

COMMONWEALTH HEADS OF GOVERNMENT MEETING (SPECIAL POWERS) BILL 2011

Introduction and First Reading

Bill introduced, on motion by **Mr R.F. Johnson (Minister for Police)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR R.F. JOHNSON (Hillarys — Minister for Police) [12.12 pm]: I move —

That the bill be now read a second time.

The Commonwealth Heads of Government Meeting—CHOGM—scheduled to be held in Perth from 28 October 2011 to 30 October 2011 potentially brings to this state over 50 heads of sovereign states, 3 000 delegates and members of the royal family. WA Police will have a lead role in providing security for the event and additional resources are required to allow for this. The Western Australian government has already approved additional recurrent and capital funding for WA Police of up to \$12.219 million. This money will fund: the establishment of a 24-hour command centre; the costs associated with additional vehicle, maritime and air support capabilities; the recruitment of additional Western Australian police officers; and the use of personnel from the Australian Federal Police and police officers from other Australian states and territories and New Zealand. This is not the final cost. Further funding requests are currently being progressed and will be considered by cabinet in the near future.

CHOGM creates serious challenges to police and others to ensure the smooth running of the event and the safety and security of the delegates and the community in general. A major concern is that, in addition to providing a forum for the attending nations to discuss matters of mutual importance, CHOGM provides an opportunity for persons aggrieved by the actions of one or more of the participating states to publicise their particular cause. The behaviour of anarchist groups at the 2010 G20 meeting held in Toronto, Canada, provides a vivid example of the challenges that may confront police and other security officers during and in the period leading up to CHOGM. Overt displays of public disorder are just one of the risks. Other risks such as acts of terrorism must also be guarded against. Security at similar events held in Australia in recent times has been greatly assisted by the enactment of special powers that provide police and other security personnel with additional powers to assist their functions. The 2000 Sydney Olympics, the 2002 Queensland CHOGM, the 2006 Melbourne Commonwealth Games, the 2007 Sydney Asia-Pacific Economic Cooperation—APEC—Conference and the Australian Grand Prix held in Melbourne are examples of events for which special powers legislation has been enacted. The legislation enacted for these events have been used as a basis for the Commonwealth Heads of Government Meeting (Special Powers) Bill 2011.

This bill provides security powers for police and authorised officers to use in designated security areas, additional powers for police to close roads for the purposes of conveying dignitaries, and coercive hearing powers to assist in gathering evidence of suspected offences aimed at disrupting the event or harming delegates and property.

In summary, part 1 of the bill deals with matters relevant to the commencement of the legislation. The majority of the bill will commence by proclamation, the exception being clause 78 and part 8, which relate to the use of Corruption and Crime Commission resources and coercive hearing powers. These commence the day following assent and will be a valuable tool in gathering evidence of potential threats to CHOGM.

In relation to these powers, part 2 provides the ability to designate security areas for CHOGM events. Core security areas are to be prescribed in regulations. These will include major venues used for the meeting or related events. Regulations made for this purpose may also regulate the use of special powers by authorised persons and detail any restrictions or conditions that apply to entering the area. To provide flexibility in cases when it is not practicable to make regulations, additional security areas may be established by order of the Commissioner of Police with the approval of the minister. An additional security area can be declared when the declaration substantially assists in promoting the security or safety of a CHOGM event, people attending the event, or the public, or in preventing or controlling a public disorder. These orders must be published in the *Government Gazette*, other than when doing so would significantly compromise security. Further, when it is not practicable to make regulations, and there are unforeseen circumstances that make it unacceptable to delay the establishment of a security area, the Commissioner of Police may, by order, establish the security area without the approval of the minister. In such cases the minister must be notified as soon as is practicable after the order is made and the order must, as soon as is practicable, be published in the *Government Gazette*. There is an exception to this publication requirement, if to do so is likely to significantly compromise security. Provisions in relation to the exercise of powers by authorised persons and restrictions and conditions of entry can be included in the order specifying an additional security area.

Provision has been made for areas within security areas to be designated as restricted areas and within these areas, additional security powers may apply. Restricted areas must be areas being used directly for a CHOGM event or for the administration of a CHOGM event. The commissioner must, as soon as practicable after the order is made, take reasonable steps to ensure the public is notified that an area has been designated as restricted.

To ensure that the smooth operation of the event cannot be frustrated by vexatious legal action, orders made under this part will not be open to legal challenge during the CHOGM period.

Pursuant to part 3, police and other security personnel will have the ability to —

- establish checkpoints, cordons and roadblocks around security areas for the purposes of stopping and searching persons, vehicles or vessels, and controlling the access to and movement of persons, within a security area;

- refuse entry to a security area if a person refuses to provide their personal details, a reason for entry to the area and/or to submit to a search of the person and things in their possession, including a search of any vehicle or vessel in which they may be travelling;

- require persons within a security area to provide their personal details and a reason for being in the area;

- stop and search a person who is in a security area, including things in their possession, as well as search any vehicle or vessel in which they may be travelling;

- require the surrender of, or to seize and detain, prohibited items. Prohibited items will be prescribed and will include items such as weapons, noxious substances, spray paint cans et cetera;

- dispose of unclaimed, seized or surrendered prohibited items in accordance with the Criminal and Found Property Disposal Act 2006;

- give reasonable directions to people in a security area to promote, when necessary, the security and safety of a CHOGM event, people attending the event, the public, or to prevent or control a public disorder;

- close roads in or leading to or in the vicinity of a security area or roads along a route being used to convey participants in CHOGM to or from their accommodation, airport, venue, facility or event;

- remove vehicles, vessels or things from a security area or a closed road and take them to a police station or other place where they may be conveniently detained. Notice is required to be given to the owner of any of these things as to their location if the owner is known; and

- remove excludable persons from a security area. Excludable persons are persons who are on the excluded persons list or who fail to comply with a lawful requirement made under the Commonwealth Heads of Government (Special Powers) Act— the CHOGM act. The excluded persons list will include persons identified as posing a serious threat to the safety of persons or property in a CHOGM security area.

A police officer or authorised person will also be empowered to conduct a basic search of a person, including a search using an electronic screening device. In doing the search, the person may be required to remove headwear, gloves, footwear or outer clothing such as a coat or jacket, and those items may also be searched. A police officer may, in addition to the basic search, also frisk search a person. To conduct a search, a person may be detained for as long as reasonably necessary, be ordered to walk through an electronic screening device, pass their belongings through an X-ray machine, and submit to having themselves and their belongings scanned with a hand-held scanner. Persons failing to comply will be refused entry or be required to leave the area as is appropriate.

Part 4 provides additional powers in a restricted area. These include powers to enter and search premises, other than residential premises; request the personal details of a person entering or in a restricted area; and require the person to provide proof of their personal details. A police officer or authorised person may exclude from a restricted area a person who is in the area without the appropriate authorisation or who is in possession of a prohibited item without special justification or who fails to comply with a requirement to disclose their personal details or provide proof of the same.

Part 5 provides for the recognition of law enforcement officers from other jurisdictions and the appointment of authorised persons. This part provides that the Commissioner of Police may appoint as a recognised law enforcement officer a member the Australian Federal Police or a member of the police force of another state or territory, or of New Zealand. These law enforcement officers will have and may perform any functions of a WA police officer under the CHOGM act and, in connection with the exercise of those functions, may perform any function of a WA police officer under any written law or the common law. These officers will be given

photographic identity cards that must be produced or displayed when performing functions under the CHOGM act.

Part 5 also enables the Commissioner of Police to appoint authorised persons when it is considered that the person has the necessary skills or experience. The authorised person's powers under the act may be limited in their instrument of appointment. They will be given a photographic identity card that must be produced or displayed when exercising powers under this act. These recognised law enforcement officers and authorised persons will be public officers and thereby given protection provided to public officers under the Criminal Code.

Part 6 details the offences applicable under the CHOGM act. Division 1 of part 6 relates to security areas and provides offences for unauthorised entry to a security area; unauthorised entry to a restricted area; interference with a CHOGM event; possessing a prohibited item; failing to disclose or provide proof of personal details; providing false personal details or evidence in support of the same; and re-entering a CHOGM security area after being removed. The maximum penalty for these offences is 12 months' imprisonment, with the exception of the offence of possessing a prohibited item, the maximum penalty for which is a fine of \$6 000. Division 2 makes it an offence for a person to use a road without a reasonable excuse while it is closed under part 3, division 5. The maximum penalty is a fine of \$1 000. Division 3 makes it an offence for an authorised person to fail to return the person's identity card within 21 days after the person's authorisation ceases. The maximum penalty is a fine of \$2 000. Division 4 makes it an offence to enter restricted airspace over a security area without authorisation, and carries a maximum penalty of \$250 000. It is envisaged that the major venues for the meeting will be subject to a restricted airspace declaration under the commonwealth Airspace Regulations 2007.

Part 7 deals with miscellaneous matters to aid in the operation and interpretation of provisions of the CHOGM act. The part details what constitutes a special justification for relevant provisions of the CHOGM act; the onus of proof for a lawful excuse, reasonable excuse or special justification; proof of unpublished orders and of appointments; what authorises the use of reasonable force by police and authorised persons; the relationship with other laws; and the protection from civil liability. The part also provides that the Commissioner of Police may, by arrangement between the commissioner and the Corruption and Crime Commissioner, make use of the services of any officer of the Corruption and Crime Commission or the use of any facilities or resources of the commission subject to that arrangement.

Part 8 provides for examinations before the Corruption and Crime Commission. This part is essentially the provisions relating to examinations before the commission contained in part 4 of the Corruption and Crime Commission Act 2003 relating to organised crime, and these have been adapted for use in regards to suspected offences intended or likely to harm persons or facilities associated with CHOGM. Pursuant to this, the Commissioner of Police will be able to request the commission to conduct an examination of persons, including juveniles. The inclusion of juveniles is a departure from the provisions of the Corruption and Crime Commission Act 2003 and has been made in recognition that some of the groups likely to engage in extreme acts are known to recruit juveniles and indoctrinate them to their cause. In such an examination, a person cannot be examined on a matter for which the person has been charged with an offence, and the evidence provided cannot be used in any criminal proceedings against that person other than for contempt or for an offence against the Corruption and Crime Commission Act 2003.

Part 9 amends the Corruption and Crime Commission Act 2003 to provide that the commission must include in the report, required under section 91, the number of findings made under the Commonwealth Heads of Government Meeting (Special Powers) Act in the year to which the report relates. This provision will expire at the end of 2012.

Finally, part 10 provides that parts 2 to 6 and part 7, other than divisions 2 and 7, of the act will expire at the end of 5 November 2011. The remainder of the act will expire on a day fixed by proclamation. All operational aspects of the act will expire at the end of 5 November 2011, leaving evidentiary averments required for prosecutions in relation to the act and requiring the Commissioner of Police to complete and report on a review of the operation and effectiveness of the act. The report is to be given to the minister and subsequently laid before Parliament.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.