TERRORISM (EXTRAORDINARY POWERS) AMENDMENT BILL 2018

Second Reading

Resumed from 15 May.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.50 pm]: I will keep my remarks brief because I understand the importance of passing this legislation before the winter recess. The Terrorism (Extraordinary Powers) Amendment Bill 2018 was introduced into the other place on 15 March this year, at which time the responsible minister, Hon Michelle Roberts, MLA, the Minister for Police, gave a second reading speech explaining the policy of the bill. It was debated on 10 May, so it took almost two months before this legislation was brought on for debate in the other place. That debate concluded fairly quickly—I think, within a day—but it was read a third time on 15 May. On that occasion, it was introduced into this place. Once again, the bill required significant amendments from the government in the Legislative Assembly, moved by the minister responsible for the bill. This is another disturbing trend whereby important legislation—legislation said to be urgent—has then, after being introduced with a flourish very, very quickly and without even much debate on the subject, required fixing by the government. I find it surprising that that ought to be the case after something like a year in office.

Nevertheless, the purpose of the legislation is to expand police powers in order to deal with extraordinary situations. It is said that it has arisen out of the coroner's findings of the Lindt Cafe siege in Sydney, where people were held hostage and which ended in tragic circumstances. It is said that because of the confusion that police had at the time as to how they could exercise their powers to use lethal force, some amendments were needed in order to clarify legislation, both in that jurisdiction and more generally in Western Australia, in order to give clarity and confidence to our law enforcement officers as to when they could use force and under what circumstances and to protect them against action in the event that they misjudge a situation in the heat of the moment.

With the amendments that were moved in the other place, the opposition is satisfied that the legislation will achieve its end. Having said that, we would like to know a little more about the consultation that has been conducted because it is apparent from the amendments that were moved in the other place that the Western Australian Police Union of Workers, for example, was not satisfied with the end product and that seems to have prompted some of the amendments that evolved. Perhaps we could have an explanation of how the legislation changed from what was proffered in the other place so that we can understand what was done to improve it. Otherwise, perhaps we could be given some brief information about the regime in other jurisdictions so we know whether our legislation differs markedly from that.

I know that the Greens, for example, have a problem with this bill. They seem to think that the current law provides the necessary protections for police officers and those assisting them in the sorts of circumstances that are covered by the bill. I am sure that we will hear more about that from Hon Alison Xamon, who is the lead speaker. I will listen to her speech with considerable interest and will be interested in the government's response to the position that she sets out.

I think it is important that this legislation passes, although it has been treated as a fairly low priority so far. We would not want a situation to occur, heaven forbid, sometime tomorrow in which the police find themselves at a disadvantage in being able to deal with that situation because it has not been dealt with properly by this Parliament. I am gratified that the Leader of the House has brought on this bill ahead of the Tobacco Products Control Amendment Bill 2017, which is yet to be dealt with, in order that there is confidence that it can be passed, and if any amendments need to be addressed, they can be dealt with properly before this Parliament rises for the winter recess and hopefully give the police the comfort they feel they need to address these situations.

HON RICK MAZZA (Agricultural) [2.56 pm]: I rise to make a few comments on the Terrorism (Extraordinary Powers) Amendment Bill 2018, which was introduced into this house on 15 May this year. The purpose of the bill is to provide certainty for police officers should there be a terrorism event and allow the Commissioner of Police or a deputy commissioner to make a declaration that a terrorist incident has taken place. I understand that this legislation came about through a review of the siege on the Lindt Cafe, when there was a degree of uncertainty about the legal position. In Western Australia, the use of force is determined by section 16 of the Criminal Investigation Act 2006 and chapter XXIV of the Criminal Code. People currently have a defence in an imminent situation of someone either killing or hurting someone else, and police officers are able to use lethal force in such circumstances. It has not been clear what powers the police have if a hostage situation occurs in which there may not be a direct or imminent threat but the situation needs to be dealt with. Therefore, this bill will address that.

Our national threat level remains probable. We must ensure that we are adequately resourced should a terrorist threat arise and that officers are able to use lethal force in those circumstances and have a defence. It is also my

understanding that amendments proposed by the Western Australian Police Union of Workers relate to when an order had been given and then withdrawn. In that case, the police would have to be notified before they would cease to have that defence.

I will not speak for long on this legislation. I support the bill. Hopefully, we can get through it fairly quickly.

HON ALISON XAMON (North Metropolitan) [2.58 pm]: I rise as the lead speaker on behalf of the Greens to speak on the Terrorism (Extraordinary Powers) Amendment Bill 2018, which amends the Terrorism (Extraordinary Powers) Act 2005. I state from the outset that the Greens have considerable concerns about the nature of this bill. I have a number of questions that I certainly hope will be answered during the minister's reply, in which case I do not envisage that we will need to go into Committee of the Whole. However, I want to make a number of comments. Proposed part 2A states —

> The Commissioner may declare that this Part applies to an incident to which police officers are responding if the Commissioner is satisfied there are reasonable grounds to suspect —
>
> (a) that the incident is or is likely to be a terrorist act;

I note that "terrorist act" is defined in section 5 of the act and means an act that causes any person to die or suffer serious physical harm or endangers the life of another person or seriously risks public health or safety or seriously damages property or seriously interferes with, disrupts or destroys an electronic system, including but not limited to these systems—information, telecommunications, finances, essential government services, essential public utilities and transport—and, importantly, that the act is done with the twin intentions of both advancing a political, religious or ideological cause, and coercing or intimidating a government or intimidating the public. I will have a bit more to say about this in a moment. Importantly, the definition excludes advocacy, protest, dissent and industrial action that is not intended to cause death or serious physical harm to any person, endanger the life of another person or create a serious risk to the health or safety of the public. Planned and coordinated police action is required to defend a person threatened by an incident, prevent a person being detained or end their detention. When we talk about "detained" in this instance, we are talking about the deprivation of liberty as per section 332 of the Criminal Code, which is effectively kidnapping. The declaration will apply to all locations where police are responding to the incident, so it is mobile if needed. I note that during debate in the other place, the Minister for Police indicated that, in contrast, the New South Wales version is not mobile. The declaration can also apply to coordinated multiple attacks at multiple locations. I note that the declaration must be in writing but if that is not practical due to the urgency of the situation, it can be made orally with details recorded contemporaneously and put in writing as soon as practicable or, in any event, within six hours. Once the declaration is made, the commissioner must notify the minister and the police officer in charge of the police who respond to the incident. The declaration will authorise responding police officers—in addition to the powers that they already have under the current laws—to authorise, direct or use force, including lethal force, that a police officer believes on reasonable grounds is necessary to defend a person threatened by an incident, prevent a person from being detained or end their detention. A police officer acting in accordance with the declaration is not criminally responsible for their act and the usual Criminal Code justifications, excuses and defences also apply.

The extra powers granted do not apply to special constables, Aboriginal police liaison officers or police auxiliary officers—which is important, and I am glad they do not—nor do they apply to officers authorised under the Corruption, Crime and Misconduct Act unless it happens that that officer is also a police officer. The commissioner can in writing appoint a member of the federal police, interstate police or a New Zealand policeperson as a special officer with these extra powers for up to 14 days at a time. I note that consecutive appointments can also be made. I understand that it is expected that specialist police officers, most notably the tactical response group officers, who are most likely to use this provision. The commissioner's power to make a declaration can be exercised by a deputy commissioner if the commissioner is absent or unavailable and it can go further down the chain of command if the deputy commissioner is also not available.

I note that declarations are intended to last until they are specifically revoked and they do not have inherent time limits. They can be revoked at any time and, in fact, must be revoked if the need for police response ends, although I am of the understanding that there is no recourse if, for some reason, it is not revoked. It would be good to know whether that is actually the case. When it is revoked, again, it must be in writing; however, in urgent situations it can be done orally with details recorded contemporaneously and put in writing as soon as practicable or in any event within six hours. The commissioner must notify the officer in charge of the police who are responding to an incident, who must in turn notify other police officers of the revocation of the order. If, for any reason, the commissioner fails to revoke the declaration, it would in any case become effectively inoperative upon proposed section 21F conditions ceasing to apply. If the declaration is revoked or found by a court to be invalid, the protections the bill gives to police officers, who acted in good faith acting under the declaration's authority, continue until the police officer becomes aware of the revocation or court finding.

I understand that the legislation was developed following the New South Wales coroner's investigation into the horrendous Lindt Cafe siege. The Greens absolutely recognise the importance of making sure that we appropriately and swiftly respond to coronial findings because we have an ongoing concern that too many recommendations are never acted upon as it is. However, we also have concerns about the way that the Lindt Cafe siege findings have been interpreted. In particular, I note that in Western Australia's response to those coronial recommendations, there are significant differences between Western Australian and New South Wales law that need to be considered.

For starters, I turn to section 248 of the Criminal Code, which deals with issues of self-defence. The wording states clearly that harm does not need to be imminent. This provision was a deliberate change made by the Parliament in 2008 to make the law more clear, particularly in cases in which the threat is not imminent. The New South Wales law that was applicable to the Lindt Cafe siege—section 418 of the Crimes Act—did not have the clear wording that WA has had in place since 2008. Although the provision is entitled "Self-defence against unprovoked assault", section 248 clearly states that it is intended to apply to the defence of one's self or another person. Section 248 applies to defence from a harmful act as defined, and that definition covers killing, grievous bodily harm, wounding, assault, sexual offences, kidnapping or the deprivation of liberty, threats, stalking and child stealing. It therefore already covers the behaviours to which the bill applies. Deprivation of liberty alone is already sufficient to trigger that section. The wording of section 248 clearly already includes "lethal force". The one significant difference between section 248 of the Criminal Code and the bill that we are now considering is the removal of the requirement that the police response be a reasonable response on reasonable grounds in the circumstances as the officer believes them to be. This is an important inclusion in section 248 because it is the safeguard against the use of unreasonable force. However, I stress that it refers to the circumstances that "a police officer believes" them to be on reasonable grounds. We are not talking about hindsight. That is what the officer believes on reasonable grounds at the time. It is what we refer to as the agony of the moment, and in a crisis situation, people almost certainly operate with incomplete information. Under section 248, if a police officer kills a person and it is not a reasonable response in the circumstances as the officer believes it to be on reasonable grounds, the officer can be charged with manslaughter. I asked at the briefing whether this has ever happened in Western Australia and the information I got at the time was that no-one could recall this having happened. In doing away with this safeguard, the bill will authorise police to respond in a way that is unreasonably violent and that would otherwise be a criminal offence had a declaration not been made.

I also refer to section 25 of the Criminal Code, "Emergency". This section does not apply if section 248 applies. Like section 248, this section contains a proportionality provision requiring the response to be reasonable "in the circumstances as the person believes them to be". Like section 248, this section was updated in 2008 to make it more clear and certain.

There are issues in this bill about blurring the line between defending victims and effectively assassinating perpetrators. This bill removes a safeguard against officers responding with unreasonable violence to the circumstances that they believe on reasonable grounds to exist. It is a really big policy step to remove that requirement. Importantly, it is not one that the Lindt cafe siege coroner recommended and as such it is not one that the Greens will support. Removing that requirement blurs the line between what constitutes self-defence and assassination. It brings to mind the infamous George W. Bush pre-emptive strike notion, but that related to armed forces, not police. Do we as members of Parliament really want this? Do we really think we have social licence from the community to do this? Remember that a declaration can be made when there are reasonable grounds to suspect certain things. That is not a very high degree of certainty to attract force, and we are talking possibly lethal consequences.

The definition of "terrorist act" in section 5 of the Terrorism (Extraordinary Powers) Act 2005 includes acts solely against property, not against people. Causing serious damage to property or seriously interfering with an electronic system is a terrorist act under WA law if it is done with the requisite intentions. Similarly, detention can occur without threatening a person—for example, physically or electronically locking a place down to prevent egress. I understand from the briefing that, rightly, police training emphasises alternatives to force in armed siege situations, such as cordon and contain, followed by negotiation, and that usually this works. It gives police time to gather information to identify the best time and way to enter. There is strong reluctance to enter or apply force too early in case it aggravates the situation. There is also strong reluctance to use lethal force until police are satisfied that enough information is available to satisfy section 25 or section 248 so that they can avoid being charged. In an armed siege involving a terrorist, however, the concern is that the hostage-taker's intention is different and, therefore, negotiation is not really a viable option. Police may need to act far earlier on far less information because, although it is extremely dangerous, it is considered less dangerous than waiting. The desire is to overcome police reluctance to act in this situation, to allow them to choose their time to act on the information they have at that time, and to protect them from criminal responsibility in so doing. That is on the basis that sections 25 or 248 would not. I understand that, but I am not persuaded that it means our existing law is inadequate nor that the important safeguards that it contains should be abandoned.

The Lindt cafe siege coronial report confirmed that lethal force was a legally available option soon after the siege commenced, although had the police known this, they had no opportunity to use it before the tragic death of the first hostage. The bill applies to situations in which there is sufficient information for the Commissioner of Police to have made the declaration; for planned and coordinated police action; for the relevant officer to have formed the necessary belief on reasonable grounds that force was necessary to defend a person or prevent or end their detention; and for a choice to have been made as to which force option should be used. I am not persuaded that that level of information is inconsistent with complying with our existing emergency and defence laws.

Instead, I am concerned that this bill will create uncertainty and false distinctions. The Lindt cafe siege coronial report teaches us that the New South Wales Police Force erred in its understanding of the law. Even the snipers did not understand when lethal force was legally permitted. It is imperative that police understand the existing laws extremely well, because the bill before us applies to a particular circumstance, and I am really hopeful that it will continue to be a rare circumstance. The usual law will continue to apply in other contexts, of which, sadly, there are several. I am talking about family and domestic violence sieges; mass killings and other attacks unrelated to any political, religious or ideological cause; abduction or deprivation of liberty unrelated to any political, religious or ideological cause; dangerous armed criminals who are unrelated to any political, religious or ideological cause, such as bank hold-ups by escapees; and terrorist acts when no declaration has been made, such as the ones that happen too fast. I am thinking of people who drive vehicles towards people in order to kill them and for which there is no time for police to plan a coordinated response. I am also talking about situations in which a declaration has been made and then for some reason it has been revoked or declared by a court to be invalid and, sadly, physical threats posed by people with impaired mental capacity who may not have formed the necessary intention. The bill requires responding police to code-switch between different legal regimes, even though they all involve a victim or a potential victim under threat of being detained and are the most high pressured of response situations. This fundamental similarity is why there have already been suggestions that this law could be expanded to other situations. That was a suggestion made in the other place during the course of the debate on this bill.

I want to make some general comments about the definition of "terrorism" because that is often contested. I am concerned that the way we now talk about terrorism within Australia is almost exclusively within the framework of Islamic terrorism. I am concerned because I think we need to be thinking a little more broadly than that. I want to make some comments particularly about how disturbed I am about the rise of the Incel movement. Incel is a recent example of a phenomenon that, in my opinion, has many hallmarks of terrorism. For those people who are fortunate enough not to have been exposed to the sheer horror of what is Incel, the name is the conflation of two words—involuntary celibate. It is already being used as a catchcry by people, including the Californian man who, in 2014, killed six students from the University of California, Santa Barbara, and injured 14 others before killing himself, and, more recently, in April this year, the Toronto man who ran down pedestrians in a van, killing 10 people; eight of whom were women. Incels appear to hate women and they advocate rape. Even the website Reddit, which is not renowned for its high standards, has banned this particular community. I am wondering whether that would be terrorism as defined in this bill. Incel has been characterised as mass murder that is attributable to poor or inadequate male role modelling. They are basically a bunch of non-achievers with a feeling of being entitled and overprotected and considered wonderful without ever having been taught by their fathers that they have to earn it to achieve anything. I think that it starts to really raise the question of what is terrorism.

I would also like to draw attention to my deep concerns about the rise of the Nazi movement within Perth. More and more, we are seeing that people who overtly call themselves Nazis feel quite comfortable in being able to come out and publicly protest on our streets. I would like to remind people that at the heart of being a Nazi is that they condone genocide. I wonder whether we will be talking about these people who are predominantly white, or whether we will really continue to talk about terrorism as it pertains to Muslim people.

I also want to talk a little about my concerns for people with a serious mental illness and the concerns I have regarding the potential risk for people with mental illness being inadvertently caught by these provisions. The Australian Institute of Criminology published figures in May 2013 indicating that since 1989–90, 105 persons had been fatally shot by police. Available information indicates that 42 per cent of those people who died had been identified as having some form of serious mental illness, with psychotic disorders such as schizophrenia being the most common. It was noted that it is harder to assess the proportionality of police response when an offender's mental capacity is seriously impaired. In 32 per cent of the police shootings, the deceased was in possession of a firearm, 39 per cent of the incidents involved an alleged offender armed with a knife and 13 per cent involved other weapons such as an axe or a crossbow. For the remaining 15 per cent of police shootings, the alleged offender was not in possession of a weapon at all. Overall, for the last 22 years for which data has been collected, 85 per cent of police shooting incidents involved an alleged offender armed with a deadly weapon. I made a point of considering how this bill is likely to apply to a person who has a severe mental illness. Making a declaration involves a two-part test. The commissioner must be satisfied that there are reasonable grounds to suspect the incident is or is likely to be a terrorist act and that there are reasonable grounds to suspect planned and coordinated police action is needed to defend a person to prevent and/or end a person's detention. The second part of the test

may apply to a mentally ill person in the same way as it would to any other person, but for the first part of the test, to be a terrorist act, as defined, the person has to have specific intentions. Frankly, a person with a mental health issue may not be capable of forming such an intention, but, as the bill stands before us, the commissioner needs only reasonable grounds to suspect the incident is likely to be a terrorist incident if, as well as being threatening, there is something about the person who is associated with terrorism, such as their appearance. I suppose this is where I have been expressing my particular concerns about whether it will be people who may come from a particular ethnic background for whom suspicions may arise, or use of particular words or slogans, then the test may well be satisfied for the commissioner, the declaration made and the authorisation to use lethal force triggered against a person who in actual fact just has impaired mental capacity and is not indeed a terrorist.

Another scenario we need to consider is that of domestic and family violence. Figures from the Australian Institute of Criminology indicate that homicide rates are declining, but in the 10 years to 2012, two in five homicides were of family members, most commonly partners, children and parents. Figures from the Australian Bureau of Statistics in 2016 were similar, nationally, at 42 per cent. Possibly this will be the most likely situation in which responding police would need to consider whether to use lethal force in order to defend a person, but this would not be terrorism as defined, unless, I point out, it turns out that the person who is making the threat is intending, for example, to try to make a point of achieving a change in family law legislation. I do not say that lightly, because there has been a disturbing increase in some of the rhetoric that comes from the more fringe end of the men's rights activist movement, the MRA, in which certain extreme measures are sometimes proposed to try to achieve changes to laws that they deem to be unjust. Very often it is their own families who may be particularly at risk of their quite unhinged rage. I am curious to know whether those sorts of situations may even be considered to be terrorism, for the purposes of this act, if indeed, the purpose of it is to try to incite terror to force changes of the law.

I will make a comment about the procedural and recording decisions. As is clear from the Lindt Cafe siege coronial report, good communications are absolutely critical for clear communication during a terrorist incident and for also understanding what went down at the time after the event. In this bill, recording systems are needed for communication, recording of the declaration and any revocation of it, recording the reasons for making a declaration or revoking it and ensuring that responding police are fully informed including following any handover, as well as recording the reasons for taking whatever police action ended up being taken. The bill, as amended in the other place, makes it clear that even if a declaration is made and later revoked or found by a court to be invalid, any action taken by a police officer is still going to be protected if it was done before the officer knew of the revocation or the court finding.

I would like to have the following confirmed for the record. It was a question I asked in the briefing, and it would be good to get on the record, if I can. From the briefing I understand that although an incident could involve a lot of people, communication lines for command are intended to be very clear and it is anticipated that it is unlikely to go wrong as a result, hence communicating the making of a declaration, any revocation of it or court finding of invalidity in relation to it is not likely to be a problem. The commissioner's reasons for making a declaration and the reasons for any revocation of it would be recorded in notes made by the commissioner. The commissioner is not likely to be time-pressured because the sort of incident to which the bill applies is one in which planned and coordinated police action is intended, such as a siege. I hope I have that right from my understanding from the briefing and if that is the case, I would appreciate it if the minister is able to confirm that for the record. As a result, hopefully, any communication breakdown at an incident is most likely to occur in negotiations and not because there has been a breakdown in the line of communication. Training and exercises are used to reduce the chances of this happening to ensure that when officers are making decisions, hopefully they are making very fully informed decisions. This is extremely important in any incident, not only those to which the bill applies.

At the briefing I asked about the meaning of the word "direction" in proposed section 21F, because an individual police officer cannot be mandated to use force, which is good. We want our police officers to continue to use their discretion and I am hoping the minister can confirm my understanding of the response I received for this as well. My understanding of the answer is that individual police officers will continue to retain their autonomy. An officer who uses force, lethal or otherwise, while a declaration is in place must themselves still believe on reasonable grounds that it is necessary, to defend a person threatened by the incident or to prevent or end a person being detained. That planned coordinated action in an incident might include directing an officer to use force. For example, they might be told to engage if such and such happens, but the officer, importantly, is still not compelled to follow that direction; they must still personally believe on reasonable grounds that using force is necessary to defend a person threatened by the incident or to prevent or end a person being detained. Nor is an officer prevented from using force until such a direction is given. If they understand there is a declaration in place and they believe on reasonable grounds that using force is necessary to defend a person threatened by the incident or to prevent or end a person being detained, that is sufficient. I am hoping that my interpretation of that can be confirmed and I hope that it is correct because it leaves some measure of safeguard. I also ask for available force options to be confirmed for the record. From the briefing, I understand that the bill will not remove other options from being available to police who are responding

to an incident and that lethal force will be merely one option. Other options include tasers, bean-bag rounds, charging with shields et cetera. They are other responses that might be considered appropriate.

In conclusion, I recognise that the bill before us aims to provide Western Australian police officers with clarified authority, greater certainty and protection from criminal liability if they are required to use force, including lethal force, when responding to a terrorist or suspected terrorist act. I understand that the intent of this legislation arose from the New South Wales coroner's investigation into the Lindt Café siege. The coroner recommended that special powers available to police responding to terrorist incidents should include a more clearly defined right to use force, including lethal force. Of course, like every single person in this place, I acknowledge that peace and security are under threat around the world. We have all borne witness to horrendous violent and criminal acts and ongoing threat. The Greens appreciate the incredibly important work that is done by our police to keep our community safe. We acknowledge that situations such as those envisaged in this legislation are emotionally charged and often require decisions to be made very quickly—often in a split second—and with less information than we would like. However, we need to remember that these situations typically involve civilians—people who are Australian citizens. It is crucial that we make sure that our legislation strikes the right balance in permitting appropriate force to be used to defend people from harm. I note that the key lesson from the Lindt Café siege was not that police needed more powers, but, rather, there was an overwhelming need within the police for more certainty, good processes, timely information and quality training. I am not convinced that the bill before us will improve on WA's existing laws for a terrorist incident. As I have already noted, the bill does not provide certainty about pre-emptive defence because Western Australia already has this. The bill removes a safeguard against responding unreasonably violently to the circumstances the officer believes on reasonable grounds to exist. It is a big policy step to remove the requirement and effectively invokes a power to kill even when hostages are not directly threatened. It is not one that the Lindt Café siege coroner recommended. As such, it is not one that the Greens support.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [3.33 pm] — in reply: I thank those members who made a contribution to the debate on the Terrorism (Extraordinary Powers) Amendment Bill 2018 this afternoon—Hon Michael Mischin, Hon Rick Mazza and Hon Alison Xamon. I am grateful for their contributions and I am grateful for the support that has been offered to this bill by Hon Michael Mischin on behalf of the opposition and Hon Rick Mazza. It is my intention to answer all questions asked during my second reading reply speech so, hopefully, I will be able to do that.

Hon Michael Mischin said that he thought this legislation, with amendments, would achieve its end. He asked about the consultation that occurred, how the legislation changed to improve the legislation and what the regimes in other jurisdictions are. I will start off on those things first. Our bill is based upon similar provisions in New South Wales. South Australia is proposing to enact similar provisions. I am advised that Victoria is taking a different approach and instead amending its Crimes Act to deal with the use of lethal force generally. Consultation took place with the State Solicitor's Office, the Department of the Premier and Cabinet, the Western Australia Police Force, the office of the Attorney General and the Western Australia Police Union. Amendments were made in the Assembly. Proposed new section 21EA was inserted to provide that revocation of a declaration is generally to be made in writing, but can be made orally. As Hon Alison Xamon said, if it is made orally, it needs to be declared or revoked within a six-hour time frame. Amendments were made to proposed section 21F(4) and (5) were added to promote greater clarity of protection for police officers. Amendments were made to proposed section 31C to provide greater clarity in the event that a special officer's appointment is found to be invalid.

On other issues that were raised, section 248 of the Criminal Code provides a defence to the use of force, including lethal force, when acting in self-defence or defence of others. That provides a broad protection for Western Australian police officers. In analysing the recommendations of the coroner in the Lindt Café siege coronial inquest, it was clear that there was a need to also make provision for the very specific type of circumstances that arose there. The amendment provides clarity in the event of a siege situation in which citizens are deprived of their liberty. It does not derogate from the ordinary offences available to an ordinary officer. The provisions reflect the very specific operational requirements of a terrorist siege and ensure clarity of authority and protection for officers dealing with a siege situation. It is correct to say that the New South Wales and Western Australian circumstances are not identical, but there was enough risk and gap for all officers involved in a siege so as to warrant a clear authorisation and protection.

Although the Western Australian coroner said that New South Wales police had an overly restrictive view of their powers to use force, he recommended similar legislation. This surrounds the issue of imminence of a threat. It is not appropriate in terrorism to wait for objective evidence of the threat's imminence. Yet without objective evidence police believe they will be exposed to the possibility of homicide charges. Hence, the protection from criminal prosecution in the New South Wales legislation and ours. The scheme in this bill will provide clarity for police officers in responding to terrorist acts. It will remove any uncertainty that may be in the minds of officers.

However, officers will still be accountable as they will still have to have a reasonable belief that lethal force is necessary. There is no compulsion, as Hon Alison Xamon raised. Directions can be given generally to the team. However, for each officer to take that action they have to have a reasonable belief that force is necessary. The bill still requires a reasonable belief about their actions. The command structure is well-established and rehearsed. Command lines from the commissioner to the commanders are direct and decision logs are maintained.

Hon Alison Xamon was correct in her comments about the declaration and revocation. She is also correct in saying that this legislation was developed following the Lindt Café siege and the coroner's report. I recognise that she has concerns with this legislation. It is not an easy piece of legislation. In an ideal world we would not have to have legislation such as this. The powers will be used only in extraordinary circumstances, but as we have seen across the world and particularly in Australia and its near neighbours to the north over the past few years, these are certainly extraordinary times. Legislation like this is not made lightly. However, it is necessitated because of those things that are happening around the world at the moment.

In the exercise of their duties, Western Australian police officers can currently use lethal force, but not pre-emptively. It has to be a case of imminent danger. In a hostage or siege situation, which is the purpose of this bill, there may be uncertainty about the imminence of the threat or danger to life. This bill will provide Western Australian police officers with authority and certainty under a declaration to pre-emptively act and prevent a person being threatened or being detained, such as in a hostage situation like Lindt Café siege. Hon Alison Xamon also touched on the issue of mental illness. The process for making the declaration relates, in part, to the actions the person is engaged in, and whether they meet the required threshold. The person in question may have underlying mental health problems. A contained, planned action by police may not always result in or require the use of lethal force to resolve the situation. This is a last-grasp issue. It would not be acted on straightaway. It is a tool in the kit that we hope never to have to use, but it has been necessitated as a result of actions that have happened interstate and overseas. The provisions in the bill actually provide greater protection for people who may have mental health problems, as a threshold has to be met for the declaration. The other point I want to make is that the act is subject to review every three years. Does this bill remove other options available to the police? Absolutely not. The member mentioned the word "tasers", and those options are still available. These are extra powers that would be used only in extraordinary situations. Hopefully, that has answered the questions of honourable members.

Hon Michael Mischin: I may have missed what you said, but did you mention the changes that were made in the Assembly?

Hon STEPHEN DAWSON: I did, honourable member. I touched on the changes that were made to improve the legislation, the regime in other jurisdictions and the consultation that was conducted.

Hon Michael Mischin: I missed that bit. I will look in *Hansard*.

Hon STEPHEN DAWSON: They are on the record now. With that, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Stephen Dawson (Minister for Environment)**, and passed.