, or in the bar. I hope he will come back into the House to listen to me quote what he said in 1992.

Politics is a very interesting game. I think those people who are genuinely interested in studying human nature - what makes different individuals tick, how they can from time to time change their minds on certain issues, and what might influence those people to change their minds on certain issues - would do well to study some members of Parliament. To that end, I suggest that the member for Innaloo might make a good case study for those people who are genuinely interested in studying human nature, especially how a leopard can change its spots according to the zoo in which it resides. The member for Innaloo now resides in the Labor Party zoo and wears Labor Party spots. He should not stand in this place and consistently and constantly berate the Liberal Party and the former Court Government for resisting what he called a public call for a royal commission when he is on the record as resisting that very call. I have kept the House in suspense for long enough, and would now like to read into *Hansard* a number of comments that were made by the member for Innaloo some time before he developed those spots that comprise the letters "ALP" in the middle of a little ribbon. Some time ago the member for Innaloo was asked on the Sattler program whether he thought the WA Inc royal commission was a waste of money. It was a fairly reasonable question. The member for Innaloo, who was just Mr Quigley at the time -

Ms Sue Walker: And not a QC. They would not make him one.

Mr BIRNEY: He was LC for "loose cannon". He replied to that question by saying that all commissions inevitably are a waste of money. Those are the words of the member for Innaloo: all royal commissions are inevitably a waste of money. It does not stop there. I hope members will indulge me a little, because I have in front of me an article entitled "Quigley Questions the Process". It contains a gleaming photo of our friend from Innaloo. He is wearing a vest and looking rather official. He looks like he might know what he is talking about. He was asked, "What is your view of Royal Commissions in terms of their value?" That is a fairly reasonable question to ask such a gentleman as the member for Innaloo. I think that he used to distribute this article in legal circles, but I may stand corrected. I hope members are listening as I quote the words of the member for Innaloo, because they are very important -

> Having been involved in a number of them, if I was in Government I would be loath to call a Royal Commission.

Those are the words of the same bloke who 25 minutes ago asked why that nasty Richard Court could not hear the public saying that it wanted a royal commission, and why the former Government spent five or six years avoiding introducing a royal commission when the current Attorney General, his knight in shining armour, came in and did it straight away. The member for Innaloo congratulated the Attorney General to that end. Obviously, the member has forgotten what he had previously said. He said that, having been involved in a number of royal commissions, he would be loath to call one if he were in government. He went on to say -

> I think that Royal Commissions are political beasts.

"Beast" is a fairly apt word to use when discussing the member for Innaloo. He continued -

> They are called for political purposes, to solve political problems and the way they conduct themselves is dictated by the political climate.

Those are the words of no less a person than the member for Innaloo. He is a very learned gentleman when it comes to police matters. He has been involved in defending police officers before the judiciary. He then went on to say -

> What I believe is that Royal Commissions are being used by parliamentarians to in some way fill a void in the parliamentary process . . .

After listening to his speech this afternoon, members would find it hard to believe that he once said that. This afternoon's speech was very good. It was very theatrical, and he looked like he was genuine and really meant what he saying. He appeared to want to make a point to members of the House. He has now been exposed as not being genuine.

Ms Sue Walker: A hypocrite.

Mr BIRNEY: He said that he believed that royal commissions were being used by parliamentarians -

Withdrawal of Remark

Mr McRAE: The member for Nedlands suggested that the member for Innaloo is a hypocrite. I think that is unparliamentary language and I ask that you, Madam Acting Speaker, require her to withdraw.

The ACTING SPEAKER (Ms Hodson-Thomas): I did not hear the interjection. I advise the member for Nedlands that if she did make those remarks, she should withdraw them.

Ms SUE WALKER: I withdraw the comment.

Debate Resumed

Mr BIRNEY: I will try to speak a little more softly, as I think it is important that everybody should hear comments of that nature about the member for Innaloo. I note with pleasure that my friend the member for Innaloo is back in the Chamber. I hesitate to re-read the quotes for his benefit, but I am sure he is very familiar with them as they came directly from his mouth - before he grew those ALP spots. I will entertain members by reading one more quote. I know that members want to hear more of what the member for Innaloo thinks about royal commissions, but I will provide only one more. It is from October 1992. I suspect that, at that time, the member for Innaloo may have thought that he was of the Liberal persuasion. It was only when the seat of Scarborough became available that the ALP thing grew on him. He said -

Mr Quigley: I joined the ALP because the hypocrisy of the Liberal Government had to be called to book.

Mr BIRNEY: I choose not to take that interjection and hope it is not recorded in *Hansard* because I do not accept it.

Several members interjected.

The ACTING SPEAKER: I am trying to hear what the member for Kalgoorlie is saying. There are far too many interjections across the Chamber that are not directed at the member for Kalgoorlie.

Mr BIRNEY: Thank you, Madam Acting Speaker, for your protection. It is not surprising that the member for Innaloo wants to bang his gums to try to drown me out, but I have a good set of gums, and, if necessary, can raise the decibel level. It is vital that we understand what the rising star of the Labor Party had to say about royal commissions prior to his 20-minute speech in this place. He is reported by the October 1992 edition of the Law Society of Western Australia magazine, *Brief*, as saying that royal commissions -

> . . . have got a social value in terms that they have got a political value. . . . Rather than politicians grabbing the bull by the horns and resolving the issues within the regular organs of government, they give birth to a Royal Commission to take the problem off their back.

That is what the member for Innaloo said. When he referred to politicians who are too afraid to take the bull by the horns, did he mean the Attorney General? I distinctly remember the member for Innaloo making glowing comments about the Attorney General only half an hour ago. Yet, this quote can be interpreted in only one fashion; that is, he believes the Attorney General would rather give birth to a royal commission than take the bull by the horns. Those words came from this bloke's mouth in 1992. That is what he thought before he saw the ALP light and became a member of the Labor Party. After he became a member of the Labor Party, he was

bludgeoned into thinking something different. In fact, he was bludgeoned into thinking along the same lines as the person about whom he just spoke of glowingly, the Attorney General.

Several members interjected.

The ACTING SPEAKER: Order! I remind members that it is difficult for the Hansard reporters to hear the member who is speaking when there are so many interjections, especially when they are so loud.

Mr BIRNEY: When I first came into this place, I did not know the member for Innaloo, although I knew of the good reputation he had for his legal prowess. One day I had a chance to read in the newspaper that the member for Innaloo was a Queen's Counsel. I thought that was interesting and that it made sense, given that he was a fairly high-profile lawyer involved in police matters at the time. However, it came to light in the "Inside Cover" section of *The West Australian* that people were incorrectly referring to the member for Innaloo as a QC. Perhaps the member should be given the title of LC - a "loose cannon". I distinctly remember the member describing himself as a loose cannon in his maiden speech. He qualified that by saying that although he was a loose cannon, members opposite could guarantee that when the cannon was rolled out it would be pointed at them. I hesitate to say that he has a hole in his foot, but I think he has blown off his foot. That is enough of the entertainment.

It is important to make members aware of the nature of the Labor Party's ability to strongly influence its members. It is important for members to understand that the Labor Party does not like its members to think for themselves. In many ways, the Labor Party still has shades of communism. The Labor Party does not like the member for Innaloo saying anything contrary to its party line. I am pleased that he is now toeing the party line, is giving the Attorney General credit and is now saying that royal commissions are great. However, not many members of the Liberal Party would be prepared to change their spots and compromise their principles simply because they had joined the party. The member for Innaloo stands condemned in that regard.

I refer to the royal commission and the Bill we are currently debating. The Liberal Party supports the royal commission, albeit with a few qualifications. I would be surprised if the royal commission discovered systemic and endemic corruption in the Police Force. Having said that, I accept that the commission will inevitably find a number of bad examples within the Police Force, and I anticipate that it will root out some of those people. However, we must consider the cost of achieving that goal. The Labor Party estimated in its budget that $15 million would be spent on the royal commission. However, I predict that at its conclusion, it will have cost in excess of $30 million. For $15 million or $30 million, the Government of the day must find systemic and endemic corruption within the Western Australia Police Service. Anything less will raise very serious questions about the Government's motivation for holding a royal commission.

Mr Quigley interjected.

Mr BIRNEY: Interjections from the member for Innaloo are a bit like being whipped with a soggy piece of lettuce; they do not hurt.

The behaviour of members of the Labor Party has resulted in a comedy of errors regarding the police royal commission. Some time ago, the Attorney General announced that police officers and former police officers would be given some financial support for legal representation at the commission, which is a good thing. However, he left it to the Minister for Police and Emergency Services to release a press statement to that effect. When I questioned the police minister about the nature of the financial assistance, she had no idea whatsoever of the answers to my questions. She had no idea about how the scheme would operate, how individuals would avail themselves of that representation, or whether it would apply to former or current police officers. There was a mix-up between the Attorney General and the Minister for Police and Emergency Services. Perhaps because the Minister for Police and Emergency Services felt left out, the Attorney General allowed her to issue a press release so that she could stamp her mark on the royal commission, despite not knowing anything about it. I suspect that the Attorney General's office drew up that press release and gave it to the Minister for Police and Emergency Services to play with, which she did and, unfortunately, got dumped because of it.

When the royal commissioner conducted the opening hearing of the royal commission on 28 March he indicated that it would commence some four weeks later, which was about 28 April. That date has passed.

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

The ACTING SPEAKER: I remind members that it is highly unparliamentary for them to have mobile phones switched on in the Chamber. A member has obviously received a message, and I would like members to turn off their mobile phones.

Mr BIRNEY: The royal commissioner wanted to start the inquiry on a date that has now passed. Sadly, the commissioner is not able to commence proceedings.

I have already referred to the budget. The Government was gung-ho in announcing the royal commission. It wanted to give the appearance that it was a crime-fighting Government that would be tough on crime. The Government proposed to fund a royal commission with $15 million. Clearly $15 million will not come close to funding it. That is the third strike for the Government.

Strike number four relates to this Bill. These powers should have been included from day one. Commission investigators should have had an opportunity from day one to use these types of powers, yet the Government, which has no firm concept of what a royal commission should do, has left them hamstrung.

I have a couple of reservations about the powers. I listened intently to the speech by the member for South Perth. Although I do not completely endorse his views, I understand and sympathise with a number of the points he made. However, the powers contained in this Bill are necessary. Arguably, the New South Wales royal commission into police corruption was successful because it managed to get people to roll over, which is not easy to do. It is not easy to get somebody to blow everybody else's cover and bring to the attention of the public certain criminal activities. However, it was done and members will recall the image of a detective handing over money under the dashboard of his car; from then on, events started to snowball. That image was obviously captured with a surveillance device, and those devices are referred to in this legislation.

Mr McRae interjected.

Mr BIRNEY: The member for Riverton is all tip and no iceberg; there is not much depth. If the member closed the exit route, he might retain what goes into his head. It will probably ricochet a bit but if he covers his mouth, it will not get out.

If we do not grant such powers to the police royal commission, the commission would do little more than the Anti-Corruption Commission in its current form. People have different views about whether the Anti-Corruption Commission has been successful. Although the ACC cannot specifically initiate prosecutions, its investigations are expected to bear some fruit. To date, the ACC has had little success in instigating prosecutions, and I am sure the member for Innaloo is pleased about that. In its current form, and with its current powers, the ACC has faced a number of problems in bringing forward prosecutions. That is why the Bill now before the House contains a range of police powers and seeks to separate the powers of a royal commission from the current investigatory body, the ACC. Some of the powers contained in the Bill include access to information and documents, both of which can be vital in the investigatory process of a royal commission. It also allows the royal commissioner to assume control of an existing investigation and provides that the original investigator must cease investigating the crime. I refer to investigations currently conducted by the Western Australia Police Service, the Ombudsman or another parliamentary commissioner. The Bill also provides for something which does not sit too well with me, although I understand and accept its need; that is, the Bill allows the heads of government departments - the member for South Perth touched on this - to doctor records to offer an assumed identity to an individual who is about to undertake an investigation for the royal commission. If we break this down in a practical sense, I anticipate that the head of a government department would have the power to invent a birth certificate, a drivers licence or taxation records to ensure that an identity is successfully assumed and not exposed at any stage. I understand the need for this. However, in some respects, the head of the government department who is required to undertake such a task may feel somewhat compromised, because, if it were not for the fact of the royal commission, such actions would be considered highly illegal. I am concerned about the way in which a government department head would conceal his actions from other staff members. Security in government departments is not necessarily strict. From a practical point of view, if a second in command or a staff member of a department observes the head of that department falsifying - for want of a better word - a birth certificate or a drivers licence, it could create all types of problems. Where does the head of a government department go to obtain the solitude and privacy needed to doctor documents for the royal commission? That is a significant concern.

Integrity testing is another power that has been implied in this piece of legislation. There are a number differing views about integrity tests. For example, an integrity test may be applied to a police officer who has been a member of the force for 30 years. In his 30 years on the force, that police officer has never been involved in corrupt activities and is as straight as a die. However, for whatever reason, he accepts an offer from an undercover agent during an integrity test. That would constitute criminal activity, and, as a result, the officer would have thrown away his career. Some people do not believe that to be right. Conversely, there is also the

argument that we do not want in the Police Force officers who accept offers of such a nature. I have a degree of sympathy for both sides of the argument.

Mr McRae interjected.

Mr BIRNEY: I will attempt to conclude my contribution to the debate, even though the gum banger in the background is carrying on.

I am aware that the commissioner has written a letter to the Attorney General about the extended powers he has sought for the royal commission. I made an application to obtain that letter under the Freedom of Information Act. However, it has not been forthcoming, and I have since discovered that the Attorney General sought and claimed an exemption for that letter. The reasons for the exemption are somewhat unclear. I have lodged an appeal with the Information Commissioner, and I am encouraged by the response I have received. However, this matter raises many questions. For example, what was written in the letter from the police royal commissioner to the Attorney General? Did he request additional powers? Were such additional powers knocked back? Perhaps such powers were not sought by the commissioner, but conferred upon him. I hope the Attorney General will answer those questions in due course.

I conclude my remarks with some observations that I have made about the royal commissions in the eastern States. The Wood Royal Commission into the New South Wales Police Service recommended that if law enforcement were to have an impeccable nature in the future, an investigatory body - similar to the ACC in Western Australia - would have to be established. That was one of the major recommendations of the Wood royal commission. One of the major recommendations of the Fitzgerald royal commission in Queensland was that what we know in Western Australia as a section 8 notice should be implemented in the Queensland system. A section 8 notice allows the police commissioner to communicate his lack of confidence in a police officer, and that police officer is then removed from the department. The observation I wish to make is this: in Western Australia we have an ACC, and it has been established for some time. Further, we also have section 8 notices and we have had them for some time. Therefore, Western Australian law already encompasses the two major recommendations that came out of the Wood and Fitzgerald royal commissions. I will be interested to see what recommendations the royal commission will make to ultimately ensure that Western Australia has a Police Force that is free from corruption, and that will allow police officers to do their duty according to the wishes of the people of Western Australia.

MR BOARD (Murdoch) [4.29 pm]: The Royal Commission (Police) Bill 2002 is a serious piece of legislation that gives extremely strong powers to the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. The Opposition supports the Bill; however, the powers it provides must be scrutinised and debated, particularly in the consideration in detail stage of the Bill. In supporting the legislation, the Opposition recognises that the Bill has been drafted at the request of Justice Kennedy. We assume that Justice Kennedy requested the Bill solely to obtain the best possible outcome for the royal commission. We must focus on the royal commission's outcome. With the prospect of a royal commission before us, it is incumbent on all of us to make sure that the royal commission has the opportunity to put to bed once and for all the innuendos and accusations that have followed the police in this State over the past decade and long before that. It is in the interests of the community, and particularly the police, that the Parliament act in a bipartisan way to support the royal commission and give it the powers it needs to get to the issues. We must ensure that the huge amount of money invested in the commission and the time and energy of the commissioner and his officers are well supported.

I take note of the speech made by the member for South Perth. He clearly indicated the continuing impingement on what he considers to be the civil rights of people in Western Australia. It is of concern that the Parliament must act in a way that people in our community may perceive as giving stronger powers to those who are trying to enforce the law of this land. If that must be done to get a better community, so be it. Although we are giving the commission the powers set out in the Bill, those powers are limited to the royal commission. We are doing this in the hope that the legislation will empower the commission and enable it to reach a satisfactory conclusion.

This legislation is being dealt with some six months after the announcement of the royal commission. It may have been more prudent to have dealt with this matter earlier, both from a cost-effectiveness point of view and bearing in mind the operations of the commission. I assume that the Labor Government had as much difficulty dealing with the provisions of this Bill before bringing it to the House as this side of the House would have had, because of the civil liberties issues contained in it. Royal commissions established in other States of Australia after a considerable amount of time and investment of public funds have called for extended powers. If we can circumvent that extraordinary cost and expedite the work of the royal commission, we will be in a better position. Hence our support for the Bill.

The legislation will require a great deal of scrutiny to ensure that we limit the powers, particularly those contained in the controversial provisions, to the royal commission, and so that they do not become the normal powers given to other royal commissions or investigative bodies. This royal commission needs these additional powers to enable it to deal with contentious and difficult public hearings into issues affecting individuals, families and the community.

The advent of more sophisticated communications technology has made it easier for many criminals to bypass normal investigative practice. Knowledge of the law and police processes also enables criminals to bypass the normal investigative practices covered by the powers of a normal commission; hence, in this instance, the provisions of the Bill, in the main, are justified and must be supported. We recognise that some people in our community will be horrified by what will transpire in the Parliament over the next few days during debate on this legislation. However, it is in the interests of the community as a whole that the Parliament ensures that our Police Force is seen to be open, accountable and clean. We owe it to our community and the Police Force to make sure that, despite the difficulties that will be experienced by those conducting the inquiry, the police, their families and all those associated with the police - especially those innocent people who may suffer as a result of the work of the royal commission - the royal commission is able to get on with its work quickly and deliberately so that it produces a satisfactory outcome that is cost effective and in the long-term interests of the community.

The Opposition supports the legislation, notwithstanding that during consideration in detail we will need to scrutinise the full intentions of the Government. We understand that the powers will be limited to this royal commission. We are under the impression that the Attorney General will clearly outline the exact limitations of the legislation. We hope those limitations will be applied to these extraordinary powers. The Opposition hopes that, at another time, it will have the opportunity to scrutinise the use of the powers and their effectiveness. I am sure that Justice Kennedy, his commission and its officers will in no way abuse their powers but will limit them to the effective nature in which they go about their work. The Opposition looks forward to the consideration in detail stage of the Bill.

MR DAY (Darling Range) [4.37 pm]: As other members of the Opposition have said, we do not oppose this legislation - indeed we support it. We should have been having this debate about 12 months ago. We question the wisdom and the potential value of having the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers look at the Police Service and the Anti-Corruption Commission. We are of the view that the Labor Government has the right to call the royal commission but, if it believes that it will be such a valuable exercise, it should have called it as soon as it got into government rather than waiting for 12 months. With the passage of time individuals' memories fade, access to information is invariably made more difficult in some circumstances and the whole outcome of the process is likely to be less effective than it would have been had the royal commission been established 12 months ago. Nevertheless, the Government is seeking somewhat belatedly to put in place quite strong powers to enable allegations of corruption to be investigated more effectively than would otherwise be the case. Although we have some doubts about the value of such a royal commission, for my part, and I believe that of the Opposition, I have complete confidence in the royal commissioner, the Honourable Geoffrey Kennedy, QC. I have no doubt that he will conduct the royal commission in a very thorough, professional and competent manner.

The member for Innaloo went over quite an amount of history. I will remind the House of some of the issues that faced the previous Government when I was Minister for Police, when Hon Kevin Prince subsequently became Minister for Police and when Hon Bob Wiese was Minister for Police during the first term of the coalition Government, from 1993 to early 1997. The former coalition Government never had any reluctance to examine allegations of corruption or serious improper conduct among officers of the Western Australia Police Service, or members of the broader public service in Western Australia for that matter. There was no opposition from either me or any other member of the Government. To the contrary, we were very keen to act in the public interest to ensure that when there was wrongdoing, it was effectively investigated and that when appropriate, effective action would be taken either by prosecuting wrongdoers, by exposing them in some other way or, if it was a less serious matter, by effective internal disciplinary procedures.

As I have said, we question the effectiveness of a royal commission; we certainly did at that time when we were in government. That was the only reason a royal commission was not set up at that time. The Wood royal commission into allegations of police corruption in New South Wales cost about $70 million. It was a very lengthy and thorough process, and some very important recommendations were made. However, there were very few successful prosecutions of corrupt police officers. Royal commissions into police services promise a lot, but they deliver little from the point of view of effectively prosecuting people who are involved in wrongdoing. Historically that has been the case, but perhaps this one will be different. If that is the case, it will

be a welcome development. Royal commissions have produced important recommendations. The Wood royal commission made some important recommendations, the main one being that to deal with these problems within the New South Wales Police Service, a continuing powerful investigative authority needed to be established. For that reason, the former Official Corruption Commission in Western Australia was converted into the Anti-Corruption Commission. Its powers were substantially widened, its resources were increased and its role in investigating these matters was enhanced from that of the previous Official Corruption Commission.

Ms Quirk: And the results have been outstanding.

Mr DAY: I will get to the results in a little while. However, we cannot judge the effectiveness of the Anti-Corruption Commission on just the number of prosecutions that result from it. A body such as that must have a role in discouraging the commission of acts of corruption or serious improper conduct within the Police Service and from within the public service in a broad sense. The fact that the commission is there and, hopefully, has an educational role within the public service and the Police Service has some effect in itself.

It is notable that some allegations of very serious corruption within the New South Wales Police Service have been made within the past 12 months. Last year, *Four Corners* showed some amazingly foolish behaviour on the part of some New South Wales police officers. That has occurred in the past 18 months, in spite of the very expensive and lengthy Wood royal commission conducted in New South Wales. It has not fixed everything in the New South Wales Police Service. No doubt it has had some positive effect; I do not deny that. It was probably very appropriate for the circumstances that existed in New South Wales at the time. However, Western Australia has been able to learn much from the outcomes of the Wood royal commission.

I will advise members of the House about the background of why we did not call a royal commission when some very serious allegations were made in June 1997 and during our term in government. The sort of advice that we received, which we took into account very seriously, came from Professor Timothy Rohl, the then Director of the Australian Institute of Police Management and of the Australian Graduate School of Police Management at Charles Sturt University. He was also deputy chairman of the Australasian Police Education Standards Council. He wrote to the previous Government in June 1997. His comments included -

> For many members of the public, calls for a royal commission from various people who seem well-informed, must make some sense or at least create some doubt in their minds as to whether or not there should be one. I understand their concerns and would be the first to support this view if I believed that the citizens of Western Australia would benefit from a Royal Commission into their police service at this time.
>
> But I do not for the following reasons:
>
> > There is a mistaken and somewhat naive assumption, that Royal Commissions automatically 'fix' problems in police organisations. The evidence does not support this belief.

His letter went on to say -

> The public is often left with a considerable sense of disappointment after Royal Commissions. They expect a raft of prosecutions which rarely occur.

Professor Rohl's letter also stated -

> The recommendations of Royal Commissions inevitably lead to a reform of structures, processes and practices. The Delta Program -

That program was put in place in the first term of the previous coalition Government and brought about substantial change for the better within the WA Police Service -

> has already gone further than this - the whole of the Western Australia Police Service is currently undergoing a profound organisational and cultural transformation. Core business has been clarified, emphasis has been placed on service and meeting the needs of all stake holders, there has been a major shift from a rules driven organisation to one that is knowledge and values driven with personal and organisational accountability at the fore.

It is in that context that the previous Government made the decision not to go ahead with the establishment of a royal commission such as that which we are considering today; it was not to cover up allegations or to try to protect people who had been involved in wrongdoing.

Another point that needs to be made about calling a royal commission into the Police Service is that such royal commissions inevitably have the effect of paralysing the activities of police services. Royal commissions put on hold effective change for the better and also paralyse and hamper the operations of a police service. Inevitably, people will be tied up in answering questions, providing evidence to the royal commission and informing it about various matters. If a police service is to be involved in that sort of role, its operational capacity will be reduced. To some extent that process is necessary. However, at the time we were in government - we still have the view to some extent - we believed that the effect of a royal commission on the WA Police Service would paralyse its activities in a number of ways. Not long after the previous Government came to office in 1993, we gave very serious consideration to setting up a royal commission similar to that which has been established by the current Government. I was not a member of Cabinet at the time; I did not become Minister for Police for another four years, at the beginning of the second term of the coalition Government. I heard the former Premier, Richard Court, say that a very serious decision needed to be made by the then new coalition Government about whether a royal commission should proceed. The decision not to go ahead with a royal commission was made for the sorts of reasons that I have just outlined, despite the fact that some very serious concerns were expressed to the then new Premier and the then new Minister for Police.

A substantially changed program was implemented within the Western Australia Police Service. Following the retirement of the former Commissioner of Police Brian Bull, Bob Falconer was appointed as police commissioner from outside Western Australia. He had a great deal of experience and was recognised as a senior police officer who could bring about substantial change within the WA Police Service. Long before I was Minister for Police, as a backbench member of Parliament, a local MP and a member of the public I formed the view that the Police Service became much more accountable than was previously the case. That is not a criticism of any individuals who may have been leading the Police Service prior to Bob Falconer's appointment. For a range of reasons changes were made in which the organisation became more open and accountable. I believe that it is still open and accountable.

Under the present legislation the Anti-Corruption Commission is required to conduct its hearings and investigations in camera. The member for Innaloo alluded to the former Government being more interested in covering up those allegations. That assertion has been made on numerous occasions over the past few years. That was in no way the case. When the ACC was established, the legislation provided for the fact that its investigations had to be conducted in camera to protect the reputations of innocent people. In the past, allegations without any substance were made to the former Official Corruption Commission. Those allegations were publicised by the people who made them, which resulted in serious harm. I remember visiting, as a backbench member of Parliament, the very well regarded Hong Kong Independent Commission Against Corruption in 1996. One of the main points I took away from that visit was very strong advice that it was essential for investigations and hearings by bodies such as ICAC in Hong Kong and the ACC, subsequently established in Western Australia, to be conducted in camera so that the reputations of people who were found to be innocent were not harmed unnecessarily. We very clearly believed that once somebody was charged with an offence or was shown to be involved in serious improper conduct that should be publicised. However, we were very keen to ensure that the reputations of innocent people were not harmed unnecessarily. That is why that provision was in the legislation.

As time has passed the ACC has sought, in some circumstances, to have its hearings conducted in open session. I have no doubt, with the benefit of hindsight, that the ACC's job would have been easier had it not only acted fairly, but also been seen to have acted fairly and impartially in its investigations. Many of the concerns expressed by the member for Innaloo, in both his current role and former role, have arisen because the public has not been able to see the investigations of the ACC being conducted in a fair and appropriate manner. That is an important issue. Obviously a trade-off was made between the competing issues that must be considered in that respect.

Another issue that probably has hampered the operations of the ACC to some extent is the role of the commissioners. I understand that the main role of the three commissioners is to provide some degree of independent oversight and community-based input into the activities of the operational officers of the ACC. I have no doubt that the current commissioners, Terry O'Connor, the chairman, and Mr Don Doig and Mr R.N. George conduct themselves in a fair, well-balanced and appropriate manner. If such is not the case, no doubt it will be investigated by the royal commission. The member for Innaloo has made many assertions in that respect. From interactions I had with those people when I was Minister for Police and from my general observations, I have no reason to believe that they are doing other than seeking to ensure that the activities of the ACC and their own judgments and conduct are above reproach.

The ACC commissioners, to some extent, have had to take responsibility for some of the operational activities of the ACC, although the theory behind the initial legislation was to ensure that they could be more independent of the commission's operations and provide community input to ensure a degree of independent oversight. As I said, I am sure that the members of the ACC take their role very seriously and seek to be fair and proper in the way they operate. The same applies to former members of the ACC and Hon John Wickham, who was the first chairman of the ACC and chairman of the Official Corruption Commission.

I do not oppose the legislation. I am keen to support it, given that a royal commission has been established. However, I will be happy to see the tangible results of what will be inevitably an expensive process because it will require funding additional to that for which the Government has budgeted. It will be not only expensive but also inevitably a longer process than the Government has planned. I will be very interested to see what tangible benefits come out of this process.

MR BARNETT (Cottesloe - Leader of the Opposition) [4.56 pm]: I concur with what other members from this side of the House have said. It has always been my view that, although undoubtedly corrupt police officers have committed and will commit crimes while officers of law enforcement, endemic corruption does not exist within the Western Australia Police Service. The Government of the day and the person responsible, whether it be the Minister for Police or the Attorney General, have a responsibility to be supportive of our Police Service. We all acknowledge that the police deal with the crooks and the sleaze elements of our society. They are spat on and insulted, and they find themselves in personally offensive situations. The vast majority of police officers do their job to the best of their ability in a way that is honourable and honest.

When a Government establishes a royal commission it suggests that it does not have confidence in the Police Service and that it believes widespread corruption exists in the Police Service. I have never shared that view, although I have no doubt that the royal commission will find a few crooks among the thousands of police officers. However, will that revelation justify the expenditure? The Opposition has not supported the royal commission. As the member for Darling Range said, the previous Government established the ACC as a permanent vehicle for investigating allegations of corruption and illegal behaviour of police officers and of people in other spheres of activity. The ACC may not be perfect. I do not think anyone is sensitive about that and there may be scope to improve the effectiveness and operations of the ACC. If this Government had the desire to do that, it would receive support from this side of the House. The coalition Government established the ACC, but perhaps it needed refining. There is no sensitivity about that. However, it sends the wrong message to the community and a very damaging message to our police officers when the Government takes the next step and establishes a police royal commission.

I agree with the member for Darling Range. This has the ability to effectively put a stranglehold on the operation of the State's Police Service. There will be a preoccupation with the proceedings of the royal commission and it will be an absolute feast for the media, as royal commissions like this always are. It will distract our Police Service from the duties and tasks it has to undertake. It has the potential to undermine public confidence and support for members of the Police Service, the vast majority of whom work hard and honestly to the best of their ability.

We have already seen changes in respect of this royal commission. Following the election, the royal commission was delayed by 12 months. The first change is that of timing. What was going to take 12 months to conduct will now take at least 18 months. The second change relates to cost. When the Labor Party said it would establish a royal commission it said it would cost $15 million. At the time, others and I, including Michael Dean from the Police Union (WA), said it would cost at least $30 million. I think he said it would cost $35 million. In my address to the Police Union (WA) last year I said the cost would be at least double that of the Labor Party's estimate; that is, at least $30 million. It has already been conceded by the Attorney General that the budget of $15 million has blown out by $7 million to $14 million. I do not know whether he has put an exact figure on it.

Mr McGinty: That is the uppermost figure.

Mr BARNETT: By that admission the figure will be at least $25 million. It has been established that $5 million has already been spent, yet there have been no public hearings and no witnesses have been called. In reality, the royal commission will cost over $30 million. The timing has changed and the costs have increased greatly. That is consistent with the experience of the Wood Royal Commission into the New South Wales Police Service and the Fitzgerald inquiry into policing in Queensland.

This legislation gives special powers to officers working for the royal commission. The powers relate to entrapment and other special provisions. As has been said by other members, this legislation should have been

introduced six months ago. If the royal commission is to operate along lines similar to the Wood royal commission and the Fitzgerald inquiry, the Attorney General should have introduced this legislation long ago. After all, the start of the royal commission has been delayed for 12 months. During that delay, there was ample time to introduce legislation that was used in two other States. That does not reflect well on the Government's ability to manage the royal commission process.

I have reservations about these powers. I do not like the idea of entrapment provisions. Many members on both sides of this House share that hesitancy. However, the Government has established the royal commission. I have given an undertaking that if the royal commissioner - a person held in very high regard - believes these powers are required for the commission to operate effectively and they will be used with due safeguards, I am, reluctantly, willing to have confidence in the judgment of the royal commissioner and his advisers and to take into account experience elsewhere. The powers are extraordinary; on the surface, they infringe people's civil rights. If these powers of entrapment are used against a criminal police officer and if that officer is caught there may be an argument that the end has justified the means. If the use of these entrapment powers finds evidence of widespread or serious corruption and breaks a ring or network in the Police Service, it may be argued that, as unpleasant as it is, that the end justifies the means. It is a great concern, if entrapment baits and inducements are used, as to what will happen to long-serving police officers who have been honest and worked diligently through their careers. In a moment of weakness or frailty, such an officer may succumb when he is under marital or financial stress. An officer in the Police Service, as has been the case elsewhere, may find himself in such a situation.

Dr Constable: He would be a fool according to this legislation.

Mr BARNETT: The point I am making is that if entrapment catches the bad guys - if they exist - so be it. If entrapment is used to induce an otherwise honest police officer to commit an offence, is that appropriate? I argue that it is not appropriate. I am not convinced that entrapment should, or can be, used properly. I may sound somewhat contradictory, as the Opposition will not oppose this legislation. The Opposition will allow its passage through both Houses of Parliament. I have a fundamental concern about entrapment powers. I do not say that to give comfort or protection in any way to the limited number of police officers who may be corrupt. For other officers, who may be good, honest officers but put under pressure from their colleagues or for some other reason, they may be tempted and induced into committing a crime.

Ms Quirk: Integrity is at stake.

Mr BARNETT: Yes, but we are talking about police officers who may be young and not have a high level of education. They may not be very sophisticated in many respects and they may be struggling to meet family commitments and a mortgage. They may be under marital stress or have other problems and temptations. If they are offered a juicy bait they may, in a moment of weakness, transgress. In transgressing and taking that inducement they may commit a crime. Is it the proper role of law enforcement and of the judicial process of a royal commission to induce officers to commit a crime? I do not think it is appropriate. However, the Opposition will not vote against these powers. The royal commissioner is a person of the highest integrity and it gives me confidence that he has asked for these powers. I am reluctant to refuse them. In almost any other circumstance, I would be extremely hesitant about this. I hope that the way in which these powers will be administered is of the highest integrity and propriety. We are getting into an unseemly area of secret police and sneaks; it is an area with which I do not feel comfortable.

A royal commission will attract a fringe element. All members of Parliament are contacted, from time to time, by conspiracy theorists. Such people always talk about incredibly complicated webs of deceit and the like. The use of entrapment powers provides an opportunity for a person with a grudge or someone obsessed with conspiracy theories or who has a wild imagination to feed information to a royal commission about a police officer. It may be done in all innocence. The royal commission may take some of the information at face value. The information may be exotic, mischievous or frivolous. The royal commission may then proceed to use entrapment powers. It creates a double wrong; it is misleading, inaccurate, exaggerated, mischievous and Machiavellian information about an individual. A royal commission, through its investigative powers, may use entrapment and an honest police officer's entire reputation and standing may be wrongfully destroyed. Someone may set out to discredit an honest police officer for whatever reason. Such a person may be a criminal or a jealous fellow officer. If entrapment is used - whether it works or not - it is inevitable that the police officer is placed under such a level of suspicion that his career and his standing in the Police Service among his colleagues will probably be damaged forever. Who will believe that he is innocent? An officer's colleagues will talk at work or in a bar. The legislation provides for secret police with powers of entrapment. I do not think this is a healthy development for our society.

Mr McGinty: The member can vote against it.

Mr BARNETT: I am making the point that I do not think it is healthy. I have given an assurance that the Opposition will not restrict the powers of the royal commission. The Opposition will give the Government that licence, but it does so most hesitantly. We as an Opposition do not do it with any enthusiasm. In many respects, the Attorney General should have given greater consideration to the Bill, although I do not doubt his intentions. I am personally swayed by the fact that Justice Kennedy has asked for these powers; that is probably the only thing that has swayed me.

Mr McGinty: We wouldn't have done it otherwise.

Mr BARNETT: I do not see any inappropriate motive from the Government. I am saying that many members on both sides of the House believe that it is not a healthy development for Western Australia to be using the powers of entrapment. I am not convinced that sufficient evidence has been produced to suggest that corruption is of such a magnitude in the Western Australia Police Service that we need to proceed with such extraordinary powers.

Mr McGinty: Terry O'Connor suggests there is.

Mr BARNETT: I am not convinced by him or anyone else. Had the Government been able to produce overwhelming evidence of endemic corruption, I would feel more comfortable than I do in voting for these powers. I do not know whether the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers can produce that evidence. However, the Opposition will support giving to the Government these powers and I trust that the Attorney General and the royal commissioner will in no way misuse them. I do not suggest they would be intentionally misused. I hope that the management and checks put in place in the administration of entrapment procedures will ensure that innocent people are not induced into committing a crime and do not have their reputation and career slurred by mischievous and troublesome allegations made against them.

DR WOOLLARD (Alfred Cove) [5.11 pm]: I am very concerned about the haste with which this Bill is being rushed through Parliament. I accept that one of the policies of the Australian Labor Party before the last election was that a royal commission into police corruption would be conducted. On 13 February 2001, Mr Matthews, the Commissioner of Police, said that the police would work with the royal commission. The Police Union (WA) also stated that it would work with the royal commission. However, when the Government talked about holding a royal commission, people believed that the terms of reference for the royal commission would be based on the Royal Commissions Act 1968, not on the new terms of reference in the Royal Commission (Police) Bill 2002.

Royal commission powers have existed for 100 years, since 1902. The last royal commission into police in Western Australia, conducted in 1949, was appointed under the Commissioner of Police to inquire into some aspects of the administration of the Police Force of Western Australia. However, this will be the first royal commission into police corruption. The Government will conduct this royal commission; however, it has been pointed out to the Government that some clauses of the Bill are unworkable, such as clause 45 on secrecy, and that clause 30, relating to controlled operations and integrity testing programs, goes way beyond the powers of any previous royal commission. Some people therefore describe the powers of this royal commission as immoral. I accept that the commission was established a few months ago, but why has the Government now put this Bill on the Table to give the commission more power? If, as the Government said, there are problems with the royal commission, surely we should be examining the Royal Commissions Act.

I have a great deal of respect for the Police Force and work closely with the police officers in my electorate but I am concerned about the powers of this Bill. I also wonder whether the powers, which are new to a royal commission, will set a precedent and how long those powers will last. My concern also arises because a parliamentary process must be followed under standing orders with Bills that are put on the Table to give members time to discuss them with the community and special interest groups. The haste with which this Bill is being rushed through Parliament has not given me as a member that time to discuss the Bill with community groups. If the Bill is adopted by this Parliament after the second reading stage, it will be appropriate to refer it to the Community Development and Justice Standing Committee so that the far-reaching and unworkable aspects of the Bill can be discussed fully before it comes back to the Parliament for consideration in detail.

MR McGINTY (Fremantle - Attorney General) [5.16 pm]: I thank those members opposite who indicated their support for this legislation. I will attempt briefly to deal with some of the issues raised by saying that the

Government went to the election with a commitment to hold a royal commission into the Police Service. We learnt a lot from the first royal commission that was conducted during last year; that is, the Temby Royal Commission into the Finance Broking Industry. On that occasion, the Government engaged Mr Temby as a consultant for some months, during which time he read the files associated with the finance broking industry and helped us to put together the terms of reference of the royal commission. The lesson that we learnt from that royal commission is that a very good result can be had from involving the royal commissioner to fix the matters that are important to the exercise of powers by a royal commission rather than the Government of the day, with the best of intentions, fixing the terms of the royal commission and hoping that they work. It is true to say that the Temby royal commission experience was applauded by people throughout the community. It was done under budget and on time and the way in which that royal commission conducted itself has been held up as an example of the way in which a good royal commission is conducted.

During 2001, particularly in the concluding months, discussions were held with the Hon Justice Geoffrey Kennedy about the possibility of his becoming the royal commissioner into the police service. We discussed with him, if he were to take the commission, what should be the appropriate terms of reference. We also indicated to him - this has been our constant position since then - that the role of the Government is to establish the royal commission and then to step back and simply provide the necessary support to ensure it works to deliver a good outcome as a result of the inquiries it will undertake.

The terms of reference were essentially discussed and agreed with Mr Kennedy as part of the process of his appointment; there was, therefore, a high level of consultation and cooperation. We had previously indicated that the budget of $15 million was an indicative amount. When we were in opposition, we said that is what we thought a 12-month royal commission would cost. However, once the royal commission had appointed its senior staff, we asked it to draw up a budget. It did that, and it discussed it with the Premier. That budget was then given consideration as part of the budget process, and an actual budget was put in place rather than a best estimate from the Opposition. That budget is to provide for a royal commission for some 18 months, until August of next year, which is when the royal commission has indicated it will conclude its inquiries. The budget also needed adjustment in consultation with the royal commission, once it knew what its actual costs would be rather than a best estimate from the Labor Party when in opposition.

There has been some public criticism or comment about the fact that the royal commission will not commence its formal hearings until 1 July. How the royal commission conducts itself is a matter for the royal commission. We have not in any way sought to influence the royal commission as to when it should start its inquiry. Obviously before the formal hearings commence, a lot of investigatory work needs to take place. The royal commission has of its own volition chosen to start its formal hearings on 1 July. That is not something over which we have, or would want to have, any control, because the role of the Government and of me as Attorney General is to provide support and do everything we can humanly do to make the royal commission a success.

Another question that has been raised is legal representation for the Commissioner of Police and current and former police officers, as well as public servants who work in areas that may be relevant to evidence to be brought before the royal commission. We looked for guidance to New South Wales and the Wood royal commission and the Office of Legal Representation that was established in that State. In a meeting that I had with the royal commission, we raised with it the appropriateness of the legal representation that was to be provided, and it gave us certain advice. We also discussed the matter with the Crown Solicitor, who had discussions with New South Wales.

All of these things are being done cooperatively. When the royal commission wrote to me in March of this year to say that it wanted the powers that are contained in this legislation, it was our job to discuss the matter with it, and to then ensure that the Bill was drafted as quickly as possible to give it in that supportive way what it wanted. The officers of the royal commission have been consulted about this Bill. It is what they have sought. They are happy that this legislation will enable them to do a contemporary job using contemporary powers to deal with contemporary problems. We have been criticised for not bringing in this legislation last year so that when the royal commission was appointed in December it would have had these powers in advance. I take some heart from what the Leader of the Opposition said - although I do not agree with him - that it is only because these powers have been requested by Geoffrey Kennedy, QC and the royal commission that he is prepared to support this legislation. He cannot have it both ways. These powers have their precedent in the Wood royal commission in New South Wales and were sought in a letter from the royal commission to me in March this year. The fact that less than two months later this legislation is ready to be debated and passed through this Chamber today shows that we have acted appropriately by making sure that we support and accommodate the wishes of the royal commission to enable it to do the job that we have appointed it to do. It is not a question of

the Government drawing up the terms of reference, and then in isolation from that and the powers that go with that royal commission appointing someone to do the job. That is not how things work in the real world.

Mr Pendal: That is the way royal commissions have worked adequately under the 1968 Act.

Mr McGINTY: Never.

Mr Pendal: What about the 1992 royal commission?

Mr McGINTY: Can the member remember a royal commission that has ever done its job within the terms of reference, the time frame and the budget suggested by the Government?

Mr Pendal: That does not require legislation. It requires firmness on the part of the Executive.

Mr McGINTY: It has never happened, apart from the Temby royal commission. When I say it has never happened, it has never happened in my recollection over the years.

Mr Pendal: The reason it happened with Temby is that you said here is the finite time for reporting, and here is the budget.

Mr McGINTY: No. It is because we worked through with Temby what he needed beforehand, and all those matters were laid down and agreed in consultation as a joint process between us. What we are doing today is part of that joint process between the Government and the royal commission.

Dr Woollard: Why then are you not looking at the Royal Commissions Act rather than bringing in extraordinary powers under this Bill?

Mr McGINTY: Because this is a unique inquiry to look at the conduct of the Police Service. Those powers were not necessary when inquiring into the conduct of finance brokers, for instance. They are necessary, and they are tough, when dealing with the police, given the special position that is occupied by police in our system of government. These powers are unique to this royal commission and will not be available to be used in future royal commissions, because this Bill says that they will relate only to this royal commission. That is the reason we have responded, as part of a cooperative exercise, by giving that support to this royal commission, as we have done on the other matters. The appointment of Mr Temby as a consultant for three months enabled us to fix the budget, the terms of reference and the time frame within which he thought he could do the job. An analogous inquiry is the Douglas inquiry into King Edward Memorial Hospital for Women. The terms of reference of that inquiry were changed halfway through, the time frame was changed on several occasions, and the budget blew out on several occasions and it ended up costing seven times as much as was originally proposed, because that cooperative approach was not taken at the beginning. I regard the passage of this legislation as a continuation of working cooperatively with the royal commission and its officers to make sure they can do the job that we have entrusted them to do without any interference or limitation on the way in which they conduct their affairs. We did not legislate on this matter last year. We had time to put a Bill like this through, but I doubt that it would have had the blessing of the Parliament in the way this Bill does, because this Bill is a direct request from the royal commission. It is not what a particular political party thinks should happen but is what the royal commission thinks should happen.

It is not my intention that the Premier, the Minister for Police or I will be commenting on matters that arise before the royal commission. We want it to get on with the job. If the royal commission needs any assistance from the Government, we will continue to provide that assistance.

Dr Woollard: You have just said that these powers will terminate after the royal commission ends, yet clause 19(3)(b) states that an investigation of the matter by the parliamentary commissioner may be commenced or resumed after the end of the commission. There is no end to the powers in this Bill.

Mr McGINTY: The member will find that there is an end to these powers. It is intended that these powers will be for the use of this royal commission, and they are expressed in those terms. We can cover that during consideration in detail.

We will not be commenting on evidence, speculation, rumours or matters that are raised on a day-to-day basis before the royal commission. The royal commission should be allowed to do its job, and we will then, no doubt, have a substantive debate in the Parliament towards the end of next year, once the royal commission has reported, about the report that it has delivered. I call on all members to give the royal commission the opportunity to get on with its job without any political interference or involvement from either side of the House,

because it is important that the royal commission be allowed to do its job. This Bill is part of giving it the powers that it believes are necessary to enable it to do its job. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clause 1: Short title -

Dr CONSTABLE: I do not think that the short title adequately describes the Bill. I would have preferred the title of this Bill to be "Royal Commission (Extraordinary Powers) Bill 2002". When the royal commission was set up in December last year, its terms of reference were published in the *Government Gazette*. On 11 December the Premier made a very brief ministerial statement, and a media release was issued; that is the way the Government communicates most matters to the public. In December the Attorney General had an opportunity to introduce legislation into Parliament specifically to set up a royal commission. It is not unusual for legislation to set out the terms of reference for a royal commission as well as provide for any other powers. That would have been more in keeping with the seriousness of this royal commission. Although I support the royal commission into the police, I do not support many of the extraordinary powers that are being given to the royal commission by this legislation.

I was disappointed when I read the Attorney General's second reading speech, which describes only what is in the Bill. It neither outlines the philosophy behind the Bill nor conceptualises the reasons for it. No reason is given for the higher thinking behind giving the commission extraordinary powers. The Government has kowtowed to the commissioner in whatever he has asked it to do. It would be interesting to see the letter the commissioner wrote to the Attorney General and the Government that asked for these extraordinary powers. Was the Government critical of anything in that letter? Did the Attorney General consider that the commissioner's request went too far? Did he decide not to give him the powers for which he asked? Did the Government give the commissioner everything he asked for, or did it critically analyse his request before it determined the powers it would and would not give? I suspect the Government read the letter and gave the commissioner what he wanted.

This reminds me of 1992. Interestingly, the chairman of the Royal Commission into the Commercial Activities of Government and Other Matters in 1992 is the same commissioner of this royal commission. In 1992, the then Government asked for powers to destroy documents related to the royal commission. I am sure that members remember the scene in this House when the proceedings of Parliament were stopped for some time while a meeting was conducted that involved the Independents. In the end, the Government was not given the powers to destroy the documents. Once again the Australian Labor Party has fallen for the same trick. It has been sent a letter by the commission asking for extraordinary powers and the Government has decided to give them. Not one iota of critical thought has gone into this. That certainly is the case in the second reading speech, where the Attorney General describes the extraordinary powers that he is happy to give to the commission without any critical thought as to what he is doing. I find that amazing.

I am yet to see an explanation from the Attorney General as to why these powers are important and why he is happy to give them. Never before in this State have these sorts of powers been given. Why is the Attorney General keen to give the royal commission extraordinary powers that will allow people to assume a new identity in order to collect information? Why does he think that the royal commission should have the power to entrap people? Several police forces around the world have used entrapment, but not in this way. They have used it as a disciplinary measure to weed out corruption within their police forces. I am not aware of its use in this way by many people in the western world. What does the Attorney General think the royal commission will achieve by having these extraordinary powers, including entrapment?

Mr McGINTY: The member for Churchlands underestimates me.

Dr Constable: I would be happy if the Attorney General could prove that point.

Mr McGINTY: The royal commission wrote to me out of the blue asking for certain powers. I wrote back to the royal commission and said that I was not convinced that they were needed. The member should not think for one minute that there has been an unquestioning acceptance -

Dr Constable: You sold yourself short in the second reading speech, which is just a simple description of what is in the Bill and does not show any conceptualisation or critical thought.

Mr McGINTY: People do not tell each other their life story's when they first meet. A little mystique does no harm.

The royal commission wrote to me and I replied by saying that I remained to be convinced that these powers were necessary. I then met with Mr Kennedy and the senior counsel assisting the royal commission who explained to me their views of why these powers were necessary. As a result of that meeting a submission was taken to Cabinet for drafting approval. The Government examined the existing powers of the Royal Commissions Act and parliamentary counsel decided that some of what was sought was adequately covered by the existing Act. We rigorously and critically studied what the royal commission sought. The senior officers of the royal commission and the royal commissioner agreed to the provisions in the draft of this Bill. If my memory serves me correctly, on the day before we took the draft to Cabinet, at the twelfth hour, the royal commission came back with about half a dozen changes it wanted to what I regarded as the final draft of the Bill. That matter was discussed with crown counsel, the Crown Solicitor, Parliamentary Counsel's Office, my office and the royal commission. During that discussion we reached an agreement. I assure the member for Churchlands that this matter was rigorously contested. The Government looked at the Wood royal commission in New South Wales, which used the same powers as are described in the Royal Commission (Police) Bill 2002. The legislation for such powers was passed by the New South Wales Parliament after the royal commission had already commenced.

Dr Constable: The Government should have learnt from that. It should have brought the legislation before the House so that it could be discussed before the royal commission commenced.

Mr McGINTY: At the time I was not convinced that that was necessary. The Government was aware of what had occurred as a result of the legislation in New South Wales -

Dr Constable: Did you think it might have been necessary earlier on, such as in November or December of last year?

Mr McGINTY: The Government was aware of it. However, when the royal commission wrote to me, I wrote back stating that I remained to be convinced that such action was necessary. The answer to the member's question is best summarised by the comments made by the Leader of the Opposition. He stated that if it were not for the fact that the royal commission requested the Bill, he would not support it.

Dr Constable: Just as it requested permission from this Parliament to destroy documents in 1992 -

Mr McGINTY: This is a different royal commission.

Dr Constable: It is the same commissioner.

Mr McGINTY: There were three commissioners -

Dr Constable: The current commissioner was the Chairman of Commissioners.

Mr McGINTY: I have looked at the powers, I have taken note of what happened in the Wood royal commission, and we have reconciled all of this with the powers that exist under the Royal Commissions Act 1968. I am happy with the Bill.

Clause put and passed.

Clause 2: Commencement -

Ms SUE WALKER: Will the Attorney General explain why clauses 37 and 40 will come into operation on a day fixed by proclamation and not on the day on which the Bill receives royal assent?

Mr McGINTY: I draw the House's attention to an error in the clause notes as reference is made to clauses 38 and 41. This obviously related to an earlier draft. However, I assure members that it is intended to be a reference to clauses 37 and 40.

Clause 37 provides that the powers in relation to surveillance devices, which are enacted by this legislation, be repealed. The powers relating to surveillance devices and the repealing of such powers cannot come into effect on the same day. This goes some way towards the point raised by the member for Alfred Cove: this is a device that allows for the repealing of such powers after the royal commission concludes.

Mrs Edwardes: Why was that provision not put in clause 49?

Mr McGINTY: Clause 37 refers to section 36 of the Act. This also extends to telecommunications so that it can also be repealed at an appropriate time. To which clause does the member for Kingsley now refer?

Mrs Edwardes: Clause 49 deals with powers that do not extend beyond the end of the commission and refers to a number of sections.

Mr McGINTY: The member is suggesting that the provisions for surveillance devices and the interception of telecommunications devices should have been added to clause 49 so that they cannot be used beyond the life of the commission. Some of the provisions in the Bill, such as the creation of offences that may be prosecuted after the royal commission has concluded, must remain in force in order for such a prosecution to take place. That is an example of why we would want that element of the Bill to linger. However, the other powers contained in the Bill are to be exercised by the royal commission. Therefore, once the royal commission has finished, the powers referred to in clause 49 must also cease.

Mrs Edwardes: Are you saying that the powers for listening devices and other telecommunications operations are likely to extend beyond the term of the commission?

Mr McGINTY: No. The power to intercept would not be appropriate.

Ms SUE WALKER: Clause 49 provides that some clauses of the Bill will be extinguished at the end of the royal commission. Are the powers relating to the commission's ability to conduct surveillance or to have access to telephone interceptions automatically extinguished at the end of the royal commission, or are they extinguished by the commissioner?

Mr McGINTY: I refer the member to clause 39. The agency is the royal commission itself. The powers can be exercised by the agency, which is the royal commission. Once the royal commission ceases, the powers can no longer be exercised. That is how it works. The definition of agency in clause 39 includes the royal commission. If no royal commission is in place, the powers cannot be exercised, because they can be exercised only by the agency or the royal commission.

Mrs EDWARDES: I refer the minister to clause 4, which states that this Bill is to be read as if it forms part of the 1968 Act. Will the powers that survive the term of the commission still be in operation and read as part of the 1968 Act?

Mr McGINTY: No substantive powers will remain on foot.

Ms SUE WALKER: This is important because only 12 clauses of the Bill will be extinguished. As I understand the Bill, 10 clauses will automatically be extinguished, and two important clauses - those dealing with surveillance and interceptions by telephone - will come to an end when the royal commission ceases. I am concerned that 10 clauses only are automatically extinguished. Clause 4 states that this Bill should be read as if it forms part of the 1968 Act; do the remaining provisions attach to that Act and will they remain attached to that Act?

Mr McGINTY: A power that is given to the royal commission, but which is not in the Royal Commissions Act, is intended to come to an end when the royal commission concludes and hands its report to the Governor. Clauses 1, 2, 3 and 4 are not expressly brought to an end by the operation of clause 49 of the Bill because they simply do not give any powers. We are trying to make sure that no powers survive the end of the royal commission, save those such as the ability for an ongoing prosecution for a breach of some of the powers contained in the legislation. I am told that anything that constitutes an exceptional power for the royal commission will come to an end when the royal commission ceases to function.

Ms Sue Walker: You are saying that all powers will be brought to an end by the cessation of prosecutions pursuant to this commission.

Mr McGINTY: No. I am saying that all powers to be exercised by the royal commission will be brought to an end by the termination of the royal commission or by the handing of the report to the Governor. Some provisions of this legislation that will continue in operation do not constitute powers beyond that date. Those are either simple machinery provisions, such as the clause we are dealing with at the moment, or they enable such things as a prosecution for a breach of the provisions of this Bill to be carried through.

Mrs Edwardes: For instance, a contempt of the commission.

Mr McGINTY: Yes; that is a good example of the need for a power to continue to exist to form the basis of the complaint or the prosecution for a breach of the Act - a contempt or something of that nature. It is the Government's intention that provisions for the power to tap a telephone, to entrap or something similar will come to an end when the royal commission comes to an end.

Ms Sue Walker: That cannot be right. Is it your intention that all 50 clauses of this Bill will cease to operate at the cessation of any prosecutions that emanate from this commission? That has to be what you are saying. You are saying that it is not your intention to permanently attach any of these clauses to the Royal Commissions Act 1968.

Mr McGINTY: That is right.

Ms Sue Walker: If only 10 or 12 clauses cease at the end of the royal commission, the remainder, whether or not they are relevant, must continue in force until the cessation of any prosecutions. It must be quite clear. I am sure that in years to come, people will look at the Act for further royal commissions and want to be absolutely clear that no other provisions linger and attach to the Act. You are saying that at some point, all provisions cease to exist. At what point?

Mr McGINTY: I will answer that by illustrating some of the provisions. For instance, none of the miscellaneous provisions, which start at clause 43 of the Bill, will terminate with the royal commission by virtue of the operation of clause 49. The reason for that is fairly obvious. However, a number of matters will be ongoing; for example, a proceeding for contempt that is still on foot after the royal commissioner has handed in his report; victimisation as provided for in clause 44; breach of the secrecy provisions, as in clause 45; or protection from liability under clause 47. They will still exist in this legislation, but the powers -

Ms Sue Walker: Will those provisions cease?

Mr McGINTY: No; those provisions will not cease.

Mr HYDE: I wish to hear from the Attorney General.

Mr McGINTY: This legislation will remain in force by virtue of two provisions. First, the powers contained in clause 49 of the legislation will cease to be able to be exercised.

Ms Sue Walker: Those 10?

Mr McGINTY: Yes, those 10 clauses. In addition to that, parts 8 and 9 of the Bill, which I will loosely refer to as the communications powers, will be repealed at the conclusion of their usage by means of proclamation of those clauses. That is what has led to this. Other provisions of the legislation that deal with secrecy, contempt and those sorts of matters will remain in force as is necessary.

Ms Sue Walker: How long will that be?

Mr McGINTY: This legislation does not provide for them to be repealed. I imagine that in the normal course of events, a miscellaneous repeal and amendment Bill will be introduced perhaps a few years down the track.

Ms Sue Walker: That is what I am trying to clarify. In fact, a lot of provisions that will be left in place will attach to the Royal Commissions Act 1968, apart from the ones that I specifically mentioned. For instance, will part 10, which amends the Prisons Act 1981, be extinguished? Nothing says that it will be.

Mr McGINTY: The member is quite right. That provision will continue in operation. I apologise to the member. The amendment to the Prisons Act will enable a prisoner to be brought before a royal commission. That is the only power that is intended to be a permanent amendment to another Act, so it will remain in place.

Ms Sue Walker: In the second reading debate, I said that I believed they would all be extinguished. It appears that that is not now the case.

Mr McGINTY: I apologise to the member. I might have led her into error on that, because that is what I said. This amendment is the one exception. It is of a relatively minor nature, but it is a sensible machinery provision; that is why I overlooked it. The member is quite right; that will survive.

Clause put and passed.

Clause 3: Interpretation -

Ms SUE WALKER: The definition of "corrupt conduct" and "criminal conduct" states -

> . . . include, but are not limited to, the meanings given to those phrases by section 3 of the ACC Act;

Why did the Attorney General choose that? The definition of corrupt conduct in section 3 of the Anti-Corruption Commission Act refers to section 13(1)(a) etc. Is that definition more extensive than, for instance, the definition given by the Wood royal commission? I note that the Attorney General referred to that in his second reading speech. Is the definition given by the Wood royal commission comprehensive?

Mr McGINTY: The insertion of the definition of "corrupt conduct" and "criminal conduct" was intended to do two things. First, it was to reflect the provisions of paragraph 2 of the commission's terms of reference in appointing the Honourable Geoffrey Alexander Kennedy, AO, QC as a royal commissioner. That paragraph states -

> 2. declare that the phrases in clause 1(a) and (b) include, but are not limited to, the meanings given to them by section 3 of the *Anti-Corruption Commission Act 1988;*

Paragraph 1 requires him to inquire into and report on whether, since 1 January 1985, there has been corrupt conduct or criminal conduct by any Western Australian police officer. It was by reference to the common usage of those words in the Anti-Corruption Commission Act that we wanted to ensure that that was the nature of things that would be inquired into. I do not have a copy of the Wood royal commission report.

Ms Sue Walker: It is in your second reading speech. It is quite a good definition. I was trying to find it.

Mr McGINTY: The intention was that we would look more to the Anti-Corruption Commission Act.

Sitting suspended from 6.00 to 7.00 pm

Mr McGINTY: I had indicated that the definition of "corrupt conduct" and "criminal conduct" contained in clause 3 of the Bill was derived from the terms of reference in appointing Mr Kennedy as the royal commissioner, and also by reference to the local area in which criminal conduct or corrupt conduct has been most recently debated by this Parliament and written into the legislation; that is, in the Anti-Corruption Commission Act. The Parliament had extensive debates on the extent of the jurisdiction of the Anti-Corruption Commission regarding corrupt conduct. The endeavour was to ensure that everything that was covered by the Anti-Corruption Commission Act, and perhaps more, regarding corrupt conduct of police officers would be covered by the police royal commission legislation.

Section 13 of the Anti-Corruption Commission Act 1988 refers to the receipt or initiation of allegations. An extensive definition is set out. I call it a definition; in fact, it deals with the ability of the Anti-Corruption Commission to receive information. I will read the first two subparagraphs by way of illustration. The section states -

> . . . that a public officer has -
>
> (i) corruptly acted or corruptly failed to act in the performance of the functions of his or her office or employment; or
>
> (ii) corruptly taken advantage of his or her office or employment as a public officer to obtain any benefit for himself or herself or for another person;

It goes on extensively over four pages to provide what I regard as an exhaustive provision on corrupt behaviour. In section 3, which is the interpretation section of the Act, corrupt conduct means conduct referred to in section 13. That is the section to which I just referred, wherein it is defined with some particularity. That is the area towards which we were looking to have a broad definition of that conduct and to have the provisions of this legislation catch everything that is caught by the Anti-Corruption Commission Act, and perhaps more.

Ms SUE WALKER: The reason I raise this is that the Attorney General has used the definition of corrupt conduct. It must be borne in mind that the interpretation clause refers to corrupt conduct and criminal conduct, and the terms of reference relate to corrupt or criminal conduct of police officers. The Attorney General referred to the Anti-Corruption Commission Act. I do not think that it really states what corrupt conduct is. First, in clause 3 of the Bill, headed "Interpretation", the definition of corrupt conduct guides us to the meanings given to the phrases by section 3 of the Anti-Corruption Commission Act. Section 3 of the Anti-Corruption Commission Act refers only to section 13(1)(a)(i) or (ii). In section 13 of the Anti-Corruption Commission Act, to which the Attorney General has rightly referred, the only provisions that deal with corruption state -

> Subject to subsection (3), the Commission shall -
>
> (a) receive information furnished to it by any person who alleges that a public officer has -
>
> (i) corruptly acted or corruptly failed to act in the performance of the functions of his or her office or employment; or
>
> (ii) corruptly taken advantage of his or her office or employment as a public officer to obtain any benefit for himself or herself or for another person;

That does not tell us a lot. That refers to a person who corruptly acted or corruptly failed to act, but it does not state what that means. The Attorney General puts it so much better, if I may so, in his second reading speech on the Bill that he wanted to debate cognately with this Bill; that is, the Criminal Code Amendment (Corruption Penalties) Bill 2002. I misled the Attorney General before dinner when I said that he had referred to the definition given by the Wood royal commission in his second reading speech on this Bill. In fact, it was the other Bill. The Attorney General said -

> For example, the Wood Royal Commission into the New South Wales Police Service defined police corruption as including -
>
> > participation by a member of the Police Service in any arrangement or course of conduct, as an incident of which that member, or any other member:
> >
> > . is expected or encouraged to neglect his or her duty, or to be improperly influenced in the exercise of his or her functions;
> >
> > . fabricates or plants evidence; gives false evidence; or applies trickery, excessive force or threats or other improper tactics to procure a confession or conviction; or improperly interferes with or subverts the prosecution process;

I know that the Attorney General said this, but I am just putting it on record. It continues -

> . conceals any form of misconduct by another member of the Police Service, or assists that member to escape internal or criminal investigation; or
>
> . engages himself or herself as a principal or accessory in serious criminal behaviour.

The Attorney General said that in each case the relevant conduct is considered to be corrupt, whether motivated by an expectation of financial or personal benefit or not, and whether successful or not.

My point is that in this Bill the definition of corrupt conduct is -

> **"corrupt conduct"** and **"criminal conduct"** include, but are not limited to, the meanings given to those phrases by section 3 of the ACC Act;

The Attorney General is not limiting people to the definition in section 13 of the Anti-Corruption Commission Act. The Attorney General went on to say that subparagraphs (iii), (iv) and all the rest of the provisions in section 13 relate to corruption. However, in fact, they relate to criminal conduct.

Mr McGinty: It is criminal conduct, yes.

Ms SUE WALKER: Given that the Attorney General mentioned the Anti-Corruption Commission Act, which does not really tell us what corruption means, would the Attorney General incorporate the Wood royal commission definition, about which he spoke in his second reading speech on the Criminal Code Amendment (Corruption Penalties) Bill 2002, as part of a definition for the purpose of this Bill?

Under the Criminal Code Amendment (Corruption Penalties) Bill, the Attorney General is seeking to amend the penalties in section 83 of the Criminal Code. I refer to Brown's *Criminal Law Western Australia* in relation to that section, because it contains a definition of corruption in Willers v R (1995) 125 FLR 221, which states -

> **Corruption** The term "corrupt" is often linked with the word "bribery". It signifies impairment of integrity, lack of virtue or a departure from what is correct: . . .

Mrs EDWARDES: I wonder whether we could hear further from the member for Nedlands.

Ms SUE WALKER: Will the Attorney General confirm that although the Bill indicates that the definition is not limited to section 3 of the Anti-Corruption Commission Act - that Act does not give any definition - the definition outlined by the Wood royal commission is included as a definition in the Bill that complements this Bill?

Mr McGINTY: The definition propounded by the Wood royal commission, to which the member has referred, and the definition of corruption in section 83 of the Criminal Code are both relevant within the terms of this definition of corrupt conduct and criminal conduct, expressed as they are to include, but not be limited to, the meanings given to those phrases by section 3 of the Anti-Corruption Commission Act. As the member for Nedlands rightly observed, to define corrupt conduct as to have acted corruptly might seem a bit circular. Regard should be given to the Wood royal commission and Criminal Code definitions of corruption. They are certainly not excluded by this definition. Equally, we did not want to say that it meant any one specific definition such as the Wood royal commission definition or the Criminal Code definition. We wanted to cast it

in terms of the most recent parliamentary debate, which was about the ACC definition, which was introduced, if my memory serves me correctly, in the mid 1990s following extensive parliamentary debate. We want to include that as the starting point, but not be limited to that definition. In other words, the police royal commission should be looking at matters that fit within the definition of corruption from the Wood royal commission, the Criminal Code and any other definition of either corrupt or criminal conduct. I think "criminal" is better defined.

Ms SUE WALKER: Does the Attorney General agree that section 13 does not mean to corruptly act or corruptly fail to act? It does not spell that out. I was not here when the debate on corruption occurred. I do not see that it has been defined as acting corruptly or corruptly failing to act.

Mr McGINTY: It is a circular argument to define corrupt conduct as having acted corruptly. The definition here incorporates the common meaning as expressed by the Wood royal commission, the Criminal Code and other sources and should not be limited.

Ms SUE WALKER: I note that public officer in this Bill has the same meaning as it does in the Criminal Code and includes a former public officer. Does that mean that under the terms of reference the royal commission can investigate a former public officer?

Mr McGINTY: The terms of the commission granted to Mr Kennedy are to inquire into and report on whether since 1 January 1985 there has been corrupt or criminal conduct by any Western Australian police officer. I interpret that to mean anyone who was a police officer during that time, including people who are not currently police officers.

Ms SUE WALKER: I note that a public officer is defined in the Criminal Code Amendment (Corruption Penalties) Bill as someone defined by section 1 of the Criminal Code. This is important because it will impact on members of Parliament. The Attorney General's clause notes indicate that the term public officer means a person exercising authority under written law and includes a police officer, a minister of the Crown, a parliamentary secretary appointed under section 44A of the Constitution Acts Amendment Act 1899, a member of either House of Parliament, a person authorised under written law to execute or serve any process of a court or tribunal and a public service officer employed within the meaning of the Public Sector Management Act 1944. Section 1 of the Criminal Code provides a larger definition, as follows -

(a) a police officer;

(aa) a Minister of the Crown;

(ab) a Parliamentary Secretary appointed under Section 44A of the Constitution Acts Amendment Act 1899;

(ac) a member of either House of Parliament;

(b) a person authorized under a written law to execute or serve any process of a court or tribunal;

(c) a public service officer or employee within the meaning of the Public Sector Management Act 1994;

(d) a person who holds a permit to do high level security work as defined in the Court Security and Custodial Services Act 1999;

(e) a person who holds a permit to do high level security work as defined in the Prisons Act 1981;

(f) a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under written law; or

(g) any other person holding office under, or employed by, the State of Western Australia whether for remuneration or not.

I wanted to read that into the record because of the way the definitions across the Acts have been referred to. Is it correct that in relation to this Bill, and the commission's terms of reference, we are talking about only corrupt or criminal conduct by a police officer and not a public officer?

Mr McGINTY: The term public officer is defined in the Criminal Code. However, in this legislation it is relevant only to part 2; that is, to clauses 5, 7 and 8, all of which relate to the obtaining of information, documents and other things. It does not relate to the other powers. Clause 5 requires a public officer to produce a statement of information; clause 7 provides the power to enter public premises used by a public authority or

public officer; and clause 8 provides that legal professional privilege does not apply to a public officer. That is the extent of the relevance of the term public officer.

Clause put and passed.

Clause 4: Relationship with *Royal Commissions Act 1968* -

Ms SUE WALKER: Does subclause (3) mean that when this Bill is proclaimed as an Act it will take precedence over the 1968 Act? Subclause (1) provides -

> For the purposes of the operation of the Commission, this Act is to be read as if it formed part of the 1968 Act.

That answers the question about whether the provisions left over from clause 49 attach to the 1968 legislation.

Mr McGINTY: This clause provides a guide to interpretation. According to subclause (1), it must be read as if it forms part of the Royal Commissions Act. As a consequence of being later in time in any event, subclauses (2) and (3) provide that, in interpreting the two Acts and their interaction, one is not to read down the provisions of this legislation by reference to any provisions in the Royal Commissions Act.

Clause put and passed.

Clause 5: Power to obtain information -

Ms SUE WALKER: This clause provides that the commissioner has power to obtain information from a public authority. The definition of public authority for the purposes of this legislation has the same meaning as that in the Anti-Corruption Commission Act. That Act refers to an authority, board, corporation, commission, council, committee, local government, regional local government or similar body established under written law. It also refers to a body that is the governing body of such a body and a contractor or subcontractor. However, reference is made to a body mentioned in part 3 of schedule 5 of the Constitution Acts Amendment Act 1899. What does that list contain?

Mr McGINTY: As best I recollect, they are bodies established by statute.

Ms Sue Walker: What bodies are intended to be covered?

Mr McGINTY: I do not have the schedule in front of me.

Ms Sue Walker: The Attorney does not have the Act with him.

Mr McGINTY: No. The member can look it up; it is spelt out.

Ms Sue Walker: I hoped the Attorney could assist me, given his magnificent mind.

Mr McGINTY: Unfortunately not on this occasion.

Dr CONSTABLE: What powers does a royal commissioner have under the Royal Commissions Act to obtain information from a public authority? What happens under the existing legislation and why is it necessary to have that power in this legislation? I assume powers already exist to allow commissioners to obtain information from public authorities or public officers. Why is that not sufficient? Why do we need to extend that power? If my assumption is correct and the power already exists, how does a royal commissioner get that information under the 1968 Act and why do we need to extend it in this legislation?

Mr McGINTY: Section 9 of the Royal Commissions Act provides -

> A commissioner may cause a summons in writing under his hand to be served upon any person requiring him to attend the commission at a time and place named in the summons and then and there to give evidence and to produce any books, documents or writings in his custody or control which he is required by the summons to produce.

Dr Constable: Could one argue that the power already exists to get information by summons?

Mr McGINTY: One could argue that, but I would not agree.

Dr Constable: Why?

Mr McGINTY: The notice procedure created by clauses 5 and 6 allows the commissioner to compel people, in this case public officers, to provide information or documents, but without requiring formal hearing proceedings. That is the important improvement made by this legislation.

Dr Constable: Please walk us through what the commissioner or his delegate will do to get information. Will he send a letter, an e-mail or a fax?

Mr McGINTY: The legislation requires a written notice to be sent by the officer of the royal commission.

Dr Constable: Is an e-mail a notice?

Mr McGINTY: No; it must be a written notice.

Dr Constable: Must it be on letterhead from the commission? Who must sign it?

Mr McGINTY: I presume it would be something of that nature. It would be a formal letter requiring someone to produce something. I am advised that it would need to be a notice in writing and that an e-mail would not suffice.

Dr Constable: What about a fax?

Mr McGINTY: It is doubtful that sending someone a fax would constitute service of a notice.

Dr Constable: Therefore, this clause provides that the royal commissioner will no longer be required to get a summons. He will be able simply to send a letter.

Mr McGINTY: This clause provides that a formal, written notice must be served on a public authority or public officer to produce. The only distinction is that, at the moment, under section 9 of the Royal Commissions Act, that involves a summons requiring a person to attend. That person is required to attend a formal commission hearing, at which he will be put in the witness box under oath and be required to produce documents. This is a faster, less expensive and less stressful procedure involving a notice to produce, which, in effect, is the same as a summons, but without the formal hearing. The person or authority concerned is simply required to front up to the officer of the royal commission and to produce the goods. That is the nature of the improved power and it makes sense.

Dr Constable: What about the protection of the person in question being lost between the Royal Commissions Act and this legislation?

Mr McGINTY: Clause 47 provides for protection from liability.

Dr Constable: I am talking about the protection of the person being asked for the information, not the person asking.

Mr McGINTY: Clause 47(1) provides -

> A matter or thing done by the Commission, the Commissioner or any person acting under the direction of the Commission -

If a person is acting under direction, I presume that that is a direction from the commission to produce. If that is correct, it is covered by clause 47, which deals with protection from liability. Subclause (2) provides -

> No criminal or civil liability attaches to any person for compliance or purported compliance in good faith with any requirement made under this Act.

In that sense, the production is protected.

The ACTING SPEAKER (Mr Andrews): I know the Attorney General is speaking through the Chair when he is addressing the member for Churchlands. However, members entering the Chamber should refrain from crossing the floor when the Attorney General is speaking to the member for Churchlands to show some courtesy to him and the member. I am sure the member for Eyre will acknowledge that.

Ms SUE WALKER: In relation to what has just been said about clause 5, I notice that under section 9 of the Royal Commissions Act the commissioner has the power to summon anybody. He has the power to summon witnesses and documents. Under clause 5 of this Bill, that unlimited capacity to summon anyone is limited to a public authority or a public officer. Correct me if I am wrong, but is that because the class of persons listed in clause 5 is asked to do something over and above the unlimited class of persons listed in section 9 of the Royal Commissions Act; that is, they are asked to produce a statement of information? What is a statement of information?

Mr McGINTY: Clause 5(2) refers to a notice served on a public officer or a public authority to produce a statement of information. The notice specifies and describes the information concerned. For example, it could be to a police officer to produce his notes of a particular occasion. The subject matter of the statement of information referred to in subsection (1) would be specified under subsection (2).

Ms SUE WALKER: The member for Churchlands asked about penalties and compared the clause as a whole with the Royal Commissions Act. That Act contains a power to summon witnesses and documents. It also contains penalties for failing to attend. Without reasonable excuse, the failure to attend constitutes contempt of the royal commission. In clause 5 of this Bill, a person failing to comply with a notice or someone who furnishes false information can be dealt with by way of contempt proceedings. What penalties are there over and above the Act for failing to provide a statement of information as specified in clause 5? Subclause (5) refers to contempt proceedings and proceedings for an offence against the Act, the Royal Commissions Act 1968 and disciplinary measures. What is the range of penalties a person may be exposed to compared with a witness under the Royal Commissions Act?

Mr McGINTY: Each is dealt with as a contempt; there is no difference in the way a breach of the Bill or the Royal Commissions Act would be dealt with. There is a marginally different procedure for contempt, but the contempt power is invoked in both cases.

Ms SUE WALKER: What are the disciplinary measures?

Mr McGINTY: The member for Nedlands was about to say that the disciplinary provisions relate to the evidence that can be put, not the way in which an offence against the provision is to be punished.

Ms SUE WALKER: I have found the reference in the Act. It states that disciplinary measures means measures under sections 8 and 23 of the Police Act.

Mr McGinty: It is only the use that can be made of any evidence produced through or by such a person. It is not a punishment for breach of that provision that invokes the disciplinary measures provision.

Dr CONSTABLE: Some members are worried about the exceptional powers being given to the royal commissioner. The Attorney General has no doubt gathered that. It is important for us to return to the people that may be affected by the exceptional powers. We must be absolutely certain of where we are going with these powers. That is why I asked earlier about protection for people who have notices served on them. It is conceivable that a zealous investigator working with the royal commissioner might go on a fishing trip for information and notices might be served on people who do not have the information they are believed to have. Those people would not be able to produce the information requested by the fixed date. What protection do those people have? I am concerned that innocent people will be caught up by these exceptional powers. We have to be certain that they will be protected.

Mr McGINTY: A person can only comply with a notice served on him to the extent that he is capable of complying with it. If a person does not have the information being sought, it is no different to being required, under the provisions of the Royal Commissions Act, to produce documents. If a person does not have the required documents, he simply says he does not have them or that they are not documents within his control. A person cannot comply with something that is not within his physical capacity. I refer the member to clause 43(5) of the Bill, which states -

> A person is not liable to be punished for contempt under this section in respect of failure to comply with a notice served under section 5 or 6 of this Act if -
>
> (a) the person establishes that there was a reasonable excuse for the act or omission concerned;

Dr Constable: Who determines if there is a reasonable excuse?

Mr McGINTY: A person is not liable if there is a reasonable excuse.

Dr Constable: The same people who serve the notice decide whether it is a reasonable excuse?

Mr McGINTY: A reasonable excuse is dealt with by clause 43(7) as follows -

> **"reasonable excuse"** means an excuse that would excuse a similar failure by a witness, or a person summoned as a witness, before the Supreme Court except that it does not include as an excuse for failing to comply with a notice that -

If I may paraphrase, it includes the privilege against self-incrimination or a fidelity obligation. It is defined in the Bill according to what everyone would understand it to be. The other important point to note is that whereas there is a general power in the Royal Commissions Act to require any person to produce documents - which is subject to the same observations just made by the member - the Bill before the House relates only to a public authority or a public officer. It is limited to the public sector in terms of who can be served a summons; it cannot go out to the public at large due to the provisions of this legislation.

Dr Constable: A person who serves a notice also decides whether an excuse is reasonable? I am concerned about checks and balances.

Mr McGINTY: The answer to your question is no. The Supreme Court punishes contempt. Clause 43(1) states -

> Where a contempt of the Commission is alleged to have taken place, the Commissioner may present to the Supreme Court a certificate setting out the details of the act or omission that the Commissioner considers constitutes the alleged contempt.

That becomes prima facie evidence of the contempt. It is not a Caesar to Caesar situation. If Mr Kennedy believed that a contempt had occurred, he would refer the matter to the Supreme Court to be dealt with.

Dr Constable: Let us go one step back from that. A notice is served and the person to whom it relates says that he does not have those documents for whatever reason. Who decides whether that is a reasonable excuse not to produce the documents?

Mr McGINTY: A person can only be punished by the Supreme Court. If the person told the Supreme Court that he did not have the documents, he would be excused.

Dr Constable: Is there not a step before it gets to the Supreme Court?

Mr McGINTY: Yes. If the question of contempt of the commission arose, Mr Kennedy would listen to the problem. If the person the contempt involved told Mr Kennedy that he would love to produce the documents but did not have them, it is likely that in those circumstances Mr Kennedy would not then proceed to refer the matter to the Supreme Court.

Dr Constable: Are you telling me that a person is automatically in contempt if a notice is served and the person says that, for whatever reason, he cannot produce them?

Mr McGINTY: No.

Dr Constable: I am asking you about a step in between.

Mr McGINTY: A person is in contempt only when he is found by the Supreme Court to be in contempt.

Dr Constable: You are not answering my question.

Mr McGINTY: Yes, I am. A person can be in contempt only if Mr Kennedy refers the matter to the Supreme Court because he believes that person to be in contempt.

Dr Constable: With due respect, you still have not answered my question. Who decides that a person has given a reasonable excuse for not having the information? That is covered by clause 43. Is it the commissioner?

Mr McGINTY: Really, it is at both levels. First, the commissioner must assess whether there has been a contempt. Under clause 43, the commissioner is required to set out in a certificate the details of the contempt. If someone comes forward and says that he simply does not have the documents that have been requested, I cannot envisage, unless the commissioner thought that the person was lying -

Dr Constable: So the commissioner is the investigator, judge and jury?

Mr McGINTY: No, he is not the judge or the jury. He is required to set out what he believes constitutes the contempt. He then refers that matter to the Supreme Court. He is not the judge or the jury. The Supreme Court would then deal with the matter.

Dr Constable: He decides whether it is a contempt before it goes to the Supreme Court.

Mr McGINTY: No, he decides whether the matter should be referred to the Supreme Court to be dealt with as a contempt. He must be satisfied about certain facts before he does that. Those facts would include the issue that the member for Churchlands has just referred to.

Dr Constable: So he is investigator and judge.

Mr McGINTY: No, he is not the judge.

Dr Constable: He judges that situation.

Mr McGINTY: He will prepare a certificate setting out the facts that he believes constitute a prima facie case of contempt, if I can put it that way. That certificate is prima facie evidence of the existence of a contempt. He is not the judge, nor is he the jury. The matter would then go to the Supreme Court, where the person would be

able to say that he was unable to produce those documents simply because he did not have them. In that simple case, the Supreme Court would not punish that person for contempt because he would not be in contempt, notwithstanding the certificate signed by Mr Kennedy, which he believed outlined the essential elements of a contempt.

Ms SUE WALKER: From looking at clause 43 and from my court experience - I will not say "which you do not have", because that would be terribly cruel -

Mr McGinty: But it is true.

Ms SUE WALKER: It is true. The commissioner will issue a notice under clause 5 requiring the public authority or public officer to produce a statement of information. If that person or authority does not provide that statement of information, the commissioner will provide an opportunity to find out whether a reasonable excuse will be offered.

Mr McGinty: That is right.

Ms SUE WALKER: If the commissioner does not think an excuse is reasonable, he will issue the certificate. He will make that judgment; that is what he is paid for. He will then send the matter to the Supreme Court. I doubt whether he will send such matters to the Supreme Court ad nauseam and waste the court's time. He will make a proper, balanced judgment because he would not want his reputation to suffer. I note that under the Royal Commissions Act, the Attorney General has that power. Section 13, headed "Penalty for failing to attend or produce documents", gives the Attorney General the power to deal with a person as if he were in contempt of the Supreme Court. I believe that headings are important in clauses. The Attorney General and I discussed that issue the other day with regard to preliminary hearings. Section 13(1) states -

> If a person who has been served with a summons pursuant to section 9 fails without reasonable excuse to attend as required by the summons and section 10, or to produce any documents, books, or writings in his custody or control which he was required by the summons to produce, he may be dealt with on the motion of the Attorney General as if he were in contempt of the Supreme Court and the Supreme Court has jurisdiction accordingly.

Am I correct in saying that there is not much difference between clause 5 and this section of the Act in relation to failure to produce without reasonable excuse?

Mr McGINTY: The member for Nedlands gave a summary of what would be likely to happen. We should bear in mind that the commissioner we are talking about is Mr Kennedy, but any other person of sufficient stature to be appointed a royal commissioner would also not send frivolous matters to the Supreme Court to be dealt with as a contempt. The member is correct on that point. As the member has rightly observed, the procedure spelt out in this Bill differs from the provisions of the Royal Commissions Act in that the Attorney General is cut out of the process. Essentially, what will now happen is that if the royal commissioner concludes that a contempt has occurred, he will refer the matter directly to the Supreme Court. That is a more efficient and efficacious procedure than the old procedure, which invoked a particular role on the Attorney General of the day to refer the matter to the Supreme Court. As a matter of practice, the commissioner would refer the matter to the Attorney General, who would refer the matter to the Supreme Court. One step of the process has been cut out; it becomes a direct dealing between the royal commissioner and the Supreme Court. Frankly, I think that is better.

Ms Sue Walker: There could be a lunatic in the position of Attorney General. I am not referring to you. I refer to other persons who might aspire to the office.

Mr McGINTY: One never knows.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Power to enter public premises -

Ms SUE WALKER: This is a new provision. I do not believe that this provision was contained even obliquely in the Royal Commissions Act 1968. Was this provision contained in the legislation of another State; and, if so, which Act did it come from and why did the Attorney General think it necessary to include it in this legislation?

Mr McGINTY: A similar provision is contained in section 45 of the Anti-Corruption Commission Act. The various regulatory bodies in New South Wales that deal with the police have a similar provision. The Royal Commission (Police Service) Act, the Independent Commission Against Corruption Act and the Police Integrity

Commission Act of New South Wales all contain a similar provision, which is essentially a power of entry provision that we have picked up and inserted in this Bill.

Ms SUE WALKER: The power of entry in this clause is more limited than in section 45 of the Anti-Corruption Commission Act. The Anti-Corruption Commission does not need to authorise the entry in writing, yet the royal commissioner must authorise the entry in writing. Why is this provision altered slightly from the provision in the ACC Act?

Mr McGINTY: I do not think a great deal turns on it. It has no particular significance, other than this royal commission will have a particular focus on police corruption; therefore, the role of the royal commissioner in supervising the use of the powers was thought to be important. I do not remember the matter being raised, but it is perhaps comparable with the sorts of powers that should be in the Anti-Corruption Commission Act in a supervisory sense. It was regarded as being a reasonable way of doing business. It is certainly narrower than the authorisation by the ACC, but I do not think it will make any practical difference.

Ms SUE WALKER: Clause 5 states that a notice to obtain information must be in writing and must contain certain things. It is interesting that clause 7 does not say what the authorisation in writing to enter public premises, which I think would be a far greater invasion of an authority's privacy, must contain. It also does not put a time limit on the authorisation. It is an indefinite authorisation for the life of the commission. Does that mean that at any time, should that authorisation be given by the commissioner, a public authority or officer may be subject to entry by the commission or an officer of the commission?

Mr McGINTY: Yes. Apart from the written authorisation by the royal commissioner, clause 7(2) provides -

> The powers conferred by this section must not be exercised other than for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve corrupt conduct or criminal conduct.

In other words, it is narrowly for the purposes of the royal commission. Given that the royal commission should terminate its activities in August of next year, subject to any extension, a request for which we do not anticipate receiving, it is for a particular period for the express purpose of the terms of reference of the royal commission. It is not in that sense an ongoing power, although it can be exercised on an ongoing basis during the life of the royal commission.

Ms SUE WALKER: Under clause 49, clauses 5, 6 and 7 can be exercised only during the life of the commission, whereas clause 8 will remain attached to the Royal Commissions Act.

Mr McGINTY: Yes.

Clause put and passed.

Clauses 8 and 9 put and passed.

Clause 10: Conditional release of a witness -

Ms SUE WALKER: Is this a new provision that is not contained in the Royal Commissions Act and will not be attached to that Act when the commission terminates?

Mr McGINTY: This is an enhanced power. Section 16 of the Royal Commissions Act provides a power to arrest a witness for failing to appear. Clause 9 provides the power to arrest a witness if the commissioner believes it is probable the person will not attend before the commission to give evidence without being compelled to do so; or is about to or is making preparation to leave the State and the person's evidence will not be obtained by the commission if the person departs. It is a precautionary power. Clause 10 provides for that person to be conditionally released once they have been brought before the royal commission.

Ms SUE WALKER: Is there already a conditional release power in the Royal Commissions Act?

Mr McGINTY: No. There is a power to arrest a person who fails to front up before the royal commission. As the member will be aware, from time to time there is a likelihood that a particular witness will abscond from the jurisdiction. This is essentially the same power, but done in advance of that person's absconding. It is a power to conditionally release that person. Once a person has failed to appear and has effectively broken the law, a different set of considerations applies. If we are to arrest someone who we fear will abscond from the jurisdiction, then a power to conditionally release is a concomitant power.

Ms SUE WALKER: I appreciate the difficulties that the commission may have in this matter and fully support clause 10. There is a penalty for failing to comply with a condition for the release of a witness. This is a bit like bail.

Mr McGinty: Yes; very much so.

Ms SUE WALKER: Section 51 of the Bail Act provides that the penalty is a fine not exceeding $10 000 or imprisonment for three years. Where did the Attorney General get this penalty from?

Mr McGINTY: The only advice I have on that matter is that it was suggested by crown counsel. I am not aware whether the provision was taken from another Act; however, that is the suggestion that was made for better or worse.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Restriction on publication of evidence -

Mr BIRNEY: Under this clause, the commissioner could direct that any evidence given before the commission may not be published. I draw the Attorney General's attention to the penalty of imprisonment for 12 months and a fine of $4 000 for a breach of this clause. This penalty does not seem consistent with penalties generally provided for in the Criminal Code. Generally, the penalty for an offence of this nature would be imprisonment for 12 months or a fine of $4 000. This clause could be considered mandatory sentencing. On my reading of the Bill, anybody who breaches this clause will be subject to 12 months imprisonment and there will be no discretion. An offender would be subject to not only 12 months imprisonment, but also a fine of $4 000. A breach of this clause might warrant imprisonment of 12 months; however, I suggest that there may be some variations of offences against this clause that would not warrant a penalty of 12 months imprisonment. It appears that this clause may be an overreaction. I cannot help but wonder whether the word "and" should be "or", which would be consistent with other sections of the Criminal Code.

Mr McGINTY: If a penalty is expressed as either imprisonment or a fine, one or the other could be imposed. The use of the word "and" means that it is not a mandatory penalty; it is discretionary. It is the maximum penalty that could be sentenced, although a judge does have the capacity to fine and imprison an offender. It would be far more preferable if we had a greater level of consistency in the way in which penalty provisions were drafted so that they followed a standard form. This is an unusual, although not exceptional, provision. When legislation provides for a penalty of a fine or imprisonment, it generally presupposes that one or the other will be imposed, not both.

Mr BIRNEY: I thank the Attorney General for that advice. However, the clause outlines the nature of the breaches of the clause that may be committed by an individual and it then states that the penalty is imprisonment for 12 months and a fine of $4 000. It does not even say that that is a maximum penalty; it just says that that is the penalty. I accept that the Attorney General has indicated that that is the maximum penalty and the word "and" should be the word "or", which would mean that an offender could be imprisoned for 12 months or fined $4 000. The one-line sentence in the legislation clearly states -

> Penalty: Imprisonment for 12 months . . .

Mr McGinty: An interpretation provision in the Sentencing Act provides that wherever a penalty is referred to, it is a maximum penalty and there is discretion to sentence an individual to less than that. The member is right on the reading of this clause.

Ms Sue Walker: In what section of the Sentencing Act is that?

Mr McGinty: I do not have it with me.

Ms Sue Walker: I do.

Mr McGinty: If the member would like to pass it to me, my adviser and I will find the provision in the Sentencing Act that has the effect of apply discretion when imposing a penalty for what would appear to be a mandatory requirement.

Mr BIRNEY: I wonder how the Sentencing Act would deal with it. The Sentencing Act does not specifically refer to the Royal Commission (Police) Bill 2002 because when the Sentencing Act was drafted, there was no such Bill. The Sentencing Act would have to be all-embracing in order to apply that provision to the Bill with which we are dealing today.

Mr McGINTY: Section 9 of the Sentencing Act relates to any law that involves a statutory penalty, such as the one we are currently considering. The Act states -

> If the statutory penalty for an offence is a fine of a particular amount or a particular term of imprisonment, then that penalty is the maximum penalty that may be imposed for that offence and, unless the statutory penalty -
>
> (a) is a mandatory penalty; or
>
> (b) includes a minimum penalty,
>
> a lesser penalty of the same kind may be imposed.

That has the effect of interpreting all these statutes wherever there is a penalty, and converts what on the surface appears to be a mandatory provision into a discretionary provision.

Dr CONSTABLE: I can well understand why it is necessary to have secrecy provisions in legislation that deals with a royal commission Bill, particularly one that seeks to investigate corruption in the Police Force. Those provisions would be included for many reasons, including the protection of witnesses. However, I would like to understand exactly what is in this legislation. At whom is this legislation aimed and why? Clause 12(1)(a) states that the commissioner may direct that any evidence given before the commission must not be published except as the commissioner specifies. Does that mean evidence given at a public hearing?

Mr McGinty: It could do.

Dr CONSTABLE: I have given evidence to a royal commission and know that the room is usually full of investigators, groupies that attend every session of a royal commission, the media and a range of other people waiting to come in who watch the proceedings outside on monitors. Does this legislation mean that the media cannot publish that public evidence? Can people who attend that hearing not speak to anyone else about it? We need a definition of what is meant by a publication. Is the provision aimed at the media and people who attend a public hearing? Clause 13 is very clear about the restriction on discloser to protect people and to maintain secrecy; however, I am not sure where we are going with clause 12. It would be helpful if the minister would walk us through that.

Mr McGINTY: It is not unlike a suppression order a court imposes on evidence that is given before it, and it does so from time to time. Normally *The West Australian* would argue that the evidence should not be suppressed even though it was given in open court. The media is the major target of suppression orders or restrictions on publication orders. It relates to anyone who publishes.

Dr Constable: From what you have just said, publication actually means published through television news, *The West Australian* or the local newspaper.

Mr McGINTY: If an aggrieved person decided to put out his own flyer, that would be publishing it.

Dr Constable: Does it mean that if I have been in the gallery at the commission hearing and a suppression order is put on it and the commissioner says that no-one will publish it, I cannot talk about it to my next-door neighbour?

Mr McGINTY: I will give the member a non-definitive answer to that.

Mr Pendal: What is a non-definitive answer?

Mr McGINTY: I am not sure. Publishing has a meaning. The member for Churchlands asked whether talking about it means publishing.

Mr Pendal: We heard what she asked. We want to know what you are going to answer.

Mr McGINTY: The member for South Perth probably knows the answer to this. Being a former journalist, he would have been caught by these provisions -

Mr Pendal: This is a bit of entrapment. She is setting you up. She is just letting you know how other people will feel.

Mr McGINTY: That might well be right. I do not know the answer to the question of whether publication or publishing means disseminating by word of mouth. If it means making public, it does. However, it might have a narrower legal meaning. I will ascertain the answer to that question and let the member know.

Dr Constable: It is a very important question. The answer should be made clear. I understand that under the Anti-Corruption Commission Act, there are certain things that you know that you cannot talk about to anybody. That is why I want to know how you define publication. It is very important to clauses 12 and 13.

Mr Pendal: A journalist knows that you can publish a slander by repeating it; therefore, by speaking, you publish.

Mr McGINTY: Yes. That is the reason I hesitated. The Minister for Police was unkind enough to suggest that this was going to be a typical answer from me.

Dr Constable: So far she is right!

Mr Pendal: She is a very astute person!

Mr McGINTY: It was quite unfair as well. In not knowing the technical answer to that question, it is not a new issue. Section 19B of the Royal Commissions Act has an equivalent provision. Whatever publishing means in accepted law, it is that which is currently caught by the Royal Commissions Act and by the restrictions on publications that come out of courts. I will ascertain the answer to that question -

Dr Constable: Will you undertake to come back and give an explanation for that?

Mr McGINTY: I will let the member know as soon as I am able to ascertain it.

Dr Constable: I would like it to be on the record; I do not want to just be told.

Mr McGINTY: I will certainly come back with that answer as soon as I am able to ascertain it. It means that a person cannot tell that information through the media, whether it be the television, newspapers or whatever. I do not know the answer to whether it relates to the member telling her next-door neighbour.

Mr BIRNEY: I return briefly to the point I made previously. It is not my intention to harp on this issue. I will make a further point for the record to which the Attorney General may or may not like to respond. It seems to be fairly frustrating when a piece of legislation is drafted for a specific purpose, yet the meaning of that legislation can be altered immeasurably in some cases by other Acts that are already in existence. I do not know how a lawyer would go in reading an Act to a client and saying that his client will have absolutely no problem because the Act says this. In actual fact, in many cases the provisions of the Act can mean absolutely nothing because they can be changed significantly by other Acts that are in existence. Clause 12 of the Bill provides a penalty of imprisonment for 12 months and a fine of $4 000. After reading this clause, a lawyer would advise his client that he will go to jail for 12 months and get a $4 000 fine. I accept that most lawyers would not jump to that conclusion readily and would search other Acts to find out whether another Act contravenes this provision. How many Acts does a person search? Where does a person start and stop in his search for an Act that may alter the Act that he is dealing with? It is a particularly frustrating situation. For the life of me, I cannot understand why this clause provides a penalty of imprisonment for 12 months and a fine of $4 000 instead of a maximum penalty of 12 months and/or a fine of $4 000. I make that point again: how many Acts does a person have to search before he is absolutely sure that the information he has just read in the Act applies?

Ms SUE WALKER: The member for Kalgoorlie has raised a good point. I do not have a difficulty with this penalty. It is not high enough in my view. If someone goes to the commission and gives very damning evidence and that evidence -

Mr Kucera: Madame d'Farge.

Ms SUE WALKER: Members on that side of the House brought in mandatory sentencing; that is fine. However, this is another mandatory sentence in my view.

Mr Kucera: There are times when you are allowed to be a little light and you can smile occasionally.

Ms SUE WALKER: I know. We do not see it from the minister very often, and it is nice to see it.

If a person gives very important evidence to the commission that could put him in the greatest of danger and then someone reveals that information and puts that person's life in danger, this penalty is not high enough. What disturbs me about the penalty is that it is mandatory and is not termed in the way one normally finds in, for instance, the Criminal Code. I will give members examples. The penalties in the Criminal Code refer to offenders being liable to imprisonment for, say, seven years. That means that the judge can give a penalty of anything up to seven years. He probably could not give three months and very soon he might not be able to give six months. However, he can give anything up to seven years. That is interesting, because under section 60 of the Criminal Code, a member of Parliament who receives bribes is guilty of a crime and is liable to imprisonment for seven years. However, section 151 of the Criminal Code contains two penalties for

obstructing officers of courts of justice. The first penalty refers to being guilty of a misdemeanour - that is, it is a more serious obstruction - and the person is liable to imprisonment for two years. The summary conviction penalty is imprisonment for six months or a fine of $2 000. That looks mandatory to me. The Attorney General spoke about section 9 of the Sentencing Act and said that this is the maximum penalty. There is only one penalty in this legislation; that is, 12 months and a fine of $4 000. Is that how the Attorney General sees it, or is he suggesting that that should be liable to imprisonment for 12 months?

Mr McGinty: I think it means that the maximum that can be imposed on a person is 12 months and $4 000. Anything less than that can also be imposed.

Ms SUE WALKER: When the new Bill is passed, people who commit an offence under this clause will have only a sentence of between six and 12 months imposed.

Mr McGinty: And a fine.

Ms SUE WALKER: In relation to secrecy disclosure and admissibility, I take it that this restriction on the publication of evidence is the same as that which occurs in courts, including in a superior court. Currently, in the Court of Petty Sessions, a notice is posted on the door telling people that it is a closed session and that they are not to disclose the evidence that is given in the court. I presume that the situation is the same under this Bill, but I will be interested to hear what the Attorney General comes back with for the member for Churchlands.

Clause put and passed.

Clause 13: Restriction on disclosure -

Ms SUE WALKER: In part 4, with which we are dealing, the only clause that dies with the commission is the one we have just debated. Clauses 13, 14, 15 and 16 - query 16 - will continue in the Act. That is my only comment on this clause.

Dr CONSTABLE: I would be interested to hear an explanation from the Attorney General about clause 13(4)(a), which states that a person does not contravene subsection (3) if -

> the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter;

Therefore, a person can disclose to somebody else in order to obtain information to comply with the notice or summons, but the employee, agent or other person is directed - I want to know by whom - not to inform the person to whom the information relates about the matter. Will the Attorney General explain what those last few words mean; and who directs the employee, agent or other person?

Mr McGINTY: It may be the case that, to comply with a notice to provide information, a person would need to go to an employee, agent or other person. That is envisaged by clause 13(4)(a). In those circumstances, a person would not breach the restriction on disclosure, provided he or she complied with those provisions. It is a way in which an employer, for instance, who may not personally know the information, would need to go to someone else to ask him or her for that information.

Dr Constable: I understand that. However, the third line of subclause (4)(a) states that "the employee, agent or other person is directed". By whom is that person directed?

Mr McGINTY: We are fairly confident that it would be the person who is the subject of the notice under clauses 5 or 6 of this Bill. In other words, the chain would be that the royal commission may, under clause 5 of this Bill, serve a written notice on a public officer.

Dr Constable: Let us say it is the chief executive officer of an organisation.

Mr McGINTY: Yes. The royal commission will serve a notice on a CEO of an organisation. The only way in which that CEO can comply with that notice is by going -

Dr Constable: In that order, the royal commissioner says that the person must not disclose the information to anybody.

Mr McGINTY: No, I do not think that is -

Dr Constable: Let us say that is in the order.

Mr McGINTY: We will say that has been done, yes. Therefore, there is a restriction on disclosure. Subclause (4), about which the member is talking, provides the capacity for that CEO to say to an employee in the department who is privy to that knowledge, "I need this information because I have a notice to provide it to the royal commission. However, I direct you not to disclose that fact to the individual who is the subject of the inquiry." In that way, once that direction is issued, it brings a person within the exemption from the restriction on disclosure that is provided for in subclause (3).

Dr Constable: I have a problem with this; that is, the point at which the person who gets the order not to disclose the information then discloses it. There should be a safeguard in this for all the people involved. That person should go back to the commissioner and say, "I can't do this without disclosing it to somebody else", and then the commissioner should somehow become involved. A safeguard for that second person should be included. He does not have anything in writing. He has just been told by his CEO not to disclose the information to anyone. The situation could be quite difficult for that second person. That person should have something in writing to protect him and to show the seriousness of it.

Mr McGINTY: Yes. The member may well be right. I believe the two of them add up to the same thing; that is, that there is a way in which the person who is directed to provide information is not caught by that information.

Dr CONSTABLE: I suggest to the Attorney General that he should somehow insist that a protocol be put in place whereby the commissioner must, in writing, direct the second person. It is wrong for one person, who has a written order, to say by word of mouth that the second person must not disclose the information. Because the first person must get the information from someone else, he will say by word of mouth, "I need this information. I have this bit of paper from the royal commission, but don't tell anyone about it." It is just too risky. A strict protocol should be in place to protect everybody.

Mr McGINTY: The logic of this flows. Subclause (3) provides -

> A person served with a notice under section 5(1) or 6(1), or a summons to attend the Commission, that includes a restriction on disclosure must comply with the restriction on disclosure.

Dr Constable: I am not concerned about that.

Mr McGINTY: I understand that. The clause then provides for an exemption from that restriction on disclosure if it is for the purpose of obtaining information and if it is also accompanied by a direction not to further disclose.

Dr Constable: It could be an oral direction. I think that is dangerous.

Mr McGINTY: The member wants to see a more formal process.

Dr Constable: I do.

Mr McGINTY: It is not a question of the power but the procedure that attaches to that power.

Dr Constable: Exactly.

Mr McGINTY: I understand that point of view.

Dr Constable: It is sloppy. The procedure should be tightened to protect people.

Mr McGINTY: Given that this provision will be in force for only a little over 12 months, and although the procedure advocated by the member would be tighter, I do not believe that this will be a long-term problem.

Dr Constable: It would not matter if it were only one week; I would want to see people protected. The Attorney knows that 12 months is a long time and the penalties are very stiff.

The DEPUTY SPEAKER: The members on my right having a conversation should go behind the Chair. It is hard to hear the debate.

Clause put and passed.

Clauses 14 to 17 put and passed.

Clause 18: Termination of police investigation -

Mrs EDWARDES: This clause ceases to have effect at the end of the commission. It provides what is required of the Commissioner of Police if the commission notifies the commissioner that it is investigating a police complaint or part thereof. It states -

(a) The Commissioner of Police must not commence any investigation of the matter or, if any investigation of the matter has already commenced, must discontinue the investigation.

Clause 17 provides that a police complaint is -

an allegation or complaint which concerns or may concern corrupt conduct or criminal conduct by a person who is or has been a member of the Police Force of the State.

The clause goes on to provide -

(b) the Commissioner of Police must take all reasonable steps to ensure that an investigation of the matter is not conducted by a police officer.

At what stage does that come into effect? I thought the police commissioner would be required to stop any investigation. I am not sure how that fits into the picture. It continues -

(c) the notification absolves the Commissioner of Police and other police officers from any duty with respect to crime and the preservation of the peace so far as it relates to investigation of the matter or to the bringing of an offender concerned before the courts to be dealt with according to law.

If a matter is afoot, criminals can do several things. They can refer their complaint to the royal commission, which will tell the police commissioner not to investigate the matter or to cease an investigation. I am not sure what paragraph (c) means. If they are investigating a crime rather than a police complaint, because they are being absolved from any duty -

Mr McGinty: It is a complaint against a police officer.

Mrs EDWARDES: It must always be against a police officer. It refers to "any duty with respect to crime and the preservation of the peace so far as it relates to investigation of the matter or to the bringing of an offender concerned before the courts to be dealt with according to law". It may not necessarily be the police officer who is the subject of the police complaint; it may be some other matter.

I am not sure what paragraph (b) means or where it applies. Paragraph (c) could extend beyond the police officer the subject of a police complaint.

Mr McGinty: There must be a police officer involved for it to be a police complaint. There could be an armed robbery involving a police officer and a felon. That would be picked up by paragraph (c).

Mrs EDWARDES: The commission notifies the police commissioner that it is investigating a police complaint. Paragraph (c) provides -

the notification absolves the Commissioner of Police and other police officers from any duty with respect to crime and the preservation of the peace so far as it relates to the investigation of the matter -

That is, the police complaint -

or to the bringing of an offender concerned before the courts to be dealt with according to law.

Mr McGinty: It could be a police officer being brought before the courts.

Mrs EDWARDES: But it may not necessarily be.

Mr McGinty: But it must relate to a police complaint.

Mrs EDWARDES: It should relate to a police complaint.

Mr McGinty: A multitude of circumstances can be readily envisaged involving non-police officers in a complaint about the activities of a police officer. It could cover a host of circumstances.

Mrs EDWARDES: Surely it should be linked to both matters; that is, the investigation of the matter and the bringing of the offender before the courts. It refers only to "investigation of the matter"; it does not then repeat "the matter" in relation to the bringing of the offender before the courts. The Attorney is saying that is what is intended.

Mr McGinty: Yes.

Mrs EDWARDES: That is not how it reads. It is not necessarily linked.

Mr McGINTY: There would clearly be a link. The whole issue relates to a complaint involving corrupt or criminal behaviour by a police officer. That might involve the police officer's association with external criminal

behaviour or purely internal police matters. The offender being brought before the courts could be that police officer, another police officer or an associated criminal who is not a police officer. A variety of possibilities could arise. I can envisage circumstances in which it would be highly undesirable if the royal commissioner is investigating the behaviour of a police officer on the complaint of a criminal for that criminal to be taken before the courts. It could jeopardise the ongoing investigation by the royal commission.

The member is aware of a recent unfortunate experience I had with the police and the Joondalup Family Violence Court. The police commissioner came to Joondalup to participate in the public announcement that the court would continue. The next week, unbeknown to the police commissioner, his senior officers withdrew half the police staff from the project and made everyone associated with it, mainly police officers, look like fools. I see the need for both paragraphs (a) and (b). Paragraph (a) imposes an obligation on the police commissioner not to commence any investigation or to discontinue any established investigation. The second obligation, which is directly relevant to the Joondalup situation, is that he must use his best endeavours to ensure that the duty imposed upon him to discontinue an investigation or not to commence an investigation is carried through by lower ranking officers in the Police Service, who seem to be a law unto themselves. I am not suggesting that that was criminal behaviour, but it was certainly bizarre.

Mrs EDWARDES: Paragraph (b) is linked to subclauses (3) and (4), in that the commission will allow the police to either continue the investigation or carry it out in accordance with the commission's instructions. The police commissioner can continue the investigation on the commission's say so. If a criminal were to refer a matter to the commission, that could easily stop the police from continuing the investigation.

Although I recognise the need to not have overlap, duplication or the like, one may hinder the investigation by the commission if an offender is brought to the court. It will mean the delay of those matters and investigations and it could be used as a tool by people who would like to have those delays put in place.

Mr McGINTY: Sure, that is the risk we run. It is up to the integrity, the wiliness and the wisdom of the royal commissioner to make sure he is not used as a tool to achieve that purpose and that he uses that power only when it is important to retain a matter under the royal commission in order to deal with a police corruption matter. In the appointment of Mr Geoffrey Kennedy we have a person who would be sufficiently wise to the likely uses of those powers.

Clause put and passed.

Clause 19 put and passed.

Clause 20: This Part does not require information to be disclosed by Commission -

Mrs EDWARDES: I love this clause. It says that this part does not require information to be disclosed by the commission. It wraps it all up into a nice, neat package with a little bow and card on top that says the commission will tell the Attorney General nothing. Not only is the Attorney General not allowed to disclose any information, but also the commission does not have to give information to him.

Clause put and passed.

Clause 21 put and passed.

Clause 22: Approval for assumed identity -

Ms SUE WALKER: The definition in this provision of who can get an assumed identity is a little broad; that is the best way to describe it. It can be an officer of the commission, who is defined under clause 3 as -

> (a) a legal practitioner appointed to assist the Commission; and
>
> (b) any other person appointed, employed, seconded or engaged to assist the Commission;

I do not know why I thought it would be only a police officer and I wonder what special skills a person needs to assume an identity and conduct himself in that way. We have people all around us with twin, or several, personalities.

Mr Pendal interjected.

Ms SUE WALKER: Would I say that about the member for Innaloo? Definitely not.

Mr McGinty: Could I suggest you not provoke him into coming back into the Chamber as we are making very good progress at the moment.

Ms SUE WALKER: He will see this in the bar and come running in at any moment.

However, I am wondering about this assumed identity. Did the Attorney General get this provision from another Act; and, if so, how was it used? How would a lawyer who is not trained in undercover operative procedures use that provision? Although lawyers can be chameleons at times, anyone in the commission can assume an identity. Can the Attorney General explain that please?

Mr PENDAL: This was one of the clauses that I did not touch on in preference to talking on clauses 30 and 32, which I intend to do when we get to them. However, the member for Nedlands has just gone to the nub of this issue by saying words to the effect, "What skills does it take to comply with clause 22?" I will take that one step further and give her an answer. The skill required is that a person be a convincing liar; that is the power we are conferring. An officer or investigator from the royal commission into police corruption and misbehaviour will go out to one of your constituents in Wanneroo, Madam Deputy Speaker, or to one of mine in South Perth, and say, "Hello, I am Tony Brown" when he is not and it is a lie. That person must not only say, "Hello, I am Tony Brown", but also he must say it with consummate skill as a liar. He is assuming the identity of someone whom he is not. Under the Criminal Code, if tomorrow morning I were to go out to the same person in your electorate, Madam Deputy Speaker, or to a constituent in anyone else's electorate and say, "Hello, I am Tony Brown" or "Hello, I am Bob Smith" and assume an identity that does not belong to me, I would commit a criminal act. I would be capable of being charged under the Criminal Code and taken to the courts on the ground that I have assumed someone's identity by lying. Apparently we are about to happily entrench a law on the part of the Government that allows for official lying; namely, I am someone whom I am not and I am pretending to be this person apparently for the higher good of trying to either get evidence at a royal commission or entrap someone in the course of my duty. Earlier I said that I ran the risk of it being claimed that I had committed some sort of ethnic offence by saying that it is Irish. However, this is more serious, because if one assumes someone else's identity and goes into the community and says, "I am so and so", it is a lie. How can we get away from that? It is a blatant untruth and yet, under clause 22, we are blithely and almost without protest giving approval for people to assume identities that do not belong to them. I will return to the question that was posed rhetorically by the member for Nedlands: what skill is involved in assuming an identity? The skill is not only in lying, but it is also in lying convincingly. The Attorney General and members on both sides of the House may think we are writing good law, but it is disgusting. It is perversion of the worst sort. I can see the Minister for Health shaking his bloody head again with that supercilious, ex-policeman look on his face. Perhaps he is used to this sort of dishonesty. It stinks -

Mr McRae interjected.

Mr PENDAL: That has nothing to do with what I am saying.

Mr BIRNEY: I am interested to hear more of what the member for South Perth has to say.

Mr PENDAL: I am only making the point. I do not necessarily expect people to agree with me or members over there to be shaking their heads as if this is some principle of which they have never heard. I find it offensive that every day of our lives in this Chamber we talk about how we want people to obey the law. We have kids in the public gallery and we talk about how we want them to respect the law. However, we are now making a law that says it will be all right to tell a lie if a person works for the royal commission. In no other way is it impossible to be immoral by telling a lie, but if a person works for the royal commission clause 22 will give that person approval to assume an identity that does not belong to him. Everything such a person will tell others about himself will be a lie. It is cute language to assume someone's identity. I refer members to the Criminal Code. Would it be possible for me to go into the streets of my electorate and assume the identity of a police officer? All members know the answer. It is an offence at law to do that. Is it proper, moral and legal for me to go into the community and say that I am Dr Tony Brown and I represent the health education council, when it is a lie? Why is it that members are being asked to put into law a lie? I do not want to be part of it. It is the most hypocritical thing I have seen occur in this place in all the time that I have been a member. If they are any good, royal commissions and police forces will be able uncover corrupt practices by using some ingenuity. Whatever happened to that? By a little bit of inventiveness -

Ms Quirk: How?

Mr PENDAL: The member who has just interjected sounds like she used to work for the National Crime Authority. It is a useless authority. I was a member of this Parliament when the NCA was created. The State gave the Commonwealth some of its powers and the Commonwealth gave us some of its powers. The authority was created because we could not get on top of crime. We cast around for legislative furphies. That is what we are stuck with in clause 22 of this Bill. I am not happy to be part of officially declaring that a royal commission officer can tell lies when no-one else can. I do not want to be part of this. It is contrary to everything we try to

do in this place. No-one has yet given me an explanation other than saying that it has been done in New South Wales and was used by the Fitzgerald inquiry in Queensland. They are no great commentaries on the way the law is conducted. What do we say if a child asks us whether he is allowed to tell lies? He might ask the member for Wanneroo. A member would say no, he is not allowed to tell lies. Telling lies is wrong except if a person belongs to the royal commission! We are getting into a dilemma. We are legislating as though something is right when it is demonstrably wrong. We should scrap this. I will make similar arguments when we deal with clauses 30 and 32. This is offensive and it sends all the wrong messages. If it does not send the wrong messages to children, it should send them to the members of this House because they are part of the process of making what is wrong today right tomorrow. I oppose this clause.

Dr CONSTABLE: I will paint the picture of what we are doing. We will confer officers of the royal commission - some of them special constables - with powers that we will never have. We will allow them to infiltrate government authorities and departments. They will search for documents and possibly set up scenarios for later entrapment. They may even entrap people when they are there. They will go in undercover with an assumed identity to investigate a situation.

Ms Quirk: It is to catch corrupt cops.

Dr CONSTABLE: I am aware of that. The chief executive officer or chief employer of an organisation will also be party to the lie that the member for South Perth has just described. This is very serious stuff. We have to be very careful that we understand fully what we are doing. We all want to catch corrupt cops, but we have to be sure that we want to use these methods. Do we want to invent a lie that includes the senior public servants of this State? Do we want them to be part of it? Do we want to catch people who may be innocent? The Attorney General must be very careful with the powers he is bestowing on the royal commission and the officers employed by the royal commission.

Mr McGINTY: The provisions in this legislation are an abbreviation of powers found in New South Wales and commonwealth legislation. New South Wales has the Law Enforcement and National Security (Assumed Identities) Act 1998. Clause 4 of that legislation refers to chief executive officers granting approval for assumed identities. The clause refers to authorised agencies, which are defined earlier in the legislation as including the Police Service and the Independent Commission Against Corruption. The authorised agencies may grant approval for agency officers to assume a false identity. That obviously includes police officers and ICAC officers.

The Commonwealth has similar legislation. It uses the Measures to Combat Serious and Organised Crime Act 2001. That recent legislation gives the ability to assume false identities to a number of commonwealth agencies including the Australian Federal Police, the Australian Customs Service, the National Crime Authority, the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service and the Australian Taxation Office as well as other commonwealth agencies specified in the regulations.

Ms Sue Walker: How do they get it?

Mr McGINTY: In New South Wales, the chief executive officer of an authorised agency may grant approval for an assumed identity.

Ms Sue Walker: The Bill states that the approval must be in writing and may cover more than one identity. Do the other Acts refer to methods of approval?

Mr McGINTY: At first blush, they do not seem to. I have not read the Acts in any great detail. I am told that what is in this Bill is an abbreviation of those other Acts. They may do; I have not read the other Acts from cover to cover. The commonwealth Act is fairly brief in its form, but it relates to more than police officers.

Ms Sue Walker: I do not have a problem with assumed identities. What is it envisaged that officers would do on behalf of the royal commission?

Mr McGINTY: They would pretend to be someone whom they are not. Through that, they would infiltrate organisations and work with people to gather evidence. That is the intention.

In relation to the comments of the member for Churchlands, the Interpretation Act has the following definition of "publication" -

> **"publication"** means -
>
> (a) all written and printed matter;

(b) any record, tape, wire, perforated roll, cinematograph film or images or other contrivance by means of which any words or ideas may be mechanically, electronically, or electrically produced, reproduced, represented, or conveyed;

(c) anything whether of a similar nature to that described in paragraph (b) or not, containing any visible representation, or by its form, shape, or in any manner capable of producing, reproducing, representing, or conveying words or ideas; and

(d) every copy and reproduction of a publication as defined in paragraphs (a), (b) and (c);

It seems that this definition would not cover someone talking to someone else. However, I do not wish to say that that is the case, because I had the chance to confer with an eminent Queen's Counsel who said that the matter is somewhat grey. I hope that clarifies the matter for the member for Churchlands.

Clause put and passed.

Clause 23: What an approval authorises -

Mrs EDWARDES: I refer the Attorney to subclause (2), which states -

> The officer can use an assumed identity under the authority of an assumed identity approval without having actually acquired the identity.

Can the Attorney General explain that subclause to me?

Mr McGINTY: To fully assume another identity might be to get a birth certificate or something of that nature. This provision covers a situation in which someone has not undergone that full transformation, if I can put it that way, but simply asserts that he is someone whom he is not. Does that cover the situation?

Mrs Edwardes: Subclause (3)(b) states -

> An assumed identity approval also authorises -
>
> . . .
>
> (b) the use by the officer of the assumed identity to obtain evidence of the identity.

What is the officer doing? Is he lying in order to get a birth certificate? Is he falsifying documents and papers in order to get a birth certificate?

Mr McGINTY: It would authorise that person to obtain a birth certificate, not necessarily dishonestly, by holding himself out to be a particular person. It might be with the full knowledge of the Registrar of Births, Deaths and Marriages.

Mr Pendal: He tells the lie as well.

Mr McGINTY: No.

Mr Pendal: Does the commissioner know what is going on?

Mr McGINTY: He knows what is going on, in which case it is not, in my view, a lie.

Mr Pendal: He is party to the lie.

Mrs EDWARDES: So this is not like the James Bond movies - the commission does not have a series of birth certificates, passports and all the rest of it in its top drawer. The commission will not be involved in the identity package - the kit - that the person will assume, and the person will not have a false beard, a moustache and everything else that goes with this kit that is tucked away at the commission. Approval will be given for someone to go out the commission's door and get his own identity documents, passports, bank documents or whatever else is required. There was a recent incident involving a law student. The individual officer must do it. The commission does not organise that centrally. It will allow a person to incriminate himself far more than just by giving him approval to go out and be someone else. The next part sets up an entrapment process.

Mr PENDAL: I would like the Attorney General to answer that question, but with an additional part to it. Subclause (3) states -

> An assumed identity approval also authorises -
>
> (a) the making (by the officer to whom the approval applies or by the Commissioner) -

So now Geoffrey Kennedy is involved. He is part of the lie-making process. It continues -

of any false or misleading representation about the officer, for the purposes of or in connection with the acquisition or use of the assumed identity by the officer;

How brazen are we becoming to now openly say that we will assist a person in making a false and misleading representation? I thought the member for Kingsley began her statement with a question. If she did not, I will ask the question. Is the registrar a party to this? I thought the member for Kingsley made some reference to that. Are we saying that in addition to including provisions to give a person - Mr Acting Speaker (Mr Dean), a constituent, the member for Riverton, or the Minister for Health, who is so enthusiastic about all this - the ability to assume an identity, we are now an accomplice to the act of making a false or misleading representation? We are starting to involve many august public officers, such as the registrar. For example, I could get some false birth certificates to put in my wallet to guard against the person who on the weekend posed as a policeman and took $500 out of the wallet of an unsuspecting motorist. We are now ensnaring Geoffrey Kennedy. That is a nice little howdy-do. He is a Supreme Court Justice and Rhodes scholar, as the Premier keeps reminding us. He has made an enormous contribution to the judiciary in Western Australia. He will now be able to tell lies. The registrar is part of it too, as is the chief executive officer of the government department.

Ms Sue Walker: Undercover police do this all the time.

Mr PENDAL: They what?

Ms Sue Walker: They go before the court.

Mr PENDAL: But they do it illegally.

Ms Sue Walker: No, they do it legally.

Mr PENDAL: How do they do it legally?

Ms Sue Walker: I presume that it must be in the regulations.

Mr PENDAL: The member for Nedlands presumes that it is in the regulations. That is a worry! I disagree with the member for Nedlands. She has presumed something. If it is in the regulations, it means that it was not in primary legislation. The member for Ningaloo is a person of some principle. Is he happy about allowing former Supreme Court judges to tell lies?

Ms Sue Walker: Undercover police go before courts.

Mr PENDAL: I am not interested in undercover police and whether they operate under police regulations. I am worried about the giving of this power.

Ms Sue Walker: I am happy.

Mr PENDAL: The member for Nedlands would be. She told us last week that she was a prosecutor.

Ms Sue Walker: I thought I was a would-be prosecutor.

Mr PENDAL: We are now giving carte blanche to a former Supreme Court judge to be part of a process of telling lies that will include the registrar, the head of the department, the Commissioner of Police and the bloke who transmits the thing from one point to another. The Government has the gall to tell us that we are trying to get to the bottom of what causes the lack of police integrity. I reckon it might start right in this Chamber and with people who sit at the Bar of the House.

Mr McGINTY: If we are doing something authorised by law, how can that be a lie or dishonest? That is the problem with the member's argument.

Mr Pendal: It is only if we pass the law and you are asked to pass a lie.

Mr McGINTY: No, I am asking -

Mr Pendal: Your own words are "false and misleading behaviour." That is in the Bill.

Mr McGINTY: No. This Bill envisages that the royal commissioner will grant approval for someone to assume a false identity. That approval must be in writing and it may specify documents that may be acquired for use as evidence. Once the commissioner has done that, the officer concerned - this is the point raised by the member for Kingsley - is then authorised to go to the Registry of Births, Deaths and Marriages and obtain, for instance, a birth certificate. Clause 24, which we are about to deal with, then casts certain legal duties upon the Registry of Births, Deaths and Marriages to comply with that order. There is no deception, dishonesty or lying in that process.

Mr Pendal: There is. It is officially sanctioned lying.

Mr McGINTY: I think the member is being too critical. The misrepresentation of the lie comes about when the undercover officer, or the officer with the assumed identity, represents himself or herself to be the person in accordance with the false identity. The procedure is traceable, transparent and executed by officers of good repute, including Geoffrey Kennedy.

Mr Pendal: We have good people being required at law to tell lies.

Mr McGINTY: No. It cannot be a lie to do something that is authorised by law and that casts a duty on certain public servants in respect of that matter. That is my view. Once officers have that assumed identity, they will then lie about their identity because what they have assumed will become their identity in their misrepresentation to crooks.

Mrs Edwardes: Clause 23(3)(b).

Mr McGINTY: Clause 23(3)(b) would give the officer the ability to fill in a form, for instance, at the registrar's office, to apply for a copy of a birth certificate saying, "My name is Joe Bloggs", when it is not. That is directly referred to in subclause (3)(b).

Mrs Edwardes: Why is it not done centrally through the commission? Why must the individual do it?

Mr McGINTY: I do not know whether Geoffrey Kennedy will go to the registrar's office or whether it will be an individual with an authorisation from Geoffrey Kennedy. The point has just been made that an assumed identity needs to be created by the individual. Someone still needs to sign the application, albeit using a false name. This is simply seen as the best administrative solution.

Mr PENDAL: I am not making the claim about falsehood; it is in the Bill. Under clause 23(3) this Parliament will give approval to people making false or misleading representations. How much clearer, blatant and brazen do we want to get? I am not making the charge. Clause 23(3) states that on behalf of the commission the officer will be making a false or misleading representation. How can people justify that? The member for Nedlands referred earlier to the practice possibly being allowed under police regulations, but she was not sure. I challenge any member of this House to say that they knew that a regulation - subsidiary legislation - had been placed on the Table of this House that allowed police officers to tell lies in assuming identities and applying for documents to which they are not entitled. I do not think that enters into the thinking of people in this House. There is a simple system for deciding whether something is right or wrong, whether someone is telling the truth or a lie. This whole Bill is predicated on the notion that when people are in the witness box at the royal commission, be they policemen under pressure or policemen doing a decent job, they swear under oath to tell the truth. Would they not be entitled to turn to the royal commissioner, Mr Justice Kennedy, just before they sit down and say, "I am prepared to tell the truth, Your Honour, to the extent that you have been telling the truth in respect of clauses 22 and 23(3) of the Act under which you operate." I know what Mr Justice Kennedy would say: "Witness, you either come here and tell the truth or you do not." Yet a couple of days before this poor unfortunate copper appears and is bound to tell the truth, evidence has been gathered by the State by a public official telling a lie and the bureaucracy of Mr Justice Kennedy is part of that process.

The Attorney General says that does not compromise everything done by the royal commission, and also wants to include members in this House. This is the most extraordinary thing I have heard in years in this place and in another place; that is, we are being asked to agree in advance to an officer telling a pack of lies to the registrar. If I did that, I would be charged under the Criminal Code or under the Police Act and so would policemen and other people who did likewise. This subclause, like clause 22, has no place whatsoever in a royal commission that is trying to arrive at the truth, when it is based on an official lie.

Clause put and passed.

Clause 24: Duties of agencies and organisations -

Dr CONSTABLE: I am particularly interested in an explanation of clause 24(2) and the destruction of documents. I want to be absolutely clear what is proposed, although I think I understand. Clause 24(2) states -

> On being directed by the Commissioner to cancel an assumed identity, a chief executive officer or chief employee, is authorised and required to cancel any evidence of identity or entry in a register or record provided or made in respect of the assumed identity.

Any evidence of the assumed identity that is held within a department where this subterfuge is taking place is to be destroyed. I imagine the thinking behind that is to protect the person who assumed the false identity. I want to be absolutely sure that the records of the false identity held by the commission will not be destroyed.

Can the Attorney General confirm that I have understood correctly that the only documents that will be destroyed are those in the department or the authority where the person with the assumed identity has gone, that the same information or information about the assumption of the false identity will not be destroyed when it is held by the commission, and that we are not sanctioning the destruction of any royal commission documents under clause 24(2)?

Mr McGINTY: Clause 24(2) relates to agencies other than the royal commission. In the example that we were just talking about, it would relate to the Registrar of the Registry of Births, Deaths and Marriages if the document was a birth certificate, so there would be a direction from the royal commissioner to cancel it.

Dr Constable: Would the false birth certificate that was issued be held and kept by the commission? If an officer of the commission has been given a false birth certificate, would that piece of paper not be destroyed but only the record of it in the Registry of Births, Deaths and Marriages?

Mr McGINTY: I can go no further than the words used; that is, the chief executive officer or chief employee, who would be in this case the registrar, is authorised and required to cancel any evidence of identity or entry in a register or record provided or made in respect of the assumed identity. An individual is not capable of dealing with a document in his possession as a departmental document.

Dr Constable: Do you consider the birth certificate in our example to be a document of the commission?

Mr McGINTY: I think it most probably is a document of the commission, yes.

Dr Constable: I want an assurance from you that no royal commission document will be destroyed and that this clause does not allow royal commission documents to be destroyed.

Mr McGINTY: This clause does not make that provision, but I will not give you the first assurance that you seek.

Dr Constable: They cannot be destroyed under the law as it stands. The Attorney General will have to come back and ask us if the royal commission can destroy documents, just like he tried in 1992.

Mr McGINTY: Maybe. Could I draw the member's attention to clause 27 which requires the royal commissioner to report any assumed identity to the Attorney General and for the Attorney General to report that matter to each House of Parliament? May I also refer the member to clause 50? This provides for the regulation-making power that makes provision for the custody or destruction of the records of the commission when the commission ends. That is the reason I cannot give the member the assurance she sought.

Mr PENDAL: History has a habit of repeating itself. I recall in the dying days of the 1992 session being in another House and moving an amendment to the Bill that dealt with the destruction of records. It was an accompanying piece of legislation for the royal commission documents for WA Inc. I suspect that the reason that the member for Churchlands has raised this issue is that on that occasion, the Government of the day, of which the Attorney General was a member, and the royal commission, wanted the right to destroy the royal commission records arising out of WA Inc. In the upper House, as the shadow minister, I moved some amendments to prevent that from occurring. The Bill came back to this House. The Lawrence Government had a bit of a problem because it was four short of a majority. This House had four Independents, two of whom were of a Labor disposition and two of whom were of a Liberal disposition. This brought about an informal conference of managers. This House was adjourned and so was the other place. We met upstairs in what is now the select committee room, and sought to clarify the content of my amendment, which was in all respects intended to protect the records of the royal commission.

Some of the untruths that were peddled out of the royal commission as to why we needed to destroy those records defy description. I was pummelled on the front page of *The West Australian* because it was said that by keeping records, we were putting at risk the lives of particular witnesses. It was an absolute load of rubbish, as the member for Churchlands has just reminded me. One was asking at that stage what was the State doing with all of its other powers to protect the interests of witnesses who had appeared at the royal commission. Falsities were peddled out of that place by people, including one by senior counsel, that made me understand that we could not necessarily rely on people in high places to tell the truth.

The four Independents in this place, of whom I was not one, very properly supported the opposition Liberal and National Party amendment that came from the other place and protected those records. That ultimately became

the basis of some of the records legislation that has been passed in this Parliament. The member for Churchlands raises the question of a birth certificate applied for by someone telling lies on behalf of the royal commission, which is a very real prospect. I am pleased that at least in this part of the debate the Attorney General is decent enough to say that he does not know the answer to that. He could have said that it would be protected, and we might have gone on to the next clause.

Other laws passed since that royal commission protect all such documents and records, yet we are in the ironic position of the member for Churchlands having to pose that question in the first place. We are in the even more ironic position of having the Attorney General, who is handling the Bill, not knowing the answer to the question. We can see from all of that that we cannot necessarily depend on people who are associated with royal commissions to be altogether frank in giving the truth of these matters. If people are a little cynical about some of the legislation introduced into Parliament, members might understand because there is a history to it all.

If we get to the point where this royal commission is allowed to illegally dispense with records, it will be in the face of legislation that we have passed and which has been given assent in the past 12 months in Western Australia.

Clause put and passed.

Clauses 25 and 26 put and passed.

Clause 27: Report to Attorney General -

Ms SUE WALKER: The clause states that the commission may furnish to the Attorney General a report. Is that the commissioner's choice or the Attorney General's?

Mr McGINTY: The member for Nedlands is quite correct in that the report by the royal commissioner to the Attorney General is discretionary and not mandatory. The nature of the material that the commission is to provide in those reports is also for the commissioner to determine. Essentially this provision, which might be criticised for being rather weak because it is discretionary, gives the commission the power to retain the discretion to omit any operational information or information that might otherwise prejudice its future activities. That is the reason it has been left as a discretionary power, but I am sure the royal commissioner, within the limits of his operational capacity, would want to comply with it.

Dr CONSTABLE: Clause 27 relates to a report to the Attorney General. As I read it, and on the surface, it looks like a very happy little set of circumstances in which the commissioner may furnish a report to the Attorney General relating to the assumption of identity and the Attorney General must then tell Parliament about it. That seems out of keeping with everything else in part 6. I cannot imagine what useful information could possibly come forth to the Parliament from the commission through the Attorney General. I would like the Attorney General to walk us through this. What is the House likely to see? Will it actually happen, because it says the commission may furnish such a report? Perhaps the commission will decide not to furnish the material. If the Attorney General brings a report to the House, what will it learn from it? How long after the event will the House learn about it? What use will it be, and what is the purpose of this? Is it to provide some sort of check and balance on the commission? The commission is being given enormous powers. Is this at last some sort of check on the behaviour of the commission, or is it some sort of Clayton's sop to the rest of us here, that something good will come out of this?

Mr McGINTY: The information provided will depend upon the view taken by the royal commissioner. I cannot answer that question because I am not the royal commissioner.

Dr Constable: What are you expecting? You are the Attorney General, and he is sending it to you.

Mr McGINTY: I expect that if the commissioner thinks it is appropriate, he will advise me of information relating to assumed identity approvals that he has issued.

Dr Constable: Will he say, for example, "Dear Attorney General - this month we have had seven"? What would you like him to tell you? You are the Attorney General, and this is your legislation. What do you want him to tell you? You have put it in here.

Mr McGINTY: I would like the royal commissioner to do his job with the greatest measure of efficiency and effectiveness possible, and for me to play a role supporting that. That is what I said at the outset.

Dr Constable: That is not what I am asking. I am asking about clause 27.

Mr McGINTY: If the member will allow me to answer her question, I will explain that that is the premise on which the specific answer I am about to give her is based. If Mr Kennedy, as I am sure he would be naturally

disposed to do, makes a report giving the number, identity, purpose and effectiveness of assumed identities, that would be the full report. He would not do that if it were in any way at all to compromise either the individual with the assumed identity or the investigations and the gathering of evidence to present to the commission. It is a matter for him alone. I have no expectation, other than that he will attempt to comply with the spirit of this provision, to the extent that he will not be operationally compromised by doing so. I have no expectation beyond that.

Dr Constable: It seems to me that the House will not get very much useful information out of this. I cannot see the point of it, because I have the same concern as the Attorney General for the safety and security of these people who go undercover and act in secrecy. I cannot imagine any information that could be of any use to anyone being sent to the Attorney General or coming before this Parliament because the safety and security of those people should be uppermost. We will not find out anything of any great use.

Mr McGINTY: I would rather wait and see. There is a clear view -

Dr Constable: Do not hold your breath, because I do not think you will get anything useful.

Mr McGINTY: I will hold my breath. I have great confidence in Geoffrey Kennedy to do the job. He will give us the information that he is capable of giving within the context of the inquiry.

Dr Constable: I cannot see any point to this clause at all.

Mr McGINTY: I am not as cynical as the member for Churchlands.

Dr Constable: I am not even being cynical about it. I am being very serious about the security of the operational people involved in this, and I cannot for the life of me see that anything useful could be made public through the Attorney General and the Parliament, by the commissioner.

Mr McGINTY: Time will tell whether that view is correct. The member might well be proved correct. I do not have a view of what the commissioner should do, because it will be a matter for him in his discretion to determine, and I do not wish, in any sense to prejudge or pre-empt that.

Clause put and passed.

Clauses 28 and 29 put and passed.

Clause 30: Commissioner may authorise integrity testing programmes -

Mr PENDAL: I intend to seek a division on this clause when it is put to the vote. I have no doubt about the outcome, and I will not spend a lot of time on it. The sort of so-called principle that goes into clause 30, went into clause 22, which dealt with assumed identity. Many of the arguments in principle that I mounted in relation to clause 22, I would include in clause 30, and that is the reason I will call a division. The clause reads, in part -

> (1) The Commissioner may authorise an officer of the Commission or another person to conduct a programme (an **integrity testing programme**) to test the integrity of any particular police officer or class of police officers.
>
> (2) An integrity testing programme may involve an act or omission (by a person who is participating in the programme) that offers a police officer whose integrity is being tested the opportunity to engage in behaviour, whether lawful or unlawful, in contravention of the principles of integrity required of a police officer.

All this is done in the name of testing the integrity of police officers. It seems to me that an act which is improper today cannot be made proper tomorrow simply because the Parliament says it wants to turn the torch on some particular person.

I put to the House a hypothetical test of integrity. Suppose, police officers are brought in from another State. I understand they are being brought in to help track down dishonest conduct for this royal commission, which is fine. These officers will come into Western Australia and effectively take part in things such as the assumed identities and police integrity testing programs. In effect they are being asked officially to tell lies. One such officer returns home, and three months later he is giving evidence on oath as part of the New South Wales or Tasmanian police forces, in a criminal case. The prosecuting counsel reminds the officer he has sworn to tell the truth, and then asks the officer if he has ever told a lie in the course of his duties. What will the officer answer? How will he answer that question? It will be a dilemma for this officer, if he has any integrity. Does he tell the court in New South Wales or Tasmania that he has always sought to tell the truth? He is then reminded that he

did not tell the truth in Western Australia. He actually told a lie. He replies that that was not really a lie because the law in Western Australia said that it was acceptable for him to tell a lie on that occasion to the royal commission. A New South Wales or Tasmanian defence lawyer would have a picnic with that bloke; they would have him laughed out of court. They would say, "So you have told lies under oath; you have sworn out false documents in another jurisdiction. Why should we now believe you are telling the truth in a jurisdiction in which you are a sworn officer?" Can members see the dilemma? The person has told a lie, all in the name of testing some other poor copper's integrity. What a load of codswallop! He took part in an officially sanctioned lie. No member can argue that. I intend to vote against and to divide on this clause because it will undermine the royal commission's credibility.

Mr BIRNEY: I will support this clause, albeit with a degree of reluctance. I listened closely to the member for South Perth and I have some sympathy for his comments. I draw the attention of the House to clause 30(1), which provides -

> The Commissioner may authorise an officer of the Commission or another person to conduct a programme . . . to test the integrity of any particular police officer or class of police officers.

The last part concerns me. It follows that a royal commission operative may move around the Police Service testing the integrity of people who have been law-abiding, hard-working, decent police officers for many years. For whatever reason, when faced with an opportunity, they might have foolishly accepted an offer and, in doing so, ruined a considerable career. It would be more prudent for clause 30(1) to provide that the commissioner may authorise an officer of the commission or another person to conduct a program to test the integrity of any police officer or class of police officers suspected of being involved in corrupt or criminal activity. In doing that, we would ensure that we were testing the integrity of only those individuals who had attracted the attention of the commission for suspected breaches of the Criminal Code. If such an amendment were passed, the commission would not need to conduct an integrity test upon an officer who had never attracted the attention of the royal commission.

I intend to support the clause because it is a necessary tool in exposing corrupt police officers. However, as it is drafted, the clause does not achieve what is intended. The intent is to provide the power to deal with only those police officers in Western Australia who have attracted the attention of the royal commission because of suspected involvement in corrupt or criminal activities. I would like to hear the Attorney's opinion on that subclause and my comments. I will support the clause, albeit with a degree of reluctance.

Dr CONSTABLE: I also oppose this clause. I am aware of the use of entrapment in police services, particularly in New York in recent years. I attended an anticorruption conference in South Africa some years ago at which I saw a video of a successful entrapment technique used by police in London. In those circumstances, entrapment is used as a disciplinary technique within a police service. I can live with that. However, to extend those powers to this royal commission is unethical and goes against all our principles of democracy. I cannot support this clause. I urge other members to think very seriously before they support giving these incredible powers to the royal commission.

Mr McGINTY: These measures are based on section 207A of the New South Wales Police Service Act. That provision enables the doing of things that would otherwise be unlawful as a means of running a very controlled test of the corruption of particular police officers.

In response to the member for Kalgoorlie, a controlled operation, which is what we are talking about, is defined as one -

> (a) in which one or more officers of the Commission participate for the purpose of obtaining or facilitating the obtaining of evidence of corrupt conduct or criminal conduct by a police officer . . .

Mr Birney: It does not specifically say that the officer is suspected of being involved in corrupt or criminal conduct.

Mr McGINTY: If the purpose is to obtain evidence of corrupt or criminal conduct by a police officer, one could go on a general fishing expedition everywhere. The purpose is to obtain that evidence.

Mr Birney: You have made my point. This clause will allow royal commission operatives to go on a general fishing expedition. That may well lead to the entrapment of a person who has been a law-abiding officer for many years.

Mr McGINTY: Subclause (1) provides -

> The Commissioner may authorise an officer of the Commission or another person to conduct a programme . . . to test the integrity of any particular police officer or class of police officers.

One would normally do that on the basis of concern about an officer's integrity.

Mr Birney: Normally that does not cut it. It does not say that in the legislation.

Mr McGINTY: It does not provide that police officer A must be under suspicion before these powers are invoked.

Mr BIRNEY: Why not?

Mr McGINTY: We would then get into arguments about the level of suspicion.

Mr Pendal: That makes it worse.

Mr McGINTY: I do not think it does.

Mr Pendal: An old conservative like you would not.

Mr McGINTY: I will tell the story about the member for South Perth's rubbing my thigh at the Marist Brothers college at Bunbury.

Mr Pendal: It was your ankle last year and your knee last week.

Mr McGINTY: Next time it will be my upper thigh.

Mr Pendal: We should draw a line.

Mrs Edwardes: I will not ask the obvious question.

Mr Masters: What was that story about Sister -

Mr McGINTY: The member for Vasse was probably there.

Mr Pendal: I would stick with this if I were you. You are getting into very dangerous water.

Several members interjected.

Mr McGINTY: We do not want an additional threshold of establishing a reasonable suspicion that a particular police officer is behaving corruptly. It is a power which the royal commission will be able to use, but which I imagine it will be reluctant to use in the absence of any suspicion. The Government did not want to introduce jurisdictional or threshold issues that needed to be overcome before the power could be used. The member is correct in saying that clause 29 requires the commissioner to specify a raft of limitations before he authorises the integrity testing of a police officer or class of police officers. It therefore needs to be narrowed down to a particular group rather than the Police Force as a whole.

Mr Birney: Clause 29 refers to the technical nature of an operation, not to who would be the subject of that operation.

Mr McGINTY: I might have been in error, as clause 29 refers to controlled operations and clause 30 to integrity testing. Clause 30(3) specifies the authorisation from the commissioner. Clause 30(3)(e) states that the authorisation must -

> specify the nature of the particular activities in which the persons specified in the authorisation are authorised to engage;

That paragraph presupposes a belief that there is an issue there; for example, if the drug squad planted drugs, or something of that nature.

Mr HOUSE: This is legislation without integrity or honour. If we as a Parliament accept the principle espoused in this legislation, what will we do the next time we are faced with the dilemma of a person lying to entrap another? Will we continue to allow that principle to be embodied in other legislation? Why should this royal commission be so different that we should allow ourselves, as a group of responsible people, to pass legislation to let a police officer lie, when we have all been brought up to respect and understand authority, and certainly encourage our children to respect people in positions of authority? Yet, we as elected people are suddenly saying that in this case it will be all right to lie. Where will this end if we start to let that standard drop? I repeat: what will be the next piece of legislation? Will a Police Act amendment Bill be brought into this Parliament to allow police to lie? If it is good enough to do it while there is a royal commission in place, surely the Attorney General could argue for the implementation of a permanent entrapment policy. We would then

perhaps not need a royal commission. If we were to allow that to happen ad nauseam, we would not need legislation for a royal commission. I as an elected member of Parliament cannot accept that we can ask a person who has been put under oath - I do not know exactly the police oath but I have on a number of occasions seen police officers take it - to honour and uphold the law and to be a respectable citizen who will be judged by others as being responsible, to tell lies under oath in court. It is beyond comprehension that we would even contemplate supporting this legislation; it makes no sense at all. I am surprised, frankly, that the press gallery is not full of journalists. I will be surprised tomorrow if the press gallery is not full if this Parliament passes this Bill. I can imagine a headline that says the Parliament passed legislation allowing someone to lie in court. Under what circumstances? It will be under the circumstances of entrapping another police officer. On what evidence? It will be on evidence that someone said that a person might be corrupt and he should be tested. How hard will he be tested? To what degree will that test go? What amount of temptation will be placed in front of that police officer before he buckles and gives into that temptation? This legislation is without principle or integrity and cannot be supported.

Mr SWEETMAN: Clause 30 carries forward a whole lot of provisions from previous clauses in the Bill. I ask the Attorney General to draw some similarities between what he is seeking to achieve through these clauses and the circumstances of Peter Coombs and his group of people who tried to catch bad guys. The Attorney General is now trying to turn police officers against each other; entrapment has been referred to. It will be a wicked irony if Peter Coombs ultimately gives evidence before the royal commission and fails the integrity test in clause 30 when the only integrity test in his life that he failed was when it was presumed that he had done certain things when trying to catch bad guys. It appears that the world has imploded and turned in on itself to an extent, in that we are now trying to turn in on itself the law enforcement body in this State and asking officers to dob in other officers caught by methods of entrapment. I ask the Attorney General to compare the situation in which Peter Coombs and his squad were caught - for which they were suspended - and other officers, perhaps the same officers, appearing before the royal commission and turning against each other.

Mr McGINTY: I thank the member for Ningaloo for the question. I will start by way of analogy. The High Court in the case of Ridgeway dealt with a situation in which police officers imported narcotics that were then purchased by the defendant in that case. The principle enunciated in the High Court was that evidence obtained by police officers acting unlawfully would be excluded as evidence - in that case it was the bringing in of narcotics to the country. Officers cannot therefore entrap or behave unlawfully to gain evidence of unlawful behaviour. That is essentially the principle at stake here. This series of issues seeks to allow officers to adopt assumed identities, in which police behave unlawfully by assuming an identity that they are not, not unlike covert or undercover operations; secondly, they will be able to participate in controlled operations; and, thirdly, integrity testing programs will be aimed at testing other police officers. Before my time ran out on the question posed by the member for Kalgoorlie, I was about to say that if an attempt were made to tempt drug squad detectives suspected of pocketing drugs or money seized in raids to do it again, the evidence would be inadmissible in court and the act would be considered an unlawful act. That scenario would facilitate the gaining of evidence, which is the aim of the provision in the clause. It is an unusual power. However, in response to the member for Stirling, a provision exists in the New South Wales Police Service Act that those sorts of things can be done.

I make the point that it is not an unprecedented power and is not foreign to our law dealing with police forces, particularly the New South Wales Police Service, in which there have been endemic problems for a long time, some of which we have seen dramatically portrayed on television with money being handed over in stings of that nature. That is the type of situation at which this clause is aimed. I appreciate that some members believe that we should not authorise dishonesty in our legislation or use dishonesty to trap dishonesty. I believe we should be able to use that type of dishonesty to catch out dishonest cops, because the sooner we get rid of them the better.

Mr HOUSE: I am even more concerned. The Attorney General has just confirmed what I suspected. I must admit that I did not know that that type of clause is in the New South Wales Police Service Act. However, the Attorney General is saying that the clause is okay because it is in the New South Wales Act. I ask hypothetically: what would we do as a Parliament if we wanted to put that clause into our Police Act? He said that it is already in the New South Wales Act and therefore it must be all right. I presume the Attorney General accepts the principle in this legislation. I presume from that - I hope he denies it - that he then intends amending our Police Act to allow it to happen. If he says he will not, why not? What will be different? Why should we do it for only a short period if the principle is right? If the principle is wrong, members must vote against it. It is a very simple thing. Members either know right from wrong or they do not. This is wrong. If the Attorney

Generals says it is all right in New South Wales and it is all right in this Bill, we are setting a very dangerous precedent. I repeat, this is the sort of principle that we cannot accept. The Attorney General has made me more concerned than I was before. We cannot accept this sort of principle and defend it publicly. If it applies to police officers it could apply equally to customs officers or other people in positions of authority. There are plenty of them. Just look at fisheries inspectors, who have huge powers. Will we use entrapment on them? Will we use it on customs officers? Once the principle of entrapment is accepted, when does it stop? It is not supportable.

Mr PENDAL: I want to reinforce an earlier comment, and I am delighted to hear some of the comments made recently. One of the worst elements of what the Chamber is being asked to do is that it is so overt and brazen. The clause refers to the Chamber endorsing action that is false and misleading. It is not as though the clause even tries to be subtle or silent or give covert support for the practices of entrapment and submission to police integrity testing. It is out in the open. The words will be embodied in law that it will be acceptable, in some circumstances, to entrap someone and to be false or misleading. By extension, what does that mean? It means to be slippery; it means to use subterfuge. It means to use dishonest practices in order to justify clamping down on another form of dishonest practice. That is how brazen and overt it is. The clause has references to activity that is false and misleading but which will be all right. I repeat what I said before. I do not believe it is all right. I repeat the remarks I said earlier. We teach children and we try to abide by the notion that some things are right and some things are wrong; some things are a lie and some things are the truth. Notwithstanding what the Attorney General has said, I cannot believe that Justice Geoffrey Kennedy is enthusiastic about this. Everything about him and his public life on the bench points to finding this sort of conduct anathema. All these circumstances are combining and conspiring to ask 57 members of this Chamber to say that by acting falsely and in a misleading way - therefore, by extension, in a dishonest way - it is okay for us to demand that of a royal commission officer. It is legislation without integrity and it should be voted down. I am happy to vote against the clause.

Mr AINSWORTH: My unease about this clause is growing by the minute. Having listened to members' speeches over the past 10 minutes it seems that the principle embodied in this clause is the old phrase, the end justifies the means. It would be easy to argue that people want a royal commission to achieve results and that genuinely corrupt police officers should be identified so they can be removed from the system. People want the Police Service cleaned up. No-one would argue that that is what should be done. If, by the process this clause suggests, we achieve an outcome that puts notches on someone's belt or creates a statistic that shows entrapment has identified a number of officers, some officers caught could have been completely honest officers who, under normal circumstances, would continue to be so. It is only the level of enticement in an entrapment that makes the difference. The temptation could be extraordinarily high and beyond what a police officer is normally faced with in his normal duties. It will not help to identify officers who are routinely corrupt. It will identify only those officers who, being human, succumb to temptation when the stakes are high enough. Is that cleaning up the Police Service and removing the officers who cause a problem? I suggest that it is not. It will make an illegal act acceptable. That is not something members should condone.

In my earlier remarks I talked about our general support for the legislation. We should give the commission adequate additional powers over and above those given when the commission was established. The extension of the powers should not include something that is currently illegal and, in the way suggested by the legislation, immoral.

Mr DAY: I will make some brief comments. I have not heard all the debate but it is obviously a contentious proposal. Potential entrapment and integrity testing is not something that should be authorised lightly by any Parliament. A number of members clearly feel uneasy about legislation that will help entrap police officers in a way that does not apply to any other members of the community. To some extent, I share those concerns. From my observations about the royal commission in New South Wales and some of the issues when I was the Minister for Police, serious concerns were raised about the conduct of some police officers on some occasions. Police officers are in a position of very substantial trust. They have substantial powers over members of the public. They have powers of arrest and detainment and the power to require information to be provided. The community needs to be assured that those powers will be used very carefully and responsibly by police officers in whom the community places its trust. When that trust is abused in a serious way by officers indulging in corrupt activity it is necessary that extraordinary powers be used to try to expose those officers. Such officers abuse the trust given to them by the Parliament and the community. However, it is not for me to defend the Attorney General and his legislation. From my experience I can say that this sort of power is necessary on some occasions to deal with some of the worst excesses and behaviour unfortunately engaged in by some police officers on some occasions. I hope no police officer in Western Australia will be caught by this sort of

legislation. They would be pretty silly if they were, but this was seen in the New South Wales royal commission. On a celebrated *Four Corners* program we saw clear vision of police officers in the front seat of police vehicles exchanging money, and I can recall in general terms the comments that were made by two obviously very corrupt police officers. That sort of behaviour needs to be dealt with and exposed.

I seek some comment from the Attorney General, if he is able to provide it, and ideally some assurance that he sees this power being used for only the more serious transgressions by police officers rather than to entrap officers who may be involved in some minor indiscretion or who are caught up in improper behaviour through some inadvertent procedure. If the Attorney General is not able to provide that assurance, I place on record a request to the royal commissioner, Geoffrey Kennedy, that he make some statement at an appropriate time that this power will be used only for the more serious cases and concerns of possible corruption or very serious improper conduct, rather than to catch police officers who are generally doing the right thing and who might inadvertently be caught up in some wrongdoing or involved in some minor indiscretion. It should not be used for that purpose. I seek some assurance from the Attorney General; if he is not able to provide it, then I seek such an assurance from the royal commissioner at some time in the future.

Mr McGINTY: Police corruption can take the form of being provided with free meals at a local restaurant and perhaps going through a red light. They can be minor matters. To my way of thinking, in the context of a royal commission that is due to report by August of next year, it would not be an appropriate use of those powers to pursue police over those sorts of minor matters. I will make this point, which goes to the member's call for the royal commissioner to make a statement on the use of those powers: it is strictly up to the royal commission how it uses the powers it is given, but Geoffrey Kennedy is well known to most, if not all, members in this House. He is a man of great integrity and purpose, and that is where any comfort lies and assurances can be given. I do not seek to limit the way in which the royal commission might use its powers. It is appropriate that that be left to the royal commission, but I would be surprised and disappointed if they were used to pursue police over minor, trivial matters. They are the sorts of powers that should be used for substantive issues of corruption.

Mr Day: Do you believe it would be appropriate for the royal commissioner to make some comment?

Mr McGINTY: I do not seek to do other than support the royal commissioner. If he thinks that is appropriate, that is a matter for him.

Clause put and a division taken with the following result -

Ayes (36)

Mr Andrews	Mr Edwards	Ms McHale	Ms Radisich
Mr Birney	Dr Edwards	Mr McNee	Mr Ripper
Mr Bowler	Mr Hyde	Mr McRae	Mrs Roberts
Mr Brown	Mr Johnson	Mr Marlborough	Mr Barron-Sullivan
Mr Carpenter	Mr Kucera	Mrs Martin	Mr Templeman
Mr Day	Mr Logan	Mr Masters	Ms Sue Walker
Mr Dean	Ms MacTiernan	Mr Murray	Mr Watson
Mr D'Orazio	Mr McGinty	Mr Omodei	Mr Whitely
Mrs Edwardes	Mr McGowan	Mr Quigley	Ms Quirk *(Teller)*

Noes (8)

Dr Constable	Mr House	Mr Sweetman	Dr Woollard
Mr Grylls	Mr Pendal	Mr Waldron	Mr Ainsworth *(Teller)*

Pairs

Mr Barnett	Dr Gallop
Mr Board	Mr Hill
Mr Marshall	Mr O'Gorman
Ms Hodson-Thomas	Mr Kobelke

Clause thus passed.

Clause 31: Effect of authorisation -

Mr BIRNEY: I draw the Attorney General's attention to clause 31(2), which states -

> In any criminal proceedings, no evidence is to be excluded and no proceedings are to be stayed only by reason of the fact that a person who participated in an authorised controlled operation or authorised integrity testing programme was not authorised to participate in the operation.

I am at a loss to understand where the Attorney General is going with this clause. My understanding is that this clause will allow evidence to be used in criminal court proceedings that has been gathered by an unauthorised person. The rest of the Bill is clear and strict regarding the authorisation of operations, including the nature, times and dates of those operations, but most importantly -

The DEPUTY SPEAKER: There are far too many conversations going on in the Chamber for us to adequately hear the member.

Mr BIRNEY: The principles throughout this Bill deal fairly clearly and consistently with the authorisation of an operation and what that operation may involve, including the times and dates of those operations and, most importantly, with the people who are permitted to take part in those operations. However, clause 31(2) alleviates the need for a person to be authorised before participating in an operation. That is tantamount to pandemonium. Basically, that clause provides that the evidence gathered by that unauthorised person can be used in a court of law. Why is there a need to ensure that evidence gathered by an unauthorised person can be used in a court of law? Why are the proceedings not stayed as a result of an unauthorised person being involved in an operation?

Mr HOUSE: This clause and the next two or three clauses are flow-on clauses from clause 30, which the House has debated extensively and which the National Party and others opposed. Consequently, we oppose the next three or four clauses that flow on from clause 30. We do not intend to waste the time of the House by dividing again. However, I make it clear that we do not agree with these clauses just as we did not agree with clause 30, which is the principal clause that enacts them.

Mr McGINTY: Subclause 31(2) deals with an authorised integrity testing program that is in place. Under clause 30(3)(c), the royal commissioner will specify the names of any persons who are authorised to participate in the program. It could well be the case that, inadvertently, in addition to the six people who have been authorised to participate in the program, someone else gets caught up in the proceedings. The evidence gained might be inadmissible because no authorisation had been given for that one person to be there. The clause deals with cases in which someone inadvertently gets caught up with the proceedings, and the defence counsel could argue that the evidence should not be admissible because one person involved was not an authorised participant in the program whereas the other six people conducting it were. The provision does not give legal or admissible status to evidence that is unlawfully obtained.

Mr Birney: But that would be the net result.

Mr McGINTY: No, because it does not say that evidence is admissible if it has been obtained in a way that has not been authorised.

Mr Birney: That is what it says.

Mr McGINTY: No, the controlling words are that -

> . . . no proceedings are to be stayed only by reason of the fact that a person . . . was not authorised to participate in the operation.

Evidence collected unlawfully by a group of unauthorised people would be struck down. The use of illegally gained evidence is not admissible in a court. I gave members the example of the High Court case and the Ridgeway principle. This clause deals with a case in which the evidence gathered is otherwise completely lawful except for the fact that one person who should not have been there tagged along. That would not make the evidence inadmissible. However, for example, if evidence was inadmissible because no authorisation was given in the first place, that would not make it admissible. It is only by reason of the fact that a person who participated in an authorised controlled operation or an authorised integrity program was not authorised to participate in the operation. The clause deals with someone who gets caught up with an operation that is otherwise authorised and evidence that is otherwise lawfully obtained. If the evidence was tainted and therefore not admissible for any other reason, that would strike it down anyway. The clause deals with just that one situation to make sure the evidence is not rendered ineffective.

Mr BIRNEY: I do not want to dwell on this clause. However, notwithstanding the advice of the Attorney General, it still appears to be a loose clause. I accept the Attorney General's advice that the clause is designed to deal with a situation that may arise when perhaps five people investigate a particular incident and four of those people are authorised by virtue of this Bill to gather evidence but one is not. In that incident, the evidence would

still be admissible. That is a reasonable assumption on the part of the Attorney General. However, I put it to him that at the end of the day it is only an assumption. I will wait until the he has finished speaking with a colleague because I would like him to answer a question that arises from clause 31(2).

Although I accept the Attorney General's position regarding multiple people involved in an investigation, one of whom is unauthorised, what would happen if an investigator were overzealous? An overzealous operative who investigates on behalf of the royal commission would know that, regardless of whether he was authorised to collect evidence, it would be admissible under clause 31(2). How does the Attorney General propose to deal with that overzealous investigator who is unauthorised to collect evidence? Under this Bill, he will still be permitted to admit evidence in court proceedings.

Mr McGINTY: The evidence from the overzealous investigator who was dealing with an unauthorised activity would not be admissible in the circumstances the member gave.

Mr Birney: Why would that not be admissible?

Mr McGINTY: Clause 31(2) requires that an authorised controlled operation or an authorised integrity testing program be in place. The authorisation provides that a controlled operation or integrity program can be conducted. If that were not in place, the evidence would have been gained unlawfully and would not be admissible.

Mr Birney: If a program is in place and the overzealous investigator is not a person authorised to carry out that program, he or she can still collect evidence and have it made admissible in court even though he or she is not authorised to do so.

Mr McGINTY: It depends on the nature of the evidence. If a controlled operation had been authorised and the individual went out on a frolic of his own and did his own thing to gather evidence, that would render the evidence gained inadmissible. It would have been unlawfully obtained because he was doing his own thing and was not part of a controlled operation. It depends on the nature of the evidence, what the operative did to get the evidence, and the activities authorised by the controlled operation. It is hard to give a definitive answer to cover every situation. A lot depends on the facts. The element of good faith would be an important aspect. In essence, if one person who is not authorised gets caught up in an operation in which other officers are authorised, that in itself would not render that evidence inadmissible. The advice I have received is that if a person were doing his own thing, that could render the evidence obtained inadmissible. However, it would depend on the circumstances.

Clause put and passed.

Clause 32: Protection from liability -

Mr BIRNEY: I draw the Attorney General's attention to clause 32(1), which states -

> Despite any other law -
>
> (a) a person who is authorised to participate in an authorised controlled operation or authorised integrity testing programme is not criminally liable for any act the person does, in good faith and in accordance with the terms of the authorisation, in the course of the operation or programme . . .

At what stage do we draw the line? At what stage do we say that this operation must come to a halt because it will seriously impact on an innocent individual? Basically, this clause provides that a royal commission operative undertaking a covert operation will be permitted to break the law in the course of undertaking that covert operation and will not be subject to any form of retribution. Would that individual be allowed to be involved in, for instance, a serious assault to prove his bona fides to an organised crime group? I am reminded a bit of *Stingers*. I do not know whether the Attorney General has seen that show on television.

Mr McGinty: Members on this side of the House do not sit in the bar and watch television while the House is sitting.

Mr BIRNEY: That is not what I am told! If I think of *Stingers,* I can pose a couple of questions that relate directly to the legislation. I am reminded of the episode in which an undercover police officer was attempting to infiltrate an organised crime operation and, to prove his bona fides, he had to belt the hell out of another individual. I would not expect a royal commission investigator to do that, but it is important that legislation prohibits an individual from doing that. From my reading of this part of the Bill, the investigator who has

assumed an identity may be able to commit a serious assault and not suffer any retribution under the law. Where does it stop? At what stage does the investigator say that he will pull the plug and not engage in this sort of criminal activity because it has gone too far?

Mr McGINTY: The answer to the question raised by the member for Kalgoorlie relates to clause 30(3)(e), which requires the commissioner to authorise in writing the nature of the activities in which the persons specified in the authorisation are authorised to engage. In other words, the royal commissioner may say that the person is authorised to buy and sell drugs, to steal money and to do whatever. To attract protection from criminal liability, clause 32 requires the operative to act, first, in good faith; secondly, in accordance with the terms of the authorisation; and, thirdly, in the course of the operation or program. The royal commissioner could give an authorisation to an undercover person to do a range of things.

Mr Pendal: Someone telling lies about his identity. Does that help?

Mr McGINTY: He could do that. I cannot see Commissioner Kennedy giving someone authorisation to commit grievous bodily harm. I am not saying that this law will prevent him from doing that, but I cannot see it happening. That comes back to the royal commissioner's specifying the nature of the illegal activities in which the person can engage. It is more likely to be found in financial and drug-type transactions than in the case of assault. Although it is not excluded by the Bill, I cannot envisage the royal commissioner authorising a person to murder someone or to commit an act of paedophilia, an act of rape or any other act of violence. If he did, it would attract protection from liability. However, the prospect of that occurring is remote.

Mr Birney: Clause 29, the authorisation clause, provides that the authorisation would identify the controlled operation and would specify the nature of the controlled activities. That comes close to limiting the sorts of crimes an individual could become involved in. However, it would depend on the way the authorisation was written by the royal commissioner.

Mr McGINTY: That is exactly right. This legislation will be in operation for a little over 12 months for the purpose of this royal commission and we know the royal commissioner who will be issuing the authorisation. Theoretically, it could extend to those areas of extreme criminal violence that I have just spoken about. The likelihood of that occurring is so remote as to be fanciful. The legislation does not list certain criminal acts that will be okay; it will depend on the circumstances. If it is done and meets the requirements specified by the royal commissioner, who will control it, it will not attract criminal liability.

Clause put and passed.

Clauses 33 to 35 put and passed.

Clause 36: Section 4B inserted -

Ms SUE WALKER: Can the Attorney General take us through the tables?

Mr McGinty: No, I cannot.

Ms SUE WALKER: Why not?

Mr McGinty: If you have a question about it -

Ms SUE WALKER: I am asking the Attorney General what they mean. I am asking him to explain them.

Mr McGinty: What do you want to know about them?

Ms SUE WALKER: It is stated at page 28 -

> s.3(1) "Anti-Corruption Commission"

To which Act does section 3(1) relate?

Mr McGINTY: This amendment under part 8 seeks to insert into the Surveillance Devices Act provisions that are set out in this clause of the Bill. I refer to proposed section 4B(2), which states -

> This Act operates as if -
>
> (a) a reference in this Act to the Anti-Corruption Commission, other than in a provision listed in the Table to this subsection, included a reference to the Royal Commission;

The exceptions to that are set out over the page. Reference is made in section 3(1) of the Surveillance Devices Act and to the Anti-Corruption Commission. There is obviously no point in referring to the Anti-Corruption

Commission, because we seek the reference to be to the royal commission. The same thing applies to the definition of authorised person in section 3(1) of the Surveillance Devices Act.

Ms Sue Walker: In which Act is section 43(2)? To what Act does that refer?

Mr McGINTY: It is section 43(2) of the Surveillance Devices Act, which makes reference to the Chairman of the Anti-Corruption Commission. Similarly, the authorised person definition in section 3(1) includes a reference to the Anti-Corruption Commission. In section 9(2)(a)(iii), reference is again made to members of the Anti-Corruption Commission, and I imagine that section 15(3)(b) is the same.

Clause put and passed.

Clauses 37 to 44 put and passed.

Clause 45: Secrecy -

Mr PENDAL: I referred to this clause during the second reading debate. I put it to the Attorney General that unless this clause is amended, it will not do what he hopes it will do. Clause 45 states that an officer of the commission must not, directly or indirectly, make a record of any information, being information acquired by him or her in the course of the royal commission. That literally means that the person - an investigating officer or another officer of the commission - cannot take notes. He or she cannot record anything in a notebook. I am not necessarily happy with the clause, but I think it means that any officer must not do those things other than for the purpose of the royal commission. I will certainly not proffer a solution or an amendment. It seems to me that perhaps the Attorney General should pass over this clause at the moment and deal with it at the end of the debate. Unless that is done, every one of those investigating officers will have to commit all their interviews and other inquiries to memory, and I am sure that is not the intention.

Mr McGINTY: I thank the member for South Perth. He has picked up an error in the drafting. We are happy to insert an amendment stating "other than for the purposes of this Act". That would cover the situation. As I got to my feet, it was drawn to my attention that that is provided for further on in subclause (3). Before I sit down I will double-check that, because at first blush I had the same impression as the member has; that is, that there is a problem with the clause. It may be necessary to place that beyond any doubt. I indicate to the member for South Perth that there is still a problem with the clause, because paragraphs (a) and (b) of clause 45(1) place a prohibition on recording, divulging or communicating. In subclause (3), the exception to the prohibition does not include recording; it relates only to divulging or communicating. This is easily amended. I am told that if we were to amend subclause (3) by inserting the word "recording" -

Mr Pendal: That would make a difference.

Mr McGINTY: - that would fix the problem. Does that seem to the member for South Perth to cover the issue?

Mr PENDAL: It either needs that in subclause (3) or an amendment to clause 45(1) in the manner that I referred to earlier. The minister has suggested amending subclause (3) so that subclause (1) does not prevent, in this case, the recording, divulging or communicating of information. That needs to be strengthened by words to the effect "but does not prevent the recording"; that is, by someone making notes, using tape recorders or videos. Unless words to that effect are put in subclause (3), or unless subclause (1) is attended to, it will circumvent the clause.

Mr McGINTY: I move -

> Page 35, line 26 - To insert after the word "the" the passage "recording,".

That will solve the problem. I would have preferred subclause (1) to be more explicit. However, my amendment will achieve what is required.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 46 to 49 put and passed.

Clause 50: Regulations -

Ms SUE WALKER: I move -

> Page 38, lines 10 and 11 - To delete the lines.

The keeping of royal commission records is dealt with in the Royal Commission (Custody of Records) Act 1992 and the State Records Act 2000. I thank the member for Churchlands for alerting me to those statutes.

Mr McGINTY: The hour is late. So that we do not have to listen to the members for South Perth and Churchlands -

Dr Constable: You cannot stop us speaking.

Mr McGINTY: I know, but I am offering an incentive. The Government will support the amendment.

Dr Constable: Why?

Mr McGINTY: Because it is agreeable.

Mr PENDAL: I also want to get home quickly, but I will explain why this is a good amendment. I was not aware of this issue until the member for Churchlands drew it to my attention. The Parliament went down this track in 1992. The contentious issue was the destruction of the Royal Commission into Commercial Activities of Government and Other Matters records being left in the hands of the royal commission or its officers. That led to an extraordinary situation in which the two Houses halted business and conducted an informal conference of managers at which it was agreed that no-one, other than officers such as the state archivist, should have the authority to destroy state records. We have been invited by the Minister for the Arts and the Premier to attend the release of the 1971 state cabinet documents. That is as it should be.

We established in law in this House and in the other place only two years ago that no judge, royal commissioner or lawyer can make a decision to destroy records made on behalf of the State of Western Australia. That job is given to the person best qualified. We established 10 years ago that that was the state archivist. The State Records Act created the State Records Commission and gave a role to the Auditor General and one or two other people whose judgment on these matters could be trusted and who had a relationship at arm's length from the Government. That is appropriate. As drafted, this clause provided that the royal commission would have rights over the destruction of records that this Parliament determined only two years ago should not be given to anyone other than those who had control of the state archives and other officers appointed to supervise the destruction or retention of records. This amendment is very good, and I am pleased to hear that the Attorney General agrees. It is good that the member for Churchlands drew it to our attention.

Dr CONSTABLE: I thank the Attorney General for agreeing to this amendment, although I am very disappointed that we had to deal with it in the first place. I cannot believe that the Government tried to slip it in given that in 1992 we suffered great pain -

Mr McGinty: It was integrity testing to see whether you would pick me up.

Dr CONSTABLE: Slipping in a clause providing for regulations to govern the destruction of documents was extraordinary. I am glad it will be deleted and I hope we are never required to revisit this issue.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

House adjourned at 10.57 pm