

**CRIMINAL INVESTIGATION (EXCEPTIONAL POWERS) AND FORTIFICATION REMOVAL
BILL 2001**

Consideration in Detail

Resumed from 28 November.

Debate was adjourned after clause 43 had been agreed to.

Clause 44: When this Part applies -

Mrs EDWARDES: Last night I referred the amendment standing in my name, which is at page 9 of the Notice Paper. The amendment seeks to add some particularity to the provision for the general warrant, which is contained in clause 45. A general warrant is rarely hardly ever used in Australia, although it has been known throughout our history. It is a warrant to search, seize or enter without any specification of the place, the persons, the type of items to be seized and the like. It does not allow for any scrutiny of the compliance of officers who carry out the warrant.

For that reason, general warrants are not encouraged or well liked by the legal profession. I would suggest they are not particularly well liked by members of the community, because no certainty can be given to the execution of the warrant. Clause 45 provides for a very broad general warrant. An officer can do anything, search any place at any time, seize any documents or other items and can search any persons. There is no restriction on an officer when carrying out the warrant to search any individual on a property.

The purpose of the Bill is to provide exceptional powers. The safeguard under clause 9 is that the police, even with all their other powers, cannot get to that evidence or that person unless the commissioner is satisfied there are reasonable grounds for doing so. Powers under sections 564 and 711 of the Criminal Code cover what police can do without a warrant. There are powers in section 49 of the Police Act, the Misuse of Drugs Act and legislation relating to firearms. Each of those provisions has a level of particularity; for example, under the provisions covering the misuse of drugs and firearms, police can search persons. Police can also search someone if they are looking for jewellery stolen from a particular property. Those actions are not generally permitted under the Criminal Code. Under the provisions of the Police Act, police can stop and search a vehicle and also a person. They can do all that without a warrant.

People will refer to this provision as enabling search and seizure without a warrant, and technically under the wording of clause 45 it is without a warrant. However, such action needs the authorisation of the special commissioner. It is not as if police can carry out this function without having satisfied the special commissioner of all those requirements under clause 9. That is the safeguard.

I acknowledge that my amendment, by adding particularity to the clause covering search and seizure, somewhat limits police powers to carry out their special function under this legislation. It allows someone to test whether there has been compliance with the action.

Mr DAY: The member for Kingsley obviously has a great deal more of interest to say on the subject.

Mrs EDWARDES: We tossed around which was the better way to allow the special commissioner to add some conditions. Is there a requirement for the police officer to state specifically the persons or class of persons, the places or class of places, the articles or class of articles to which the order applies, to have a copy of the order on him and to produce it subsequently? Should we simply give the special commissioner the power to add any conditions he may see fit? I drafted the amendment to require a greater level of particularity, which prohibits the special commissioner from having the power to do anything and everything. Does the Attorney believe that will severely curtail what is being sought and why these powers are necessary as against the other powers that are already contained within the sections? Part of the public interest test in clause 9 requires that the information cannot be obtained or achieved within existing police powers. If this amendment is not suitable, the Attorney General may give consideration - prior to debate in the other place - to the special commissioner's adding whatever conditions he sees fit. This clause does not require the police officer to advise the owner of the place or of the goods that he has carried out the search - the person may or may not be there - and to give the owner a list of the items taken. That is a most unusual omission from this Bill. There should be some onus on the police, if this clause is passed in its current form and is not amended in the other place. The Bill should provide for the special commissioner to add conditions. The reason for doing this is to test what is done and what is presented to the special commissioner. The special commissioner can oversee the carrying out of that by the police officer, but there should at least be some requirement for the officer to present to the owner a list of the items that have been taken as well as identify that a search has been carried out. I move -

Page 21, line 5 - To insert after "exist" the following -

and the special commissioner has made an order that this Part applies.

- (2) An order under this section shall state the general nature of the offence that it is suspected has been or is being committed, and may impose such limitations as the special commissioner thinks fit as to the exercise of the powers including but not limited to -
 - (a) the persons or class of persons to whom it applies;
 - (b) the places or class of places to which it applies;
 - (c) the articles or class of articles that it applies to.
- (3) A person exercising these powers must carry a copy of the order when exercising them and shall endorse on the back of the copy the manner of its execution and shall deliver the endorsed copy of the order to the special commissioner within 3 days of the exercise of the power.
- (4) The copy referred to in subsection (3) need only be a true copy and need not be certified. It shall be sufficient where the powers are being exercised by a number of police officers if one of the police officers carries a copy of the order.
- (5) A person exercising the powers is not required to produce the order to any person other than a superior officer

Mr McGINTY: The purpose of this Bill is to enable the police to investigate organised crime, particularly serious offences, and to provide for enhanced power to enter, search and detain. Those powers are set out in part 4 of the Bill. My concern with the amendment moved by the member for Kingsley is that it may provide a basis for challenging the actions that are taken, because it seeks to place a range of constraints upon the police in the exercise of the powers given to them by the special commissioner. In particular proposed subclause (2) of the amendment provides -

An order under this section shall state the general nature of the offence that it is suspected has been or is being committed -

On the surface that sounds fine, because one should know, at least in a general sense, what is alleged to have been committed. To continue -

and may impose such limitations as the special commissioner thinks fit as to the exercise of the powers including but not limited to -

- (a) the persons or class of persons to whom it applies;

I presume that is discretionary and the special commissioner may impose a limitation. To continue -

- (b) the places or class of places to which it applies;

Given that is expressed as a power for the commissioner to impose a limit on the warrant to enter, search and detain and it is not mandatory, and the commissioner can, if he thinks fit, impose that limitation on the warrant, the commissioner would have the power to do that in any event. That draws attention to the fact that he should consider imposing some limit on the warrant as it issues. In principle, it does not seem to present enormous difficulties. However, I would not want it to be something that could be the basis of challenging the exercise of the power or frustrating the powers of police.

Mrs Edwardes: There is no judicial supervision of what the special commissioner does in this regard, so there is no power by virtue of the judicial supervision exclusion to question what the special commissioner has done. It is purely for purposes of public interest, certainty and confidence in the process that we want to see the special commissioner, at least, considering whether to impose conditions so he can reassure people this has been properly carried out. The supervision of the exercise of that warrant is granted to the special commissioner.

Mr McGINTY: In principle I do not see any great problems arising out of what the member for Kingsley has proposed. I will seek the advice of the officers here about whether it presents any overriding difficulties; but it does not seem to.

Ms SUE WALKER: I support the member for Kingsley's amendment. It is well known and often said in criminal proceedings in relation to warrants that an Englishman's home is his castle. When police take out a warrant they have to particularise the offence, so that the person whose home they are entering understands completely why the police are entering, and what the offence is. If a warrant is not properly executed, the police

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are not supposed to proceed. They often do, but any evidence collected cannot be used in court. It is a safeguard to prevent the abuse of police powers.

Yesterday, the Attorney General said that these powers of search and seizure could be used in cases involving organised crime and also those involving individuals whose activities fall within the schedule of offences in the legislation. These powers, which the Attorney General has called extraordinary, go far beyond any police powers previously granted in this State. There should be a limit, otherwise police officers will go into homes at any time of the day or night without a warrant and seize anything and stop, detain and search any person. The warrant should contain a description of the offence that is the subject of the search.

Clause 45(2) provides that the police can stop, detain and search anyone at the place. I remember from my law school days that police officers are usually required to have a reasonable suspicion to exercise search and seizure powers. Paragraph (c) provides that the police can photograph any person or thing and make a copy of or seize any document that they suspect on reasonable grounds will provide evidence. Paragraph (d) also refers to the requirement for reasonable grounds to be suspected before police officers can seize anything. However, they are not required to have reasonable grounds for suspecting that an offence is being committed if they want to stop, detain and search a person. In general, if a police officer executes a warrant and goes to a house, and while he is there he suspects that another offence has taken place, he can stop, detain and search someone. This legislation contains no safeguards. I support the member for Kingsley's amendment.

Mrs EDWARDES: Obviously I do not want to fetter the discretion of the special commissioner. My amendment requires him to consider whether he wishes to add any conditions to the general warrant to test compliance, and, if so, what they should be.

Mr McGINTY: I raise three potential problems with this amendment. First, I do not want to open up the role of judicial supervision as a frustrating technique. A more prescriptive warrant would increase that possibility.

I said earlier that judicial discretion is excluded from this part. Unfortunately, it is not. Clause 37 limits the exclusion of judicial supervision to part 3 of the Bill, which deals with the interrogation procedure before the special commissioner. Judicial supervision is excluded there, but not from this part. It is a real concern that someone could go to the Supreme Court with a prerogative writ to frustrate, challenge or delay the implementation of these powers.

The second issue is the question of time. The member has referred to three possible limits on the exercise of power pursuant to the warrant according to paragraphs (a), (b) and (c). The first paragraph refers to the class of persons, the second to the place or class of places and the third to the article or class of articles.

The duration of the validity of a warrant was raised during discussions about this legislation. Warrants are normally valid for 30 days. Of course, there is no restriction here. The intention is that, once the order is made by the special commissioner, these powers will last for the duration of the investigation. That is extensive and it is the intention.

Mrs Edwardes: The special commissioner can include a return date.

Mr McGINTY: Yes, he does have the capacity to do that. The member has not included time as one of the specified limits that the commissioner may consider. If we were to impose limits, it could be considered.

The third point relates to subclause (3). The member's amendment requires the person exercising the powers to report back to the special commissioner within three days of the exercise of the power. That in itself is not unreasonable. However, it does carry with it an implication that, when an officer has exercised the power, that is the end of the matter. The Government's intention is that the power might be exercised time and again in respect of the person, place, thing and so on. This could be challenged on the basis that the power has been exercised and the police have reported back, so the warrant can no longer continue to be exercised. I can see that argument being developed in a prerogative writ proceeding before the Supreme Court if a police officer goes back a second time with a search warrant. I am particularly concerned about the non-exclusion of judicial supervision.

Mrs EDWARDES: I acknowledge the issues that the Attorney General has raised. I had not noticed that judicial supervision did not apply. To some extent, that provides an opportunity to ensure that excessive power is not exercised and irrelevant material is not seized. Those issues could be the subject of a writ in the Supreme Court.

Mr McGinty: The availability of judicial supervision might well provide the check that the member is seeking to apply.

Mrs EDWARDES: It may do, but it is open-ended. There is no warrant; it is an authorisation. An authorisation issued by the special commissioner involves some form of documentation. However, that is not identified in the Bill. It would obviously need to be done in regulations or whatever. I note that this legislation contains no regulation-making power. I am not sure how some of the required administrative functions will be carried out.

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Obviously, the notations will require documentation, whether it is done by regulation or rules. That process will need to be developed. The Government will require some form of power to effect the administrative side of the legislation. In any event, there must be some form of authorisation. For the sake of convenience, we can refer to it as a general warrant. The test of judicial supervision is that this is open-ended in every way. No checking mechanism exists to gauge whether excessive power has been exercised when places have been searched, people detained or material seized.

We do not wish to constrain the police because there is a serious constraint on the police at present. If the police have a warrant to seize computers, for instance, does that warrant extend to access to the material on the computer? It has been argued that it does not. If the warrant is so limited, the police must get another warrant to get the material off the computer. We do not want those extreme cases to hamper the police in their investigations. Why else would the police want to seize a computer other than to get the material off it, unless the computer was stolen? Police would want to examine the material on the computer to investigate corporate crime or fraud. There must be an ability to test the implementation of this general warrant against the authorisation of the special commissioner. However, that is not provided for in any way in this legislation.

The Attorney General is concerned that my proposed amendment to clause 44(2)(a) to (c) provides a checklist, and I acknowledge that concern. However, the Attorney General could add the words in the amendment to clause 44(2) only up to the words "exercise of the powers" and the rest could be deleted. If the minister is concerned that my amendment states that the order of the special commissioner must be delivered to the special commissioner by the person who exercised the powers provided for in the order within three days, he could delete the number of days. However, at some time there must be a reporting requirement to the special commissioner.

Another aspect, which is not in this amendment and is a serious flaw in the drafting, is that there is no requirement to identify the items seized to the individual whose items have been seized nor is there a requirement to inform that individual that his place has been searched. It is absolutely essential that those requirements be included in the legislation. We can play around with this now, but the Attorney General must provide for the special commissioner to add some conditions to his order. The commissioner may very well do it in any event if he applies his mind to it. However, if it were in the legislation, it would remind him that Parliament would like him to apply his mind to whether conditions should be placed on that order to allow it to be tested against the actions taken.

Ms SUE WALKER: The Attorney General said that he had been asked for how long a warrant would exist. There is no provision in the Bill that stipulates what the commissioner gives or does when an application is made to investigate without a warrant. There is no provision for an order, such as those given currently under other legislation. I do not know whether a decision of the special commissioner can be appealed. The legislation is open-ended, highly unusual and dangerous. Like the member for Kingsley, I do not want to stand in the way of investigating organised crime, but this legislation is not just about organised crime. We do not know what kind of a warrant a police officer would get or whether the special commissioner would give him an order. There has been no attention to detail and no thought has been given to what the commissioner gives to the police. Currently, even the Commissioner of Police can ask policemen what sort of warrant they have been provided with. Nothing like that is in this legislation. Is there any right of appeal from such an open-ended position? How will this be administered without details being stipulated? It would be better to do that here and now.

Mr McGINTY: Some of the thinking behind the members' arguments is constrained by the usual procedures that apply to warrants to enter and search properties. This Bill is designed to apply when the usual procedures do not work. We are not seeking to have a warrant issued; we are seeking to provide statutory powers that can be exercised by the police. Under clause 9, the special commissioner must be satisfied of certain things, and the powers contained in the Bill cannot be exercised unless the commissioner is so satisfied. In particular, the commissioner must have reasonable grounds for believing that the use of the powers given by part 3 would be in the public interest, having regard to whether or not the suspected offence could be effectively investigated without using those powers. In other words, the commissioner must come to the conclusion that a traditional search warrant is not appropriate in these circumstances. When he has come to that view in respect of entry, search and seizure, which applies to clause 44, no warrant or document will be issued. The commissioner will state the circumstances that justify the use of these powers, and the police can then exercise the statutory powers.

Mrs Edwardes: That must be in writing.

Mr McGINTY: A finding will be made by the commissioner that the powers contained in this Bill are appropriate to be used -

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Mrs Edwardes: They are appropriate for the investigation of an offence that has been brought before the special commissioner. The special commissioner must provide some detail to the Commissioner of Police, and that must be in writing. However, that is not required in the legislation. By the automatic process of the Commissioner of Police satisfying the commissioner that clause 9(3) in particular has been satisfied, the police can carry out the powers provided under clause 45. By that very act, there must be some form of documentation. It will not work unless something in writing recognises that fact.

Mr McGINTY: The requirements for entry, search and related matters under clause 44 are the same requirements that invoke the investigatory powers under clause 9; that is, that the special commissioner is satisfied with certain things. The Commissioner of Police must satisfy the special commissioner that the grounds described in clause 9(3) exist, particularly in relation to entry, search and other matters. All that is required is a written statement from the special commissioner that he is so satisfied. When that statement, which is the only requirement, is given by the special commissioner following his consideration of the matters, these statutory powers will operate. Under this Bill there is no need for a warrant. The documentation that would normally be attached to a police investigation for the authorisation to conduct an investigation will not be required. It is a different concept from that which members opposite are considering. The member for Kingsley's amendment is predicated on the basis that a warrant will be issued -

Mrs Edwardes: Is that an order, an authorisation or whatever that the special commissioner is satisfied that the grounds under clause 9(3) have been met, which he then gives to the Commissioner of Police for the purpose of the investigation of such an offence?

Mr McGINTY: Yes. Therefore, by virtue of that, the police would be given the statutory powers that are contained in this legislation. The statute contained in the legislation acts as a limit. The member is seeking that, in addition to being satisfied, the special commissioner might impose limitations. That would follow. The member has sought to describe what those -

Mrs EDWARDES: May I ask for an extension of time for the minister?

The ACTING SPEAKER (Mr Andrews): The member for Kingsley certainly may. The Attorney General can have an extension of time.

Mr McGINTY: Thank you, Mr Acting Speaker. However, I do not think that an extension of time is necessary now that I have been given the call.

The special commissioner, either in a preamble or an order, would inform the Commissioner of Police that he is so satisfied that the grounds under section 9(3) have been met. The special commissioner would then need to describe the sorts of things the member for Kingsley has referred to in her amendment, including the person's place, articles and perhaps other things that are the subject of that order. When he has done that, the limitations on the police and matters relevant to that are unlimited. That is the intention of this Bill. We do not want to go down the path of suggesting situations that might limit the interpretations that would apply as to time or subject matter and things of that nature. This is a new power and a new approach to these matters. In a sense the power to enter premises without a warrant in this Bill overlaps the Misuse of Drugs Act.

Mrs Edwardes: However, in that Act a specific item - drugs - is mentioned. In this Bill everything is included. I acknowledge that the legislation on drugs and firearms is limited to particular items.

Mr McGINTY: The Misuse of Drugs Act has a statutory power to enter, without limitation, premises that are believed to be used for the cultivation or manufacture of drugs, including private residences. It provides a statutory right to do certain things and to enter people's castles. That provision in the Misuse of Drugs Act was the type of provision we had in mind in this Bill. There is a statutory right to do certain things without warrant when dealing with drug trafficking and manufacture. That is the sort of notion that we had in mind in this Bill, except to apply it in respect of organised crime and the commission of very serious offences instead of drug trafficking. That is the scheme of things that we were looking at.

Mr Pendal: A concern was expressed a couple of minutes ago about there being no paper trail. When the Commissioner of Police gets a "non-existent" warrant and instructs people in the field to do certain things, what is the guarantee that those people doing those certain things, such as breaking into people's homes, have not misunderstood the limitations put on them either by the special commissioner or by their own senior staff? There is no provision for a warrant in writing.

Mr McGINTY: The special commissioner will issue a statement, I presume in writing, that he is satisfied that the powers in the Bill be invoked. I presume the commissioner will then relate it to a particular person or offence, which, in a hypothetical case, will be part of the order.

Mr Pendal: Will it be in writing?

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Mr McGINTY: He would need to be satisfied that the powers be invoked. I am sorry, he must make an order and it must be in writing.

Mr Pandal: Would that order then be conveyed in writing to the person who ultimately enters the premises?

Mr McGINTY: Yes, the Commissioner of Police.

Mr Pandal: Does that order then go to the bloke in the field?

Mr McGINTY: No.

Mr Pandal: How do we know then that the bloke in the field has not misunderstood the order? He may get back to the commissioner who tells him, "No, that's not what I said. I said to go down to the bloke's caravan and you've gone to another part of his premises." The capacity for misunderstanding and therefore the capacity for abuse is immense.

Mr McGINTY: A great number of police powers are required to be exercised properly.

Mr Pandal: I know that. We saw the abuse that has occurred with random breath testing. That was not due to laziness on the part of those people; as the commissioner said, it was a criminal act.

Mr McGINTY: Exactly.

Mr PENDAL: If it is capable of being misunderstood at that level when police have written instructions about how to carry out RBTs, what guarantee is there about this clause? If, for example, police officers are capable of abusing random breath testing to the point of criminal conduct when they have written instructions for that procedure, how on earth can we give them these enormous powers which are not spelt out in writing and which invite the form of abuse and criminal conduct that have now been exposed with random breath testing? Apart from any other weaknesses of the Bill, some of which I referred to in my contribution to the second reading debate, this provision in particular is a glaring example.

The minister said that no warrant will be required and that the police need these new powers because the traditional warrant system has not produced results. It is one thing to ask the Parliament to give extra powers; it is another thing to make the powers commensurate with a guarantee that abuses of that nature cannot occur. We are treading on terribly dangerous ground in giving the police these powers. We know that 95 per cent to 97 per cent of policemen are honest and good operators. We do not have to bother about them. We always have to bother about the two to three per cent of people who are dishonest, be they in politics, the Police Force or anywhere else. This clause is an open invitation to the two per cent, or whatever, who do not mind cutting corners, who do not mind trampling on people's rights and who do not mind being dishonest. These people may be entrusted with literally busting into someone's home on instructions that are not even in writing.

The point originally raised by the member for Nedlands which evoked a response from the Attorney General is part of the nub of the whole issue and I would like to hear the Attorney General's comments.

Ms SUE WALKER: I am disturbed that the legislation gives carte blanche powers to the police, yet the Attorney General only presumes that the special commissioner will put those powers in writing. That is not good enough. I raised this matter because the Premier in his second reading speech said -

Members should note that as the Bill proposes extraordinary measures, it also contains a series of checks and balances.

However, there are no checks and balances in this Bill. The Attorney General cannot tell us the type of order that the commissioner will give. It is disturbing that there is no provision in the Bill which stipulates that the special commissioner must give reasons in writing for the basis of the decision and no provision about the length of time in which the order remains in force. There is also no provision in the Bill for a person, who is the subject of an ongoing, indefinite police investigation of his home day or night, to appeal that decision. Where are the checks and balances on these extraordinary powers about which the Premier spoke in his second reading speech?

Mrs EDWARDES: The Attorney General referred to the Misuse of Drugs Act. When the police carry out their powers under that Act without a warrant, the purpose is limited to the reasons for which the Misuse of Drugs Act is in place and the police cannot go outside the powers provided in that Act. Secondly, if the police carry out any function without a warrant under that Act, they are required to report back to the Commissioner of Police usually within three days on exactly what they have done. The matter is not left open-ended as the powers in this Bill appear to be.

Mr Pandal: Are you referring to the Misuse of Drugs Act?

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Mrs EDWARDES: Yes. Even if the police carry out their powers without a warrant under the Police Act, they are required to report back to the Commissioner of Police. This Bill lacks the definitive steps for the actions taken by the police in carrying out those powers to be accountable and transparent. We believe that particulars must be added to this clause. It is not clear how clauses 44 and 45 interrelate? Clause 44 requires the special commissioner to be satisfied that the grounds described in section 9(3) exist; and we then jump to clause 45. We are talking about this part applying. It lacks a basic level of accountability and how one goes about exercising this power.

Ms SUE WALKER: Section 24 of the Misuse of Drugs Act in relation to the granting of search warrants states -
A justice of the peace who is satisfied by information on oath that there are reasonable grounds to suspect that any thing referred to . . . -

Reference is made to section 23 -

may be in or on any vehicle, or in or on any premises or other place, may grant to a police officer a search warrant authorizing a police officer at any time or times within 30 days from the date of that search warrant to enter any vehicle, or any premises or other place, named in that search warrant . . .

The powers in the Misuse of Drugs Act that are greater than normal are constrained when considered in relation to this carte blanche authorisation - it is not even a warrant - that does not name where the police are to go; does not name whether it is a vehicle, house, office or restaurant; does not name the address; and does not say for how long it remains in force. I again ask the Attorney General to explain where the checks and balances for these exceptional powers are that the Premier mentioned in his second reading speech?

Mr McGINTY: The relevant provision in the Misuse of Drugs Act is section 22, not section 24, as has been suggested. Section 22 of the Misuse of Drugs Act gives -

Mrs Edwardes: It is more section 23 than section 22, with respect.

Mr McGINTY: Section 22 gives a statutory right to enter someone's premises.

Mrs Edwardes: But limited to items.

Mr McGINTY: Where one is manufacturing or cultivating drugs the police have a statutory right of entry; no warrant, checks and balances or reporting back are necessary. It is simply a statutory right. That was the provision I referred to.

Mrs Edwardes: But the Commissioner of Police requirement is that there be a reporting back to carry out that function.

Mr McGINTY: But it is not a statutory requirement; it is an internal police requirement which would apply equally to the powers under this Act, given that they are directly comparable.

Mrs Edwardes: The concern is that those are exceptional powers.

Mr McGINTY: They are exceptional powers but they are not unprecedented. Under the Misuse of Drugs Act, the police officers have a statutory power to enter a person's premises when it is suspected that illicit drugs are being manufactured or cultivated on those premises. That is directly comparable with this clause; that is, a statutory right without warrant to enter premises in those circumstances for the purposes of the Bill.

The opening words in clause 45 of the Bill are "A police officer may" and the limiting words are "for the purposes of investigating a section 4 offence". That is a power that is not unlimited; it can be used only for the purposes of investigating an offence for which the special commissioner has said these powers should be invoked. If a police officer stepped outside that provision and started to investigate something extraneous, that police officer could be constrained by means of judicial supervision. Therefore, there is a limitation, in the same way as there is in the Misuse of Drugs Act.

Section 23 of the Misuse of Drugs Act deals with the powers of police officers when things are suspected of being used in the commission of offences. It also lays out a number of statutory powers which the police might exercise. This is not unprecedented. However, we are simply saying that there will not be a warrant and there will not be a statutory power of investigation by the police when the special commissioner is satisfied that the grounds set out in section 9 of the Misuse of Drugs Act are satisfied. This is directly comparable with the exceptional powers that we have given to the police for dealing with drug trafficking and drug manufacture, and that will obviously form a significant part of what is contained in this clause. If a section 4 offence is drug trafficking, this clause will give the same statutory powers that exist in sections 22 and 23 of the Misuse of Drugs Act to enter, to search and to seize, as already applies to drug trafficking. We will give that power to

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police in respect of organised crime, the bulk of which activity I should imagine involves drug trafficking. It is not unprecedented in that sense, and no constraints have been urged upon me by members opposite today on the way in which the police will go about exercising those powers for only the most serious offences which are comparable with the drug trafficking, manufacture or cultivation provisions.

Mr PENDAL: That partly makes sense. I understood the member for Kingsley to say that under the Police Act, for example, a procedure is in place - I do not know whether she said it was anything higher than that - which meant that within three days of the action, the police officer is required, maybe by procedures or regulations -

Mrs Edwardes: Police procedures.

Mr PENDAL: That in itself is comforting. It is not onerous for the Parliament to place that requirement on anyone exercising extraordinary powers. A special commissioner would be an unusual human being not to want to know the outcome of his or her order. The special commissioner would probably ask the Commissioner of Police, or whoever, how he got on with X, Y or Z operation. Natural curiosity would produce that. I am referring to what the members for Nedlands and Kingsley said, but it is not too onerous to require some reporting mechanism.

I do not like the Bill; it is a terrible bit of work. It is as bad, incidentally, as the confiscation of profits of crime Bill passed a year or two ago. I had a look at those debates last night. However, given that I do not like the Bill, there are ways to at least allay some of the fears we on this side of the House have talked about. It is not onerous to require a procedure, such as the member for Kingsley talked about, for a form of reportage within three days to the police hierarchy when these extraordinary powers have been exercised, because presumably senior police would want to know how their officers got on in an operation. There should be an obligation on their part. It should be a two-way process. We are lacking a direction in writing, so the provision is capable of being abused; and it appears that we are also lacking a reporting and accountability mechanism following the search. If this Parliament is to give people extraordinary powers - there may be occasions when it does that - it must make a commensurate demand for better reporting procedures that go both ways. They seem to be lacking, and that goes to the nub of my concerns.

Ms QUIRK: I shared some of the concerns of the members for Kingsley, Nedlands and South Perth. However, the Attorney General explained to me the error of my ways.

From my experience, I would always prefer a police officer to wield a bit of paper. However, closer examination of the legislation shows that some of the concerns that have been expressed have been accommodated in some way. As the Attorney General said, provisions in other Acts permit searches without warrant. It is a question of having reasonable suspicion. If the matter were to go to court, the officers must produce the evidence that led them to exercise the power of entry provided by a certain section, and there must also be evidence that the Commissioner of Police authorised the search. Logistically, that would be much easier if scheduled forms were contained in this legislation; however, proof is by no means a mandatory requirement for the gathering of evidence.

The member for South Perth is concerned about abuse of power. There is one ultimate other sanction - the courts. This evidence will not be gathered for the hell of it; it will be gathered to try to secure a prosecution and conviction.

Mr Pendal: It might never get that far.

Ms QUIRK: The member is right, but in the event that the matter did go to court, the police would have to satisfy beyond the normal criminal standards that certain things were complied with. They would need to present the evidence they had secured in the course of that search. In the event that evidence was improperly gathered, the trial judge would have the ultimate sanction and discretion. That will not change.

Having said that, I accept that the member is concerned. Administrative arrangements will go side by side with the overriding common law discretion to exclude evidence that was unfairly obtained. There are standard operating procedures pertaining to searches for securing evidence, maintaining its continuity and record keeping; and the police must also follow the commissioner's rules, directions and guidelines. That would all form part of a brief of evidence. That does not resolve the problem about which the member for South Perth spoke, whereby a search warrant is executed but no evidence is found. He asked what sanction anyone might have in that case. If officers are acting inappropriately, internal sanctions can be used.

The idea of search without warrant is by no means novel. It needs to be distinguished from section 711 of the Criminal Code, which requires a justice of the peace or another judicial officer to approve a search warrant. Under that section, the police officer executes a search warrant, carrying a bit of paper. However, there is no point in having the special power in this legislation if it is to be on all fours with the section 711 warrant.

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Ms SUE WALKER: I follow on from what the member for Girrawheen and the Attorney General said about sections 22 and 23 of the Misuse of Drugs Act. They can be distinguished. Clause 45(2)(b) allows police to stop, detain and search anyone at a place. The corresponding power in section 23 of the Misuse of Drugs Act limits the circumstances in which one can stop, detain and search someone. I raise this because the member said the provisions were comparable.

Section 23 of the Misuse of Drugs Act requires that if a police officer wants to stop and detain a person, he must have reasonable grounds to suspect that an offence may be or has been committed. The section outlines the variety of things that the police must consider before they stop, detain and search that person. Importantly, it says that a person should be searched by only a person who is of the same sex or a medical practitioner. If it is not practicable then and there to comply with those requirements, the police officer may detain the person and convey him to a place where such a search is practicable. Clause 47(2) contains similar provisions. However, I want to check that such safeguards will be in place.

Mr McGINTY: I appreciate the concerns that have been raised by members opposite. I think that the best way to pull together the Government's response to the debate is to start with section 22 of the Misuse of Drugs Act, which gives a police officer the power to enter the premises of a person - including his home or business premises - who is carrying on the business of a manufacturer, seller or supplier of prohibited drugs or a cultivator, seller or supplier of prohibited plants. Once in that place, the police have the right to demand the production and inspection of any books, papers and documents relating to transactions of or dealings in a prohibited drug or plant. Section 22 of the Misuse of Drugs Act deals very directly with the right of entry into the home of a person who is committing a serious offence by being a manufacturer, cultivator, seller or supplier of prohibited drugs or plants. That is a statutory right of entry without warrant into someone's home for the purposes of the Act.

I bow to the member for Kingsley's superior knowledge in these practical operational legal matters.

Mrs Edwardes: It has been a few years.

Mr McGINTY: It has been even longer for me - like never. The member said that underpinning that right of entry are the operational procedures with which police officers must comply when acting with a warrant or, in these circumstances, without a warrant. Those operational requirements include a reporting-back mechanism. Those sorts of requirements are built into the police operational safeguards. My colleague the Minister for Police did not sound at all well when I heard her on the radio this morning. That was not related to the subject matter she was discussing; I presume she has the flu or something of that nature. As a result, she is not in the Chamber, otherwise I would defer to her for what I think would be a reasonable solution to the problem. It would have been reasonable for her to stand in this place and say that the police operational requirements that apply when a warrant is or is not issued under the Misuse of Drugs Act will also apply in this case. It is not my portfolio; therefore, I am not in a position to give that commitment. However, that seems me to be the sensible answer to a number of the issues that have been raised. If I can continue with the analogy of the Misuse of Drugs Act, section 23 of that Act provides that a police officer may, using such force as is reasonably necessary and with such assistance as he considers necessary, stop and detain the person and search him together with any baggage, package, vehicle or other thing of any kind whatsoever found in his possession, and for that purpose may stop and detain any vehicle.

Section 22 provides a statutory right to enter the premises of a person without a warrant. Section 24 deals with the granting of search warrants in connection with the prevention and detection of certain other generally lesser offences; and certain protections are built into the way in which a person shall be searched. Those protections are substantially contained in clause 47 of this Bill; for example, that the search shall be conducted by a person of the same sex. Although the amendment suggested by the member for Kingsley has some merit, it is not one that we need to support on this occasion, given the existing safeguards and precedents in this matter.

Mrs EDWARDES: Given that the Attorney has not been able to tell this House what those safeguards are in other practices and procedures, he may like to give us that information during the third reading debate.

Mr McGinty: I am more than happy to do that, because that is an essential part of the dialogue that has taken place during the past half to three-quarters of an hour.

Mrs EDWARDES: It is important that that be put on the record, because the drafting of this clause lacks form, manner and particularity; and, as a result, it lacks accountability. If the Attorney can outline the safeguards that will govern how the police will exercise these powers, a level of comfort may be returned to this House. The Attorney may find also that he needs to tighten up some of these provisions so that we will have the necessary paper trail. The Attorney and I are both saying there is a presumption that there will be some form of

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documentation, even if it is in the form of a transcript of proceedings, so that there will be a paper trail about what the Commissioner of Police has said to the special commissioner and how that has been portrayed to the police officer who will be exercising these powers.

The Attorney may also like to consider whether the clause should contain a power to allow the special commissioner to make rules or regulations, or whatever he will need in order to operate administratively, because that also seems to be a flaw in the legislation. I take it that such a power is not incorporated in the Royal Commissions Act. However, this Bill is probably a little different from that Act, because a royal commission will usually exercise its powers of search and seizure by means of the ordinary processes and warrants, not the exceptional powers that are being created in this Bill. In order to give us some level of confidence and to have it on the record, I ask the Attorney to confirm that the special commissioner will not be limited in imposing conditions as he sees fit.

Mr McGINTY: I am happy to confirm that, and I will deal with that matter more extensively during the third reading debate.

Amendment put and negatived.

Clause put and passed.

Clause 45: Enhanced power to enter, search, and detain -

Mrs EDWARDES: We have probably had an extensive debate about this matter, given that the amendment to clause 44 has picked up what these powers will be. The powers that will be granted under this clause are exceptional powers. A police officer will essentially be able to enter any place at any time and demand the production of any articles or records kept there; search and secure the place for the purpose of searching it; and stop, detain and search anyone at the place. A police officer will also be able to use any force that is reasonably necessary - that is, he can break and enter, knock down the doors, or whatever - and take anything that he believes will be relevant to the investigation. However, the special commissioner must be satisfied that what the police officer is doing is relevant to the investigation of the offence; and we have talked about how that will be particularised by the Commissioner of Police in the record-keeping process.

Clause put and passed.

Clause 46: Enhanced power to stop, detain, and search -

Mrs EDWARDES: Whereas clause 45 provides an enhanced power to enter, search and detain, this clause provides an enhanced power to stop, detain and search the person and any conveyance at any time. Subclause (3) states -

The power to stop and detain a conveyance includes the power to detain anyone in or on the conveyance for as long as is reasonably necessary to search the conveyance even though, until the conveyance has been searched, the person may not be suspected of anything because of which the person can be detained under subsection (2).

The extra powers contained in this clause are outside the state powers as I know them, although they may be powers that have been given to the National Crime Authority. Therefore, the special commissioner must be satisfied, under clause 9(3), that the ordinary powers that the police officers already have in their bag of armoury are not sufficient to gather the evidence in an endeavour to finalise the investigation of an offence.

Mr McGINTY: I am fairly certain that the provision referred to by the member was taken from the previous Government's prostitution legislation. I am not sure whether we objected to it at the time, but I remember having a debate about that very issue and talking about streetwalkers and people in cars kerb crawling and picking up prostitutes on the street. It is a comparable provision. The member for Kingsley is right; it is the enhanced power to stop, detain and search. It is comparable with the provisions in the Misuse of Drugs Act, which I have already referred to, but this provision had its origins in the prostitution legislation.

Clause put and passed.

Clause 47: Provisions about searching a person -

Mrs EDWARDES: This clause deals, in particular, with the search by a police officer of a person of the opposite sex, and strict requirements cover this procedure. I have not found any significant difference from the ordinary practices and procedures outlined in other legislation. Does this legislation need some regulations to underpin it?

Mr McGINTY: I am advised that the answer is no, and I am happy to accept that advice.

Mrs Edwardes: Was that no, there are no differences in any of the practices and procedures?

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Mr McGINTY: There is no need for regulations. In a general sense, this provision is comparable with other provisions covering the prohibition on people of the opposite sex conducting body searches and things of that nature. At first glance, it appears to be a fairly standard provision, and I share the member's appreciation of it.

Clause put and passed.

Clause 48: Extension of power to search -

Mrs EDWARDES: I was bemused to read this clause, given the extensive powers under clause 45 to do anything and everything. This clause covers the extension of the power to search and includes "the power to break open anything that it is suspected might contain it." I thought clause 45(3) would allow that to be done. What is the necessity for this clause? Is a similar power outlined in the Criminal Code?

Mr McGINTY: Clause 45(3) states -

A police officer may use any force that is reasonably necessary in exercising powers given by subsections (1) and (2).

I am told that the provisions in clause 48 that give police officers the power to break open anything are different from the power to use reasonable force -

Mrs Edwardes: Is there a case on that?

Mr McGINTY: I do not know, but I will endeavour to find out. It is an attempt to deal specifically with damaging property; it is the power to break something open, which is to damage it. Reasonable force may not inflict damage on property. We are not sure whether a case exists, but statutory precedent exists for treating the two matters separately.

Clause put and passed.

Clause 49: Things that have been seized -

Mrs EDWARDES: This clause states that the things seized must be dealt with as if seized under section 714 of the Criminal Code. The issue of seized property, particularly the disposal of it, is to be dealt with by a justice. When dealing with property that has been seized, who will this go before? Will it come back to the special commissioner or will it be dealt with by a justice? As stated in section 714 of the Criminal Code -

The justice may cause the thing so seized or taken to be detained in such custody as he may direct, taking reasonable care for its preservation

Under the Criminal Code, the justice is required to direct that the thing be returned to the person, etc. How will section 714 of the Criminal Code be used in this instance? Are we talking about the matter going to a justice or the special commissioner, considering that a previous clause dealt with the powers of the special commissioner with regard to the records of the investigation? Those have been dealt with, and this clause deals with other seized items which may, or may not, be part of the evidence. How will they interrelate?

Mr McGINTY: The standard arrangement when the police seize property as part of their investigation is regulated by section 714 of the Criminal Code under the heading "Seized property to be taken before justice: Disposal of such property". It then lays down the procedures to be undertaken. The matter does not go back to the special commissioner; it goes before a justice who will determine what will happen to that property. That is the standard procedure that applies when property is seized. In the course of a police investigation, it was thought that the provisions that apply generally to property that is seized should apply under this Bill. We have simply adopted the usual provisions that relate to property that is seized and dealt with before a justice.

Mrs EDWARDES: When does the provision apply? Does it apply after the investigation is complete? It is not stated in the Bill and I am not sure what is common practice in this instance. The Bill states that everything must be kept secret until the Commissioner of Police says otherwise; therefore, a high level of secrecy surrounds the witness, the investigation and all the rest of it, so when will this provision apply? The potential exists for the secrecy to be breached at an earlier point than when the Commissioner of Police thinks the investigation has been completed. It would appear that, in this instance, the situation is being opened up to a third party, and that is outside the general confidentiality and secrecy that is required when dealing with organised crime.

Mr McGINTY: The member for Kingsley is correct. The secrecy requirements relate to the interrogation. The other powers in the Bill come under the same description as is applied to any other police investigation, although they might be more extensive. If property is seized, the requirement under section 714 of the Criminal Code is that -

When anything is seized or taken under the provisions of this Code, the person seizing or taking it is required forthwith to carry it before a justice.

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It is not secret and it is part of routine police investigations. If police conduct a raid and seize property, they take the property forthwith before a justice. Section 714 of the Criminal Code continues -

The justice may cause the thing so seized or taken to be detained in such custody as he may direct . . .

The justice will determine what happens to it from that point. The interrogation is meant to be confidential and secret. It is expected that the exceptional powers that apply in relation to seizure of goods will be exercised in the way that the police normally conduct these sorts of matters. It is also subject to judicial review. It would be no different from a police drug bust. The police would bring the matter before a justice and the usual provisions would apply. They are not cloaked in secrecy.

Mrs EDWARDES: That probably brings us back to the safeguard to clause 45 of the Bill, which we discussed earlier. I raised the point that there did not appear to be any particular requirement to document and provide advice back about the item seized. That is provided under clause 49. However, three issues surround the issue of secrecy regarding the questioning of witnesses. The first is safety of an individual; the second is the fair trial of an individual; and I cannot remember the third. The fourth might be that it was in the special interest of the commissioner to add the notation that a public interest was to be met. A public interest might well be met in keeping the seized property within the tighter grouping for which a special commissioner will be established. Again, a special commissioner might wish to place that condition on the authorisation to carry out the powers provided under clause 45; that is, that it is in the public interest to require the items to be seized in the same form and manner as provided under section 714 of the Criminal Code.

Mr McGINTY: I think that is right. Clause 12 of the Bill deals with the secrecy provisions when someone is summoned to attend to give evidence before a special commissioner. The clause lays down three tests to determine whether the secrecy provisions will be invoked. The first test is the safety or reputation of a person; the second is the fair trial of a person who has been or may be charged with an offence; and the third is the effectiveness of an investigation. That is the point raised by the member for Kingsley.

Mrs Edwardes: And the other one - the public interest test under clause 12(4)(b).

Mr McGINTY: I guess that is the fourth; that is, that it might otherwise be contrary to the public interest. The effectiveness of an investigation is at the nub of this matter. There might well be a requirement to keep the matter confidential in the same way that other police investigations are required to be kept confidential at particular stages; otherwise, the likelihood of compromising the effectiveness of that investigation would arise. My understanding is that the provisions contained in section 714 of the Criminal Code are adequate to cover that situation.

Clause put and passed.

Clause 50: Offences under this Part -

Mrs EDWARDES: The comment I again make is that, given the special purposes of this Bill, the penalty appears to be low for this offence. The clause provides that -

A person who wilfully -

- (a) delays, obstructs, or otherwise hinders -
 - (i) the performance by a police officer or other person of a function . . .
 - or
 - (b) does not produce anything as demanded under section 45(1)(b),
- commits an offence.

The penalty for that offence is imprisonment for two years and a fine of \$40 000. The penalty should be considered in the light of all those other matters. Again, the Bill is providing exceptional powers for exceptional reasons. As such, the penalties should not be comparable with others, but should include a tariff. I could not find a comparable clause. I am sure that there is one in the Police Act; however, I am not sure that it would include the word "hinders". That appears to be something new. It might be incorporated somewhere in the Criminal Code, but I did not have a chance to find out. I ask the Attorney General to pick that up in his reassessment of the penalties.

Mr McGINTY: I am told that numerous precedents, which are somewhat differently expressed from time to time, have a vast array of penalties. There is no consistency in the nature of the penalty where this appears in other legislation. This would not be a penalty at the lighter end of the scale for this sort of behaviour, but I appreciate the point that has been raised, given the subject matter that we are dealing with - organised crime and crimes at the serious end of the scale. Anyone who wilfully delays, obstructs or otherwise hinders an officer in

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the performance of his duties should be dealt with harshly. I undertake to pick that up when looking at the penalties generally in the Bill.

Clause put and passed.

Mr McGINTY: Given that part 4 of the Bill has just been completed, I will deal with an undertaking that I gave last night to report back to the House on the inclusion of the words “court proceedings” in clauses 28(7)(c) and 12(9)(c) of the Bill. The definition of “official matter” contains a reference to court proceedings. That definition is taken from section 29B(7) of the National Crime Authority Act. Section 29B of that Act, like clause 28 in this Bill, relates to the offence of disclosure when there is a notation on a summons. The reference to court proceedings in the definition of official matter under clause 28(7)(c) of the Bill could refer to an appeal under clause 21. The same rationale would apply to clause 12(9)(c). I indicated last night that that might be the answer; I am now told that it is the answer.

The ACTING SPEAKER (Mr Edwards): I am conscious of the fact that there is no question before the House. I take it that the Attorney General was providing an explanation to a question raised last night.

Mr McGinty: Yes.

Clause 51: Enhanced powers concerning surveillance devices -

Mrs EDWARDES: Clause 51 provides enhanced powers for a police officer who applies for a warrant under section 15 or 16 of the Surveillance Devices Act if the offence concerned is a section 4 offence. This change will lower the test. The current test is that there must be reasonable grounds of belief for a warrant to be issued. For the purposes of this Bill, it will be sufficient for the court to be satisfied that there are reasonable grounds of suspicion. We went through the difference between suspicion and belief yesterday, and it is clear that the courts regard suspicion as being a much lower test than belief. I ask the Attorney General to clarify who is considered to be the court under this clause. Is it a federal judge or an ordinary justice of the Supreme Court?

The other issue is that this clause grants an exceptional power. As such, in lowering the test, all the concerns raised about privacy and the operation of the Surveillance Devices Act when that legislation was first brought to this Parliament come into play. Although the Surveillance Devices Act strengthened the rights of the individual in some instances, it also took away some elements of privacy. We are doing that again. The person who is the subject of the investigation is not the only person who is likely to be caught by the devices; they will also catch other people. As such, if people do not think they are being overheard, often they are likely to say things that they would not want to see in the written word. We often find that *Hansard* does not reflect the whole context of debate because it cannot record the inflections in what we say and how we say it. Reading a conversation in the written word can also be a shortcoming, because often it can be taken out of context. In those instances, a more accurate account could be gained by listening to, rather than reading a transcript of, a conversation, and it is probably a far better tool for understanding what was being referred to at the time.

How comfortable is the Attorney General with reducing the test in a major privacy issue to the satisfaction of the court? It is not just the person or classes of persons who are likely to be covered in the legislation; it will pick up essentially private individuals who have nothing to do with the offence that is under investigation. Can the Attorney General clarify the court to which we are referring?

Ms QUIRK: The Attorney General has asked me to address the concerns of the member for Kingsley. The term “court” is defined in the Surveillance Devices Act. I understand that is the Supreme and District Courts, and the applications are made in the normal course under that legislation. There are many checks and balances in this legislation. It is a fairly cumbersome process. I made representations to the Attorney General about this legislation because I did not think he was giving the police as much power as they needed to make a timely and expeditious application. As the member for Kingsley rightly pointed out, all this does is lower to some extent the threshold at which one could expect to be granted a warrant. In all other respects, the application will proceed under the Surveillance Devices Act and will be used in appropriate circumstances in accordance with that Act.

Mrs EDWARDES: I appreciate the member for Girrawheen’s contribution. Under the Surveillance Devices Act, the definition of a court also is not clear; it just refers to a judge. I assume that that is a judge of the Supreme or District Courts. I have never had to make such an application. I do not know the process. I do not know how it works. I do not know what are the safeguards or the problems that the member for Girrawheen is referring to when she says that it is very difficult to gain such an application. We are lowering one test to suspicion as opposed to belief. Given that the privacy of individuals who are not caught up in any way with the investigation of a matter will be breached, is the Attorney General comfortable with the lowering of the test and the safeguards in the use of these exceptional powers?

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Mr McGINTY: A report was tabled in Parliament about a month ago indicating that some 32 surveillance device applications were approved by the courts in the State, which struck me as remarkably few. The advice I received at that time was that it was due partly to what the member for Girrawheen has said; that is, it is a fairly cumbersome procedure, which acts as a deterrent to using surveillance devices. We are effectively proposing to lower the standard of satisfaction that must be arrived at. Clause 51(2)(a) reads -

... it is sufficient that the court be satisfied that there are reasonable grounds for suspecting it;

It comes down essentially to a reasonable suspicion, if I can paraphrase it in that way, rather than a reasonable belief. We are trying to facilitate the use of surveillance devices in the fight against organised crime and the commission of serious offences. I am comfortable that greater use should be made of surveillance devices in this particular area of criminal activity.

Mrs EDWARDES: Given these particular parts, it might have been useful to have a senior member of the Police Service here to answer some of these questions.

Mr McGinty: I think the member for Girrawheen has had considerable expertise in the matter.

Mrs EDWARDES: I acknowledge that. However, before we proceed to the third reading, can the Attorney General seek information about the independent safeguards to ensure that the police are acting on a bona fide basis, given that the test will be lowered and given the potential breach of the privacy of individuals who are not caught up in the investigation of a matter for which this Bill is being put in place?

Ms QUIRK: Before the Attorney General gives that undertaking, I will expand on some of the concerns of the member for Kingsley. Under the Surveillance Devices Act, the appropriate court depends on the nature of the application being made. If, for example, it is an application for a tracking device, a person can go to a magistrate. However, if it is an application for a listening device, a person will normally go to a Supreme or District Court judge.

Mrs Edwardes: How do you determine between them? Is it the offence?

Ms QUIRK: No; it is the nature of the application. If a person is seeking a tracking device and simply wants to track a suspect, that application is made in the lower court. If a person is seeking a listening device and intends to listen to words spoken to or by a suspect, it is done in the superior courts.

Mrs Edwardes: How do you differentiate between the District and the Supreme Courts?

Ms QUIRK: As I understand it, it is the availability of judges. I must confess that although I have a good knowledge of the legislation, I preferred to make applications for such devices under the federal Customs Act, which was a lot more streamlined. In any event, a judge of the Supreme Court has supervisory jurisdiction over this legislation, and the administrative arrangements that were put in place at the time the Act was enacted. It was Mr Justice Owen, but he is doing much more important things now. I am not aware of who the judge is now, but it was the intention of the Chief Justice that a Supreme Court judge have supervisory jurisdiction. My bone of contention with this legislation is that the manner of application is similar to a notice of motion in the Supreme Court, with the attendant number of forms.

In relation to the lowering of the standard, it is my understanding that the supporting affidavit would need to have formally deposed in it a paragraph to the effect that the application is in relation to a person who is the subject of a special investigation under this legislation. I imagine that there may need to be a change in the form of warrant under the Surveillance Devices Act to reflect this, so that the judge can say that he is satisfied to the requisite degree. As the member quite rightly pointed out, that will result in a lower standard in this legislation.

Very thorough record-keeping procedures are in place in the agencies. For example, there is a protocol for not listing the name of the investigative target on the notice of motion; instead, one uses a letter or the number of the application. The Bill dealt fairly well with all those issues. These checks and balances were part of the reason the legislation was further delayed. In effect, the capacity exists for the judge to be satisfied in a greater range of cases. However, in all other respects, it remains the same. The Attorney's observation that only 32 applications were made last year says volumes about a self-filtering process.

Mrs Edwardes: Is it your experience that federally there are usually a lot more applications in Western Australia?

Ms QUIRK: Yes. The only impediment is that one must prove that the substance is reasonably suspected of being imported, and applications are limited to drug cases; whereas under this Bill, a surveillance device could be approved for a case of property laundering. That is the only difference between the two. It is likely that there would be no great increase in applications arising out of this, purely because the procedure that is implemented to obtain such an application remains the same.

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Clause put and passed.

Clause 52: Meaning of terms used in this Part -

Mrs EDWARDES: Part 6 relates to knocking down the fortress, and the main concern is due process. Some people see this as a cumbersome process to get to the point of knocking down the fortress. It is more than likely that this is a subsequent action after the police have got the material and broken down the doors - as we saw on the television a few weeks ago. This is not a process required to be put in place in an endeavour to gain the evidence that is required for the investigation; it is a subsequent action to assist for the future. Therefore, provision for a fortification warning notice to require 14 days, seven days and a subsequent seven days for appeal means we are not dealing with an urgent application. Essentially, these people do not need fortified premises. Will the Attorney outline why this process is necessary, when proper planning approvals have been obtained through the local council, and, if they have not, it would be open to the authorities to take the necessary action to remove such structures? Why do we have fortification and removal notices when the time frame indicates it is not something that is absolutely necessary for the investigation of the offence to continue?

Mr McGINTY: The rationale for part 6 of the Bill, which relates to removal of fortifications, has its origins in the way in which a number of outlaw motorcycle gangs operate in this State; that is, they construct around their usually domestic dwelling an unnecessary level of fortification that is designed to enable criminal activity to take place behind that fortification. In the circumstances of hot pursuit, this gives them a measure of protection against the police and a measure of time in which, perhaps, the evidence of crime can be destroyed. The purpose of these fortifications on premises is to avoid the law. To put it in a simple way, the owners of the premises have applied to the local government authority to construct a wall or other fortifications on their premises and these are all matters that have received the approval of the local government authority. Generally speaking, a local government authority will approve renovations to a premises if it fits within its town planning scheme. The local government authority is not concerned about the purpose for which the fortifications might be built, which is to place people beyond the reach of the law. We have seen on the television spectacular pictures of police using angle grinders to cut through steel doors and smash their way through fortifications for which we see no need in our society, other than for people to place themselves beyond the reach of the long arm of the law. Some issue was made during the debate about the meaning of fortification. The definition of "fortification" reads -

... any structure or device that, whether alone or as part of a system, is designed to prevent or impede, or to provide any other form of countermeasure against, uninvited entry to premises;

That definition could cover a vast array of home security systems. However, one needs to go a step further and look at the meaning of "heavily fortified" and also subclause (2), which reads -

Premises are heavily fortified if there are, at the premises, fortifications to an extent or of a nature that it would be reasonable to regard as excessive for premises of that kind.

We are talking about excessive fortifications on premises and not those of a normal domestic or business nature. It is important that the fortifications be excessive. The third leg to this definition is to be found in clause 53(2), which reads -

The special commissioner may issue a fortification warning notice if satisfied on the balance of probabilities that there are reasonable grounds for suspecting that the premises to which it relates are -

- (a) heavily fortified; and
- (b) habitually used as a place of resort by members of a class of people a significant number of whom may reasonably be suspected to be involved in organised crime.

It is not just the fortification per se; it is the conduct of organised crime behind that fortification that this is attacking. I do not think there is a concern that ordinary citizens will be caught as part of this - even those who might be super security conscious or even paranoid. This requires an organised crime component to it in order to attract the issuing of a fortification warning notice, which is the trigger for the procedure that is outlined. I would expect that this would not be a subsequent action after police have entered the premises. If they have a reasonable suspicion that things untoward are occurring on premises, I would hope that the police would take action before the special commissioner to remove those fortifications, so that when the need arises, they can take action unimpeded.

Mrs EDWARDES: What strikes me most about part 6 is that it will not happen quickly and that safeguard after safeguard is built in. It is obvious that even when people have spent a lot of money to fortify their premises, there must also be the trigger as outlined in clause 53(2)(b) of a reasonable suspicion that criminal activity is

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going on behind those closed doors. However, some form of recognition is given that the place is their home before the State can come in with a bulldozer and knock it down even if it may also be a fortress. I recognise that the legislation provides safeguard after safeguard so that the demolition of a property will not occur quickly. Before a property is demolished, a number of appeals may take place, and we know how long that can take. Therefore, the provision would not provide the evidence that would be required on an urgent basis for the use of those exceptional powers. However, I recognise the due process that has been put in place for that. The member for South Perth rightly said that if one does not consider the further qualification of clause 53(2)(b), the definition of "fortification" under subclause 52(1) and also subclause 52(2) could include the senior citizens who have become fearful of living in their homes and who do so with their windows and doors barred and with excessive fortifications for the kind of premises in which they live. It is a sad indictment on our society that the elderly are so fearful that they need to put themselves in that position. Last year, Jack Bendat was broken into on a number of occasions.

Mr McGinty: It might have been a couple of years ago.

Mrs EDWARDES: It might have been. Time goes so fast when one has so much fun.

Mr McGinty: It does not when you are in opposition, I can assure you.

Mrs EDWARDES: I think the past nine months for the Attorney General would have been very short in comparison.

Senior citizens are fearful and often fortify their premises too heavily. I acknowledge the qualification under clause 53(2)(b) that the special commissioner must have reasonable grounds for suspecting that certain classes of persons habitually use the premises. The definition of an "interested person" in the Bill states -

"interested person" means a person who -

- (a) is a lessee of the premises, whether or not actually occupying the premises; or
- (b) is actually occupying, or is entitled to the possession of, the premises;

For the notification requirements, it is necessary to know about whom we are talking. Does the legislation require members of a local bikie club or organisation to be notified that a search will take place? How is that distinguished? If 364 members of the local bikie club are at their headquarters, they may very well be "interested persons". When notifying the interested persons that a search will take place, must all members of that club be notified?

Mr OMODEI: Why is the warning notice in this legislation? I raised this matter in the second reading debate. Surely the police would prefer to have the element of surprise if they were to gather important evidence, otherwise the warning notice would be just that and any evidence would be removed before the police were able to enter the premises. Given that the police can get into almost any premises quickly, why is a warning notice of a search to be given for fortified premises? If police can get into the building, surely they could be issued with a warrant to get the evidence and bring the occupants to account.

Mr MCGINTY: It is often difficult for police to get into a building. Many times on television we have seen dramatic footage of police using sledgehammers, angle grinders and the like to enter fortifications. What happens on the inside while the police make a din and demolish the outside of the building is anyone's guess. The time taken to enter the building would provide a buffer to enable evidence to be destroyed. The member for Kingsley said that in her view the fortification removal would occur after the event. However, I am not sure whether that is right. The fortification removal would not be done in a hot pursuit situation and the provisions of the Act do not allow that to occur. If we knew there were problematic premises in Bayswater and believed there would be some dealings in the future between the police and its residents, the police would initiate an action to remove those fortifications. When in the hot pursuit situation or when other evidence came forward, the police would then be able to easily access the fortified premises because the fortifications would have been removed. The police would be able to access the premises as easily as they would access the member's or my house. It will not be dealt with in a hot pursuit situation.

I share the view that has been expressed by other members. This is one area of the legislation that we may have gone overboard with to build in safeguards to protect ordinary citizens. I am in favour of streamlining the procedure because the provisions in this Bill are somewhat cumbersome. We must work through the way in which that could be done. People who have spent a lot of money on their own security systems do not want the police to move in with sledgehammers and knock down their walls without being given appropriate notice. There is a balance in this area between protecting the rights of ordinary citizens and making sure that antisocial

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fortifications were removed - to avoid crime detection fortifications is how I would describe them. Given that the removal of fortifications would not occur in the heat of the chase, it will afford a more leisurely process. I am not all that happy about the cumbersome nature of the current proposals. In other areas we have streamlined the process. For example, under this Bill the police do not need a warrant to search someone's house. We have taken away a number of steps and stages in the process for obtaining a warrant; however, in this area those steps and stages have been left, which is not something that I am particularly enamoured of. Nonetheless, it seems that in the context in which it will arise, it will not be a problem.

Mrs EDWARDES: I left the Chamber for two seconds. Did the Attorney General refer to the issue of interested persons about whom we were talking?

Mr McGINTY: Clause 52 defines an "interested person" as a person who is a lessee of the premises or a person who is actually occupying or is entitled to the possession of the premises. The fortification warning notice in clause 54 is addressed to the owners of the premises to which it relates and any other interested persons without naming them but with an explanation of the term "interested person". It is envisaged that a notice would be put up on the door, for instance, for people who might be visitors.

Mr Omodei: In other words, the owner could be overseas but the notice could be applied?

Mr McGINTY: Yes, that is the intention. We will come to the notice in a few minutes. An owner and a lessee have the right to be notified and other people who have a right to use the premises are also recognised as people upon whom a notice should be served.

Clause put and passed.

Clause 53: Issuing fortification warning notice -

Mrs EDWARDES: Subclause (2)(a) and (b) contains the provisions for dealing with fortification. Not only do the premises need to be heavily fortified, but also they need to be habitually used as a place of resort by members of a class of people, a significant number of whom may reasonably be suspected to be involved in organised crime. Obviously we are talking about bkie headquarters. We are not talking about people who may be involved in drug trafficking, although they may operate in this way. They may operate from houses, either their own or leased premises around the metropolitan area; the premises may be habitually used by people who may be involved in organised crime; but I am not sure how we include drug traffickers in "a class of people". What is "a class of people"? What is "a significant number"? "Heavily fortified" could mean an ordinary home with excessive security in an ordinary street. How do we use this provision to deal with people who might not be members of bkie gangs?

Mr McGINTY: I do not know that this clause would apply to anything other than bkie headquarters. Theoretically it could, and if one were in southern Italy, one might find headquarters used by other unlawful gangs that did not ride motorbikes, for instance. One could easily see how that could apply because of the requirement, in addition to being heavily fortified, that it is habitually used as a place of resort by members of a class of people a significant number of whom may reasonably be expected to be involved in organised crime. Again, we would go back to the definition of "organised crime". The linkages are important: that it is frequented by people a significant number of whom may reasonably be suspected to be involved in organised crime. That requirement or that suspicion is necessary. A significant number is clearly more than one or two, but how many would depend upon the total number of members and the like. The next reference is to "habitually used as a place of resort", and bkie headquarters continually come to mind as the local manifestation of what this clause is targeted at, although it is not defined to be exclusively that, and could be applied elsewhere.

Mrs Edwardes: The organised crime does not necessarily need to be carried on at that place of resort to meet this criteria.

Mr McGINTY: No; it is the people themselves who are involved. It does not necessarily matter that the crime takes place at that abode.

Clause put and passed.

Clause 54: Contents of fortification warning notice -

Mrs EDWARDES: How will this warning notice be complied with? The warning notice must be addressed to the owner of the premises, or, if there are two or more, each by name, and any other interested persons. They do not have to be named. The 364 members of the local club do not have to be named; the notice can be sent to any other interested person with a definition of the term "interested person". The notice must also contain a brief summary of clause 53 - that is, that the premises are heavily fortified - and the basis for suspicion. It must contain a warning that unless, within 14 days after the day upon which a copy of the notice is given as described in clause 55, the Commissioner of Police is satisfied that the premises are not heavily fortified or habitually used

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as a place of resort, a notice may be issued. An explanation must be included as to how the person can make a submission to the Commissioner of Police that a fortification removal notice should not be issued. This is the warning to the owner or the interested persons as to what the notice might contain. I query the process because it is extremely cumbersome. At the end of the day, I cannot see how the warning notice will get to the other interested persons.

Mr McGINTY: The provision for giving the fortification warning notice is contained in clause 55; we are currently dealing with clause 54, which indicates that the warning notice must be addressed to certain people and what it must contain. We would prefer to respond to the issue raised by the member when dealing with clause 55.

Clause put and passed.

Clause 55: Giving fortification warning notice -

Mrs EDWARDES: The fortification warning notice can be given to any person who is an owner or is actually occupying the premises as long as he appears to have reached 18 years of age. It can be given in any way described in section 76 of the Interpretation Act, registered post being used if it is given by post. Section 76 refers to the service of documents generally. The document can be delivered personally; by post; by leaving it for the person at his usual or last known place of abode; if he is a principal of a business, at his usual or last known place of business; or, in the case of a corporation, by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation. I am happy to be corrected, but it does not appear to cover the situation in which the notice can be left with a person who is present at the premises but who does not necessarily occupy the premises, as long as that person is over the age of 18. That narrows the number of people on whom the notice can be served.

I go back to who is "any other interested person" and how we can get the notice to those other interested persons, if we are talking about a broad range, even without naming them. The notice can be left at the premises, which would cover the owner and all those other interested persons, and if that is not done within 14 days, the notice lapses and cannot be given. Subclause (3) provides that it is sufficient for the notice to be given and the Commissioner of Police is required to make every reasonable attempt to give, as soon as practicable, a copy of the notice to every person who has not already been given a copy of it - again that picks up the 364 members - and who is an owner or interested person, indicating on that copy when the submission period ends. This is not an effective way of ensuring that the notice is served.

Mr McGINTY: Usually, a notice must be given to an owner or occupier of the premises in any of the ways described in the Interpretation Act, such as by registered post. If it appears that any reasonable attempt to give notice is unlikely to be successful, the notice can be affixed to the front entrance or another part of the premises where it can be easily seen. I am satisfied that that will be sufficient to ensure that notice is given to the owners, lessees and occupiers of the premises and that people do not frustrate this provision by making themselves unavailable. Affixing the notice to the front of the premises is sufficient. Under subclause (3), the Commissioner for Police is required to make every reasonable attempt to give, as soon as practicable, a copy of the notice to every person who is an owner or interested person and who has not already been notified.

Mrs Edwardes: Is that despite whatever has been done under subclause (1)?

Mr McGINTY: Yes. The notice may be nailed to the front door, but the police must still make every reasonable attempt to get the notice out as soon as practicable.

Mrs Edwardes: How will they determine who might be an interested person? The owner is easy because he is specified.

Mr McGINTY: The police must use every reasonable attempt to notify people as soon as practicable. Those people might be included in a register of the membership of the association, if one is held publicly.

Mrs Edwardes: In your dreams!

Mr McGINTY: It might be an organisation under the Associations Incorporation Act, and there might be a register of people. However, if it is not practicable, it will not be done.

Mrs EDWARDES: This could provide an ability to frustrate. If an organisation had 364 members, the police would be required to make every reasonable attempt to give a copy of the notice to each member. That is onerous, despite subclause (1). Why has subclause (3) been included if the police may simply pin the notice to the front door, similar to the way a notice is nailed to the mast of a ship? The subclause could provide an ability for every person who did not receive a copy to make an application to the court.

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Mr McGINTY: The key is the opening words to subclause (3). I share the member's concerns; this is part of the cumbersome procedures involved. Clause 55(3) opens with the words "although it is sufficient for the notice to be given as described in subsection (1)". That is legally sufficient. However, the police should endeavour to ensure that people who could not be notified in the first instance are notified. This subclause cannot be used to frustrate because legal sufficiency is provided by nailing the notice to the front door. That is the broad approach. We do not want someone to simply nail the notice to the front door and forget about it. The police must continue to use their best endeavours.

Clause put and passed.

Clause 56: Withdrawal notice -

Mrs EDWARDES: If before the expiration of the fortification warning notice the commissioner decides to not issue a fortification removal notice, he is required to issue to every person who received a copy of the warning notice a copy of the withdrawal notice. This appears to be a cumbersome process that will involve a considerable amount of bureaucracy. It seems to be an attempt to overbalance the actions for which this is intended. I accept that, but the process required is cumbersome and, upon review, may prove to be inefficient.

Clause put and passed.

Clause 57: Issuing fortification removal notice -

Mrs EDWARDES: After the warning notice has been given and a certain time has elapsed in which no submission has been made, the removal notice may be issued. The Commissioner of Police will not be able to issue the fortification removal notice unless, after considering each submission, if any, made before the submission period elapsed, he reasonably believes that the premises are heavily fortified and habitually used as place of resort. Such a submission might say, for example, that the place is not heavily fortified and that the owner is simply protecting himself; and that he holds only card sessions at the premises and not many people at those sessions are involved in organised crime - there may be a few, but not a substantial number. The Commissioner of Police cannot issue a fortification removal notice until the time for submissions has elapsed. Further, a fortification removal notice cannot be issued if more than 28 days has elapsed since the end of the submission period. It will be up to the Commissioner of Police to deal with this in a timely fashion, because he cannot issue a removal notice if more than 28 days has elapsed since the expiry of the warning notice, or if he has given a withdrawal notice, which is prescribed in the previous clause. I think the Government is putting a heavy onus on the Commissioner of Police to deal with this in a timely fashion.

Mr McGinty: Yes.

Clause put and passed.

Clause 58: Contents of fortification removal notice -

Mrs EDWARDES: The notice needs to be addressed to each person, as was the warning notice. We have gone through the difficulties of that. Under this clause, the notice must contain a statement to the effect that within seven days after the day on which the notice is given, or any further time allowed by the Commissioner of Police, the fortifications at the premises must be removed or modified to a standard satisfactory to the Commissioner of Police. How will he determine that?

The notice must also warn the owners that if the fortifications are not removed within seven days, the police will remove them and charge the owners for it. The fortification notice must also explain that the owners have the right to apply for a review, which is prescribed in clause 61. The notice might say that the fortifications must be removed within seven days, otherwise the police will remove them; however, the owners may appeal the notice within that seven days. I have said that some of the times prescribed in the legislation are extensive, but the period within which the fortifications must be removed appears to be relatively short. It may not be a practical period in which to remove some of the heavy fortifications. Why is seven days prescribed in the legislation? The Commissioner of Police is allowed to extend that time. The owner might say that he is overseas and cannot organise the removal of the fortification, and that he does not want the lessee to do it in case the premises crumble once the footings and other structural parts of the building are removed. He might argue that the work has to be done properly and will probably involve some engineering work. In that case, I suppose the owner could say to the Commissioner of Police that it will take him a bit longer to do the work, but he will do it; and, if he did not want to do the work, he would have the right, under clause 61, to apply to the Supreme Court for a review of the fortification removal notice.

Mr McGINTY: Some significant issues are involved in this clause, and it is more prescriptive than I would prefer. Nonetheless, these are the sorts of steps that should be taken when we are dealing with other people's

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property. The effect of clause 60 needs to be clearly understood, and people also need to be aware that they will have the right to apply to the Supreme Court for a review. It is not as though people will suddenly be hit with a notice to remove the fortifications within seven days. People will receive a warning notice; therefore, when the final fortification removal notice arrives, it will not be a surprise. In that context, a period longer than seven days is unnecessary.

Clause put and passed.

Clause 59 put and passed.

Clause 60: Enforcing fortification removal notice -

Mrs EDWARDES: If the fortifications are not removed or modified within the time specified in the fortification removal notice, subclause (3) authorises police officers and agents of the Commissioner of Police, without warrant or further notice, to enter the premises and secure them to do anything that they need to do to remove the fortification, and to use any force and employ any equipment necessary. That will mean that the premises will no longer be available for use in their current form. I ask the Attorney General to comment on whether that is also his understanding.

Subclause (4) states -

The Commissioner of Police may seize anything that can be salvaged in the course of removing or modifying fortifications under this section, and may sell or dispose of it as the Commissioner of Police considers appropriate.

Subclause (5) states -

The proceeds of any sale under subsection (4) are forfeited to the State and, to the extent that they are insufficient to meet the costs incurred by the Commissioner of Police under this section, the Commissioner of Police may recover those costs as a debt due from the owner of the premises.

That will give the owner of the premises an incentive to do the removal or modification work himself, because otherwise the State may do the work and keep the proceeds of sale, and recover any shortfall in costs as a debt due from the owner of the premises.

Mr MCGINTY: The Commissioner of Police is entitled to enter and secure the fortified premises, and to use any force and employ any equipment necessary. The securing of the premises may involve excluding people from the premises, particularly if demolition work is to take place around the premises; and I think that is something the police will want to be able to do. However, if that is done amicably, it may be that the occupiers are excluded only from certain parts of the premises. If the police conduct the demolition themselves, they may sell whatever they can salvage, and recover any outstanding costs as a debt due from the owner of the premises. The purpose of this clause is to ensure that the police have sufficient power to complete the demolition work and recover the costs.

Clause put and passed.

Clause 61: Review of fortification removal notice -

Mrs EDWARDES: Subclause (1) states -

If a fortification removal notice relating to premises has been issued, the owner or an interested person may, within 7 days after the day on which the notice is given to the owner of the premises, apply to the Supreme Court for a review of whether, having regard to the submissions, if any, made before the submission period elapsed and any other information that the Commissioner of Police took into consideration, the Commissioner of Police could have reasonably had the belief required by section 57(2) when issuing the notice.

If a club has 364 members, will each of those persons be an interested person who will be able to take advantage of this clause? It may well be a technical flaw that each member of an organisation will be considered an interested person. I think the Attorney General will find that this will be tested.

I am not sure that sufficient notice will have been given under subclause (1) if the elements of the previous clauses have not been met. I am still not sure of the reason that we need subclause (3) in clause 55 and subclause (2) in clause 59. Those subclauses appear to be excessive and will place a huge burden on the Commissioner of Police.

Mr MCGINTY: The intention is that a wide range of people may apply to the Supreme Court for review, not that each of those persons is required to be served with a fortification removal notice; and that is probably the crux of the point the member has raised. I also draw the member's attention to subclause (3), which states -

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An application for review under this section cannot be made if an application has previously been made by any person for the review of the same matter.

Mrs Edwardes: If one of those members has made an application for review, none of the others can?

Mr McGINTY: Yes, although a number of people may make a concurrent application. It is designed to avoid the frustration of individuals continually applying for review. Subclause (3) would strike that out.

Mrs EDWARDES: Returning to the secrecy provisions in this Bill, subclause (2) states -

The Commissioner of Police may identify any information provided to the court for the purposes of the review as confidential if its disclosure might prejudice the operations of the Commissioner of Police, and the information is not to be disclosed to any other person, . . .

A penalty is proposed for an offence under that subclause. However, that penalty also needs to be picked up in the review of the penalties. More importantly, it highlights the point I made earlier about the seizure of those documents; namely, that if there is a likelihood that it could prejudice the operations, there is no relevant provision in the corresponding section 714 of the Criminal Code under which the items seized must go before a justice.

Mr McGinty: Was that a question?

Mrs EDWARDES: I am not supporting the clause on that basis and I was just making that point.

Subclause (5) states that -

The court may decide whether or not the Commissioner of Police could have reasonably had the belief . . .

It will be a review of the Commissioner of Police holding the belief; not a review of the decision. Is that how the Attorney General understands it, as it is a significant point?

Mr McGINTY: The review is not a matter of reconsidering the issue. It will look at whether the Commissioner of Police could reasonably have had the belief that is required.

Mrs Edwardes: It is not reviewing the decision to issue the fortification notice and the potential knocking down of property, although the Attorney General is not likely to have got to that stage; it is whether the Commissioner of Police actually held the belief.

Mr McGINTY: Yes, that is what is being considered. Once the commissioner has the belief that the premises are heavily fortified and it is a place frequented by people who are associated with organised crime, certain consequences will flow. The provision only considers the commissioner's belief.

Clause put and passed.

Clauses 62 to 66 put and passed.

Clause 67: Expiry -

Mrs EDWARDES: I have forewarned that we will go to a division on this clause if need be.

Mr McGinty: The Government will support the member in this instance.

Mrs EDWARDES: I have a new clause listed on the Notice Paper that will enable a review of the Act. The Opposition will vote against this clause, which is a sunset clause on the operation of this Bill after four years. We will then seek to insert a new clause containing provision for a review of the Act. The Bill will be expensive to put into operation. However, it is regarded as an essential tool to enable the police to investigate organised crime; therefore, it would be silly to apply a sunset clause without providing for the ongoing operation of the provisions. I note the point made by the Attorney General that four years was identified so that the operation of the legislation would be taken past the date for the next election. This should not be an election issue. There has been bipartisan support for it. The review clause I will seek to insert will enable the review to be carried out as soon as practicable after the expiration of three years. That will take the date for the review past the next election and it will remain in the same time frame as that anticipated by the Attorney General. Any problems that arise in the operation of the legislation will be dealt with then. We have identified some of the problems during this debate, and some of them may be corrected in the other place. However, four years is a totally inappropriate time frame, bearing in mind the costs involved and the obvious need that this Bill will meet. Indeed, it can take four years to carry out an investigation. Although under the ongoing provisions if an offence has been committed during those four years, the person involved can still be punished, the exceptional powers

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cannot be utilised after that time. We will oppose this clause, and I understand that the Attorney General indicated he will support the Opposition in moving to insert a review clause.

Mr McGINTY: This Bill has proceeded with accommodations from both sides of the House. The Government was of the view that a sunset clause was appropriate given the extent of the new powers contained in the legislation. Under this clause a conscious act by Parliament would have been necessary to reactivate those powers. However, a similar end result can be achieved by a review clause operating on the same time frame. In the spirit of goodwill with which this Bill has been progressed so far, I am happy to agree with the member for Kingsley that, instead of a sunset clause that would enable the Bill to automatically cease operation four years hence, the Bill will be reviewed. That review might recommend the repeal or significant rewriting of the legislation. Whatever mechanism is used, it is clear that these new powers warrant rigorous scrutiny during the life of the legislation. If it is found that the provisions breach human rights or have been used capriciously, the option is available to not proceed with the legislation beyond that date, and a review will recommend the appropriate course of action. I am happy to support the member for Kingsley on this matter.

Clause put and negatived.

New clause 67 -

Mrs EDWARDES: I move -

Page 35, after line 10 - To insert the following new clause -

67. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 3 years after its commencement.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 4 years after the commencement of this Act.

New clause put and passed.

Schedule 1 -

Mrs EDWARDES: During the second reading debate I highlighted how these sections of the Criminal Code related to the Bill. I mentioned that it would have been far more convenient if the titles of those sections had been included here. The one section that is missing from the list in schedule 1 is section 409 of the Criminal Code, which deals with the offence of fraud. Organised crime in America and around the world is moving heavily into fraud. The reason for that is that there is a big difference in the penalties imposed for different crimes. Why would someone involved in organised crime import drugs, which carries a maximum penalty of life imprisonment or 20 years in jail, when the penalty for fraud is seven years? From the point of view of organised crime, fraud carries a lesser penalty and could be far more economically productive. That is probably the reason that organised crime is moving heavily in that direction.

A report was released earlier this year by the Federal Bureau of Investigation in the United States on national white-collar crime. That was the first FBI report to deal with Internet fraud trends and statistics. The FBI established an Internet fraud complaint centre and had more than 20 000 complaints in the first six months of operation. It clearly identified the current level of Internet fraud. The report went through the different types of Internet fraud that is being carried out by large and small players.

The inclusion of section 409 of the code in schedule 1 of the Bill might perhaps require an exception, because we want this legislation to pick up only the big boys and crimes involving excessive amounts of money. At the moment, one of the flaws in our system in dealing with fraud is that each act of fraud is dealt with separately by warrant or summons. Therefore, a person might commit several hundred thousand dollars worth of fraud, but that might be dealt with as 20 offences of \$10 000 and be classified as misdemeanours. That is an issue for another day. Organised crime is clearly moving towards fraud, particularly some of the Asian groups. If this amendment is not passed, this legislation will not be able to be utilised for the increasing level of fraud that organised crime is committing in this State.

Mr McGINTY: There is no doubt that offences of dishonesty are often at the core of organised crime, whether it be organised corporate crime or crime at a more base level. The problem with the proposal put forward by the member for Kingsley to include fraud within the range of schedule 1 offences is that it currently carries a maximum seven-year penalty. There is a summary conviction penalty of imprisonment for two years or a fine of \$8 000. The bulk of crimes of fraud that currently go before the courts involve relatively small amounts of money. Section 409 of the code requires that if the value of the property gained by fraud is more than \$10 000, it

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must be dealt with on indictment. It cannot be dealt with summarily. That implies that matters of fraud dealt with by magistrates must be matters involving less than \$10 000. We clearly do not want to catch that in the ambit of this legislation, which deals with the most serious crimes at the most serious end of the scale. Fraud is one form of dishonesty, but there are others. The schedule picks up property laundering, which is contained in section 563A of the Criminal Code. Property laundering is a fairly broad provision, which states -

- (1) A person who -
 - (a) in Western Australia engages, directly or indirectly, in a transaction that involves; or
 - (b) brings into Western Australia, or in Western Australia receives, possesses, conceals, disposes of or deals with,
- any money or other property that is the proceeds of a major offence is guilty of a crime and is liable to imprisonment for 20 years.

That has been picked up. A major offence for the purposes of property laundering means an indictable offence. It seems that money laundering, which is often the consequence of fraud, would pick up that criminal act. It is a serious offence because the maximum penalty is 20 years imprisonment, compared with the maximum of seven years for fraud. The Government will not agree to the member for Kingsley's amendment because a vast number of frauds are committed which bear no relationship to organised crime. The dishonesty in dealing with money and property is covered by the property laundering provision. It is perhaps not dealt with completely, but it will certainly provide scope for the police to use property laundering, or the suspicion of the occurrence of property laundering, as a way to catch organised criminals who engage in that area of economic activity.

Mrs EDWARDES: I pick up the fact that, by just incorporating section 409 without providing an exception for it to deal only with large amounts and the big boys, the amendment is not as acceptable as it should be. We do not want this legislation to pick up small acts of fraud. However, it gets back to the definition of organised crime. That definition would eliminate most of those smaller elements because they would not necessarily meet the test of organised crime. There must be two or more schedule 1 offences or it must be in conjunction with a clause 4(b) offence of murder or wilful murder.

This section could be used to target attacks by organised crime on major banks, and not petty fraud or acts of dishonesty. Credit cards are the main way in which that type of fraud is committed. Banks are a great corporate identity. There have been cases in the United States in which a person has paid for a meal at a restaurant with a credit card and an imprint of that card has been taken. The imprint is given to another person who puts it through a computer and produces an undetectable copy of that credit card, which allows those people to access the accounts attached to that card. The occurrence of that crime is growing in the United States. I know that the Australasian Police Ministers' Council, as well as all Commissioners of Police around Australia, is concerned about the potential growth of that crime in Australia. Again, that crime would pick up the element of organised crime, because it involves a high level of organisation and planning by two or more people. Another way to commit fraud using credit cards is through merchant records. Far greater amounts of money can be accessed with those records. A whole business can be cleaned out overnight. Although the banks have put certain tags in place so that if an unusual number of transactions occur within a set period, such as 24 hours, or the level of the amounts withdrawn are unusual, it automatically shows up, but not until the next morning. However, by that time they have gone, and the police cannot get to them. If the police had the ability to use these powers, a particular person could be brought before the special commissioner and the police could go onto the premises. There are real restrictions on completing an investigation in this area of the law, because it is a growth area. I have highlighted only two examples. There are probably a number of other ways in which credit cards are being abused and misused by people involved in organised crime in an endeavour to rip off other people. Essentially we are talking about not hundreds of thousands of dollars, but millions of dollars. Seven years will not be sufficient.

A number of things need to happen. First, the section 409 issue needs to be looked at in the light of the current activity that is being exhibited by some gangs that are operating internationally as well as within Australia. International gangs, particularly the Asian gangs, often operate within Western Australia. That needs to be looked at separately. Secondly, we need to look at incorporating that as a schedule 1 offence. I did not have the ability to distinguish how one would carry out the section 409 exception so that the big guys could be caught. The Criminal Code might need a new offence, which could easily be incorporated into schedule 1 in the future. That needs to be looked at seriously in the operation of the Act.

Mr McGINTY: I think that is right. The answer to the proposition that the member has put is that section 409, which deals with fraud, needs to be reviewed to cover a range of situations in which the nature of the criminality

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is extremely serious, rather than someone duping someone or things of that nature. Section 409 fraud is really about any person who, with intent to defraud by deceit or any fraudulent means, obtains property from any person. That is a very general crime, much of which will not be part of organised crime. We cannot support that at this stage. If, at some future time, significant computer crime or things of that nature were covered in a separate subsection, that could be included in this legislation.

I also draw attention to the provisions in section 398 of the Criminal Code, which section deals with attempts at extortion by threats. This has more of the colour of organised criminal activity than does a simple fraud.

Mrs Edwardes: I think they are moving from the total aspect of being violent to safer areas, but are still extorting and ripping off people and making money.

Mr McGINTY: If section 409 were broken down into two sections, the more serious ones could easily be included here. Section 398 provides -

Any person who, with intent to extort or gain anything from any person, -

- (1) Accuses or threatens to accuse any person of committing any indictable offence, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any indictable offence; or
- (2) Threatens that any person shall be accused by any other person of any indictable offence or of any such act; or
- (3) Knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid;

is guilty of a crime.

It then goes on to make other provisions. We would regard those more as standover threats and extortion, which would constitute an element of organised crime.

Mrs Edwardes: Some people have indicated to me that that might pick up a class of people known as the unionists, and one union in particular.

Mr McGINTY: I think it could even pick up one of the building company employers who was sent to jail recently for quite an extended term. Perhaps it cuts both ways in certain industries that are run by fairly rough measures. There is merit in the proposition, but it is possibly a bit premature at this stage.

Mrs EDWARDES: For the sake of completeness, I move -

Page 36, after line 22 - To insert "s. 409".

Amendment put and negatived.

Schedule put and passed.

Title put and passed.