

COMMONWEALTH HEADS OF GOVERNMENT MEETING (SPECIAL POWERS) BILL 2011

Consideration in Detail

Resumed from 24 March.

Clause 12: Restricted areas —

Debate was adjourned after the clause had been partly considered.

Ms M.M. QUIRK: Clause 12 provides that the commissioner may designate an area within a CHOGM security area which is a restricted area. In other words, it is an inner ring of a broader security area. We know where the events will be held—for example, at the state reception centre, or Fraser’s Restaurant as it is more commonly known, and at the Perth Convention and Exhibition Centre, more commonly known as the PCEC. I will use them as examples. I know it has probably not been finalised yet, but can the minister give me some idea of the extent of those restricted areas? In other words, if we are talking about Fraser’s, where will the restricted area be as opposed to the broader security area?

Mr R.F. JOHNSON: The member is quite right: the restricted areas are the inner areas within the outer areas. I am advised that 19 hotels will be used for CHOGM. We are not sure which ones the delegates are staying at yet, but obviously that will become known nearer the time. As the member quite rightly said, the restricted areas that we know of will be the convention centre, Fraser’s restaurant, Burswood hotel and Government House. They are the venues that will be restricted at this stage. There may be more as we get nearer the date and as the planning is finalised. There will be 53 heads of state and all their entourage, a few thousand in total, in Perth. When the final details become known nearer the time, I have no problem in ensuring that the shadow minister gets a briefing on all those areas that she has an interest in. That is probably all the information I can give her at this stage. If she needs any more information, I am more than happy to give it to her.

Ms M.M. QUIRK: I want to try to get some understanding of the extent of the area. I know it is very hard as it will depend on the operational exigencies and the threat advice at the time et cetera. Can I get a general feel for the size of the restricted areas? Will it be 500 metres or five metres outside the premises? How big will those restricted areas be?

Mr R.F. JOHNSON: The advice that the deputy commissioner has given me is that it will depend on the different hotels. One or two hotels have nine separate entrances whereas others have only two or three. The restricted areas will depend upon the number of entrances and exits to those hotels. I would suggest that that is the greatest number of restricted areas around those nine hotels in which the commonwealth heads of state will be staying. It is impossible to give the member an accurate answer as to whether it is 500 metres, 20 metres or whatever. It is too early to give the member that information. It is fair to say that WA Police want the least amount of restriction as possible. Obviously, it has to take into account the risk assessment of whoever is staying at the hotel and Government House, and who will be visiting Fraser’s and the convention centre, where all the heads of state will be meeting. I would suggest that there may be a greater risk around those areas because there will be so many people in one place. The restricted areas around those venues would be greater than individual hotels, depending on the risk assessment. I am advised that they will all be gazetted, which is what clause 13 will do.

Ms M.M. QUIRK: That brings up another point. Before I go on to that, I will take the example of Fraser’s. At the CHOGM briefing that I attended last night, I heard that streets such as Mount Street, Malcolm Street and Cliff Street are all likely to be in what I call the security area—the outer ring. Clearly, the constraints of entering that area will be less than the constraints of entering areas nearer to the reception centre. I suspect that the reception centre would be in the outer ring, but I want to know where the inner ring is likely to start.

Mr R.F. JOHNSON: It could be several hundred metres. As I have already said, it will depend on the venue. That is more properly answered under the clause that deals with roadblocks, because we certainly do not want to inconvenience too much those people who live very close to where there will be some roadblocks—if we can possibly help it. They may not be able to drive their vehicles for a few hours on the Friday, for instance, but they will be able to walk. We can probably give the member a better answer when we get to that clause, if she wants to ask specific questions about where the roadblocks will be. At the moment, we have a pretty good idea, but it will be for the minimum time necessary, if I can put it that way.

Ms M.M. QUIRK: The minister mentioned that these areas will be gazetted in due course, which is excellent to hear. Why was it that the New South Wales legislation was able to include an indicative core map of the declared areas? Was that considered here; and, if not, why not? Was the advice of parliamentary counsel that it could not form part of this legislation?

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Mr R.F. JOHNSON: I have been advised that we have found out that some of the delegates may not want to stay in the hotels we have reserved for them, and will stay somewhere else, so it is impossible at this stage to provide that detail.

Ms M.M. Quirk: I have a spare room!

Mr R.F. JOHNSON: What is the member's rate?

Mr D.A. Templeman: I have been encouraging them to come to Mandurah!

Mr R.F. JOHNSON: Honestly, it is too early to be able to give that information. The Asia-Pacific Economic Cooperation meeting was very different from this one. CHOGM WA will be the biggest security event ever in Australia—never mind in Western Australia! We need these extraordinary powers to ensure that the Queen and those visiting heads of state and their spouses will be, as they should be, properly protected in a way that countries should protect visiting heads of state. I cannot give the member the information yet. I can assure the member that these areas will all be gazetted. Nearer the time of CHOGM, if the member really wants a map of those areas, I will be more than happy to supply one to her. I am happy for the member to come on board in this bipartisan event for the benefit of Western Australia.

Ms M.M. Quirk: Is that why the opposition was not provided with a security briefing but the Premier was? The minister is saying we should be bipartisan, but we have not been privy to the same briefings that have been provided to government.

Mr R.F. JOHNSON: The opposition will be given a security briefing.

Ms M.M. Quirk: I understand that the Premier was given one last week.

Mr R.F. JOHNSON: I am not aware of that.

Ms M.M. Quirk: I believe it was in the last couple of weeks.

Mr R.F. JOHNSON: It may or may not have been, but obviously it is quite right that the Premier should be briefed—almost on a daily basis.

Ms M.M. Quirk: The minister is saying this is bipartisan, but we are operating with limited information.

Dr K.D. Hames: We are the government.

Ms M.M. Quirk: The opposition has to be responsible in terms of this legislation.

Dr K.D. Hames interjected.

Ms M.M. Quirk: He is not; that's the problem.

I asked whether parliamentary counsel had given advice on how the maps could be published and whether there was any constraint from doing that.

Mr R.F. JOHNSON: No.

Ms M.M. Quirk: So the answer is that you do not know yet!

Mr R.F. JOHNSON: The answer is that it has not given us any information or indication as to why maps cannot be published or be part of the legislation. The member has to accept that Western Australia, and Perth, is very different from the situation that New South Wales faced with APEC, which had huge barricades and all sorts of things. We do not want that in Perth. We want to be more inclusive of the people. The honest answer is that I cannot give the member that information because all the details have not been finalised; it is a work in progress.

Ms M.M. Quirk: The NSW legislation referred to an "indicative map".

Mr R.F. JOHNSON: I could give the member a map of Perth with a circle around it and say that was an indicative map, but that would be misleading and I do not want to be misleading.

Ms M.M. Quirk: Excellent.

Mr R.F. JOHNSON: I am glad the member for Girrawheen thinks so.

Ms M.M. QUIRK: In his answer, the minister made a point about barricades and those big orange barriers—I am sure the deputy commissioner would know their name.

Mr R.F. Johnson: He is not allowed to talk.

Ms M.M. QUIRK: He may be able to advise the minister.

Mr R.F. Johnson: They may be used as roadblocks, but we are not anticipating having railings all along the streets. APEC was different.

Ms M.M. QUIRK: In the context of this clause, if people are in a broader security area and then they proceed to a restricted area, what demarcation will there be so that people do not inadvertently go from the outer ring into the restricted areas?

Mr R.F. Johnson: There will be signs and it will be gazetted as per clause 13(2)(c).

Ms M.M. QUIRK: I will leave that for when we get onto that clause. This clause contemplates there may be intelligence that certain events have occurred and that will give the minister the opportunity to gazette or declare additional areas.

Mr R.F. Johnson: Yes.

Mr W.J. JOHNSTON: I want the minister to clarify subclause (3)(a) —

the area is being or will be used directed for or in relation to a CHOGM event or the administration of a CHOGM event;

Does this mean that the business forum, the youth forum in Fremantle or the people's forum, wherever that is taking place, will not be designated as restricted areas because they are not CHOGM events but events that happen in relation to CHOGM?

Mr R.F. Johnson: They are related CHOGM events.

Mr W.J. JOHNSTON: Clause 3 describes a CHOGM event as “any meeting, event, function or activity that forms part of CHOGM (Perth)”. Is the minister saying that the people's forum, the business forum and the youth forum are CHOGM events?

Mr R.F. Johnson: Yes.

Mr W.J. JOHNSTON: Where in the definition clause is it made clear that those events are part of CHOGM, given that the website of the Commonwealth Secretariat defines CHOGM as being the leaders' forum and leaders' retreat and does not define those associated events as being CHOGM events?

Mr R.F. JOHNSON: We have gone through this before. It is covered in clause 4(2)(a), which refers to “and associated events”.

Mr W.J. JOHNSTON: When I raised this issue with the minister during the last sitting week, the minister's commentary on this topic was that it was not pertinent because there was a restriction in the other clauses—that is, where the powers were specified to restrict the bill to CHOGM events. In some cases the minister is right, and this is one of those cases. I am trying to establish from where the power comes to make a restricted area for an event other than CHOGM.

Mr R.F. JOHNSON: Clause 4 gives us the power.

Mr W.J. JOHNSTON: What word in clause 12(1) gives the commissioner that power? Subclause (3)(a) says that the commissioner may designate an area only if the commissioner is satisfied that the area is being or will be used directly for or in relation to a CHOGM event or the administration of a CHOGM event. A CHOGM event is defined in clause 3, which states —

CHOGM event means any meeting, event, function or activity that forms part of CHOGM (Perth);

If the minister looks up on the Commonwealth Secretariat website what the Commonwealth Heads of Government Meeting is, it states that it is the leaders' meeting and the leaders' retreat.

Mr R.F. JOHNSON: That is its definition, not ours.

Mr W.J. Johnston: But where is it?

Mr R.F. JOHNSON: Under clause 4.

Mr W.J. Johnston: Okay. But if the minister wants to put it that way, what in clause 4 tells me that an event other than the CHOGM event is covered by that clause that we were just discussing?

Mr R.F. JOHNSON: Going back to clause 4 again—I can see which way we are going—it states it quite clearly, which why clause 4 is there, that —

Mr W.J. Johnston: Clause 4 or clause 3?

Mr R.F. JOHNSON: Clause 4, “Purpose”, which states —

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The purpose of this Act is to promote the security and safety of people attending the Commonwealth Heads of Government Meeting in Perth in 2011 and associated events, functions and activities by giving police officers, certain other persons ...

And so on and so forth. That is what clause 4 states. We debated that clause ad nauseam during the last sitting week, and I do not intend to keep getting up and answering the same question because I have answered it. The member does not like my answer, obviously, but I am not going to change my answer just so that the member can have one that he likes.

Mr W.J. Johnston: I'm not asking you to do that.

Mr R.F. JOHNSON: We are not going to use as a definition whatever the Commonwealth Secretariat of CHOGM has as its definition for CHOGM. We are dealing with the bill in this place, not what is on a website somewhere else.

Mr W.J. JOHNSTON: On 22 March 2011 I asked —

Minister, will these powers apply to other events planned for Western Australia during the commonwealth meeting?

The answer was no.

On 24 March the minister came into the chamber and made the following comments —

The scope of this bill needs to be flexible. As mentioned by at least two of the opposition members who spoke on this bill, part of CHOGM's success is the informality of the arrangements. Leaders and delegates are encouraged to meet informally, without advisers, to discuss issues of importance. However, police need powers to protect dignitaries, delegates and other participants in Perth for CHOGM at whatever formal or informal CHOGM event they are attending. Accordingly, the bill should not strictly define "CHOGM Perth", as this could lead to police not being able to use these powers to adequately protect the security of participants in CHOGM.

Fundamentally, the problem in the way the minister is saying this clause should be interpreted is that the people's forum, the youth forum and the business forum are not part of CHOGM.

Mr R.F. Johnson: Clause 4(2)(b) relates to promoting the security and safety of the accommodation for people attending CHOGM; they are not associated events, but that is part of the security that needs to be put in place because heads of commonwealth countries will be staying at those hotels. The website that the member has been referring to does not refer to that as a CHOGM event, does it?

Mr W.J. JOHNSTON: No.

Mr R.F. Johnson: Exactly.

Mr W.J. JOHNSTON: No, the minister needs to listen to what I am saying. I am not trying to do anything other than get clarification, but that is not what we are discussing. I understand clause 4; we had a very long debate about what it meant.

Mr R.F. Johnson: Ad nauseam.

Mr W.J. JOHNSTON: I will not go into why that occurred. I am saying that this states that the commissioner will have the power to create a restricted area only if clause 4(2)(a) and (b) are satisfied. I have no trouble with the thought—because it is pretty clear from the words—that the commissioner will have the power to declare the Hyatt Regency Hotel a restricted area if heads of state are staying there, but what is not clear is whether he has the power to declare the Burswood convention facility a restricted area because the business forum is not CHOGM; it is the business forum.

Mr R.F. Johnson: It's an associated event.

Mr W.J. JOHNSTON: Yes, but this does not state "associated event"; these are not my words, they are the minister's. It states a CHOGM event, not an associated event, and I am just trying to clarify. By the exclusion of the words "associated event", is the minister trying to have this provision apply to only the leaders' meeting and the leaders' retreat? Because if it is meant to mean something in addition to those, which words on that piece of paper under clause 3 tell the commissioner that he is entitled to use these powers in respect of the business forum? Remember, there may not be a single head of state at the business forum—nobody knows whether there will be any heads of state there—so the Commonwealth Heads of Government Meeting is the meeting described by the Commonwealth Secretariat on its website. I am not asking about the meeting of the leaders; I am asking about events that take place associated with those leaders' meetings, because if it is supposed to cover more than

just CHOGM, surely we need to give the commissioner a specific head of power, otherwise how can he exercise it?

Mr R.F. JOHNSON: The advice I have been given is that clause 4 widens the definitions in clause 3 by referring to associated events, functions and activities; it widens the scope. That is the advice I have been given; I am not just dreaming this up. The advice I have been given by the experts at the table is that that is the reason for clause 4—it widens that particular scope.

Mr W.J. Johnston: How? Because you've defined a CHOGM event in clause 3.

Mr R.F. JOHNSON: But then clause 4 widens that scope.

Mr W.J. Johnston: But, minister, the reason you wrote the definition in clause 3 was that you wanted those words to have only one meaning in the balance of the bill; that is the purpose of the definition. Having defined it in clause 3, you can't now say it means something else because it is defined in clause 3.

Mr R.F. JOHNSON: The member obviously cannot sleep at night for thinking about this.

Mr W.J. Johnston: Minister, don't get personal; I've not been personal once yet.

Mr R.F. JOHNSON: No, I am not getting personal either.

Mr W.J. Johnston: You are! Don't make any comment about my personal behaviour.

Mr R.F. JOHNSON: I was actually trying to make a bit of humour, but obviously the member is lacking humour.

The ACTING SPEAKER (Mr P.B. Watson:): Members!

Mr W.J. Johnston: No, no, I'm not lacking in humour; I'm just asking you to talk about the words on this piece of paper.

Mr R.F. JOHNSON: I do not want to spend all night, again, on virtually the same clause. I suggest that we move on, and I will take some advice on whether there is a need to define it more clearly. If it satisfies the member, I will take the advice and later on, if necessary, I will move an amendment along those lines—is that all right?

Ms M.M. QUIRK: To finish the point the member for Cannington made, minister, if it was intended that clause 12 was to cover events referred to in clause 4, it could easily have stated "a CHOGM event and/or events referred to in clause 4". My colleague is saying that by referring to a CHOGM event, it takes the same meaning as that given in clause 3, which is of course narrower. Of course the minister knows, from his many years in this place, that the sorts of provisions that confer an unusual power would be interpreted restrictively by the courts. Anyway, that is by way of editorial.

Mr R.F. Johnson: I understand that, and I mean what I say; I will take some more advice. Yes, I will do that.

Ms M.M. QUIRK: We are very pleased to hear the minister's offer to amend the clause if necessary. The minister described, for example, that a restricted area might be an area such as, say, a hotel. As I understand it from a briefing I went to yesterday, federal police will have the security responsibility inside a hotel and WA Police will be responsible for the outside of a venue.

Mr R.F. Johnson: The advice that I am given is that it is Western Australian law and on Western Australian land, but the Australian Federal Police will be the security operatives inside the hotel. They will be applying Western Australian law.

Ms M.M. QUIRK: Will the restricted areas be limited to Australian Federal Police officers, or will there be unsworn, authorised officers inside restricted areas as well?

Mr R.F. JOHNSON: There could well be Western Australia police officers in there as well. I would suggest that for the initial security, we would look to the AFP to assist, but that will not restrict the Western Australia police from being there. As I say, it is on Western Australian land and everybody—whether AFP officers or officers from another state who may be assisting—will be operating under Western Australian law.

Ms M.M. Quirk: Some of these dignitaries will be accompanied by their own security personnel. I assume that they will not have any powers at all within the restricted areas.

Mr R.F. JOHNSON: I can confirm that obviously nearly all the heads of state will have their own security people with them, but they will have no powers whatsoever in Western Australia and they will not be allowed to carry firearms.

Clause put and passed.

Clause 13: Public notification of restricted area —

Ms M.M. QUIRK: The minister said, in relation to the previous clause, that there will be gazettal of the restricted areas, some presumably well in advance of the actual event—sorry, I should not use the word “event”; that is a bit misleading—in advance of the Commonwealth Heads of Government Meeting. He also said that there will be publication of information in newspapers and the erection of public signs. That is my understanding. There might not be other physical barriers; it may well be limited to signs on site. Is that correct?

Mr R.F. Johnson: The commissioner does not have to take those steps under this clause if he considers that to do so would significantly compromise security arrangements for a CHOGM event. That is the only area. The rest of it will be gazetted and we want everyone to know, in plenty of time, where everything is happening.

Ms M.M. QUIRK: What is likely to be on the signs?

Mr R.F. JOHNSON: At this stage, I would not have a clue! I cannot tell the member whether they will be written in red or blue, what they will say, or whether there will be pictures! I do not know. Hopefully, we will have samples of the signs for the member to see nearer the time.

Ms M.M. Quirk: Just putting a sign up to say that it is a CHOGM-restricted area will not necessarily convey much to anyone else. Are the signs going to read, “Entry will be restricted to people having an invitation or a CHOGM conference card”? I just want to know what will be on the signs.

Mr R.F. JOHNSON: They might well read, “Only authorised people can enter this area”, but people will be coming through outer security first, so they will see one lot of signage, and when they get to the restricted area, there will be police or security officers there alongside the signs.

Ms M.M. Quirk: I think the minister is right; the restricted area is going to be less of an issue because by that stage the penny will have dropped with people that something is going on. I am more concerned about the argy-bargy you might have with people trying to access their places of residence.

Mr R.F. JOHNSON: I think we cover that further on in the bill; people will have passes. We do not want to restrict anyone who lives in any of these areas from getting to their homes.

Ms M.M. Quirk: We do deal with that later on, but that was the main issue I wanted to raise on clause 13.

Mr R.F. JOHNSON: Okay.

Ms M.M. QUIRK: I want to talk about one other area in clause 13; I should perhaps have brought it up in respect of clause 12. I refer to businesses. I know that there will be some consultation, but has there been any further notification for businesses about the possible implications of being in a restricted area and whether there is the likelihood of any compensation?

Mr R.F. JOHNSON: I am told that the commonwealth is not advising of any compensation, but in respect of businesses that are within a restricted area, we do not want businesses to suffer; we want the cafés and restaurants to be open. All we are saying is that deliveries will not be able to be made on the Friday morning, when there will be roadblocks, for obvious security reasons. We do not want trucks or any other vehicles going down there, other than authorised vehicles. We will be sending a letter to every business within that area so that they are fully aware of exactly what is happening, where it is happening, the time it is happening and whatever restrictions there may need to be. I think it is a very small ask for such a tremendous event that will benefit Western Australia in so many ways. I think a lot of businesses will actually benefit from this.

Clause put and passed.

Clause 14: Application of *Interpretation Act 1984* to orders —

Mr A.J. WADDELL: I would like the minister to explain to me the purpose of clause 14. It seems that it provides that, for the purposes of proposed sections 8 and 12, which are to do with the creation of these restricted areas by the police commissioner, this is not subsidiary legislation. We had a brief discussion, during the last debate on this legislation, about the reviewability of regulations under this legislation and how they would go through the normal scrutiny of parliamentary processes. If those regulations are not subsidiary to this legislation, am I correct in my interpretation that the normal parliamentary review processes would not apply and that therefore we would have no ability to double-check that the police commissioner had made an order in accordance with the will of this Parliament?

Mr R.F. JOHNSON: I am advised that the correct forum for review in relation to jurisdiction would be in the courts rather than Parliament. That is the advice I am given; I am happy to take an interjection.

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Mr A.J. Waddell: If we flip over to clause 15, all the orders made are exempt from any judicial review, so there is no parliamentary review and no judicial review.

Mr R.F. JOHNSON: I refer the member to clause 15(3).

Mr W.J. Johnston: That's where the commissioner issues an order in respect of businesses when he doesn't have power to do it; it's not about the order itself.

Mr R.F. JOHNSON: Or otherwise ultra vires.

Mr A.J. Waddell: So in effect we're giving carte blanche power to the police commissioner to make whatever order he wants—Parliament can't come in, the courts can't come in, and nobody can review it.

Mr R.F. JOHNSON: I am told it is reviewed by the courts in respect of jurisdictional errors. Does that answer the member's question?

Mr A.J. Waddell: No.

Mr R.F. JOHNSON: The advice I am given is that the restricted areas will be in the CHOGM security areas, and that will be done by regulation. Therefore, the Joint Standing Committee on Delegated Legislation will have an opportunity to review, through its process, those areas that the commissioner would designate, because they would be within the restricted areas.

Mr A.J. WADDELL: Can the minister clarify what the orders made under proposed sections 8 or 12 would be that are not subsidiary legislation, and therefore not within the purview of the delegated legislation committee?

Mr R.F. JOHNSON: The advice I am given is that the delegated legislation committee will have the opportunity to review the restricted areas that are set by the commissioner within the overall security area. As I understand it, some other areas could be declared at the last minute, depending on the risk assessment, and obviously the delegated legislation committee would not have the opportunity to review that at that stage. However, afterwards, when the total review is done, Parliament would be able to hold the commissioner to account if an error had been made, or if the commissioner had gone beyond the bounds to which he should go, if the Parliament had a concern about that.

Mr A.J. WADDELL: I do not believe that is what this legislation says. Clause 14(1) is very clear. It says —

An order made under section 8 or 12 is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Clause 8(1) says —

The Commissioner may, with the approval of the Minister, by order, declare an area of land within the State ... to be an additional security area for the period stated in the order.

Clearly the police commissioner may, with the approval of the minister, make this declaration. That declaration is not subsidiary legislation. Therefore, the delegated legislation committee would not have the opportunity, under its terms of reference, to review that decision either before the fact or after the fact.

Mr R.F. JOHNSON: I am advised that that is correct for clause 8, but not for clause 6, which defines more clearly the core security areas. Clause 6(1) states —

The regulations may declare one or more areas of land within the State to be core security areas for the purposes of this Act.

It then goes on to provide more detail. Therefore, that is correct for clause 8, but not for clause 6.

Mr A.J. WADDELL: In other words, clause 6 is great; we can review it. But at the last minute, the police commissioner can make an order for an additional area, and that is not reviewable. Does that not completely invalidate the purpose of clause 6?

Mr R.F. JOHNSON: The advice I am given is that that is correct. However, in clause 8(4) there is a substantial precondition in relation to whether the commissioner can declare an area.

Mr A.J. WADDELL: Therefore, if the commissioner is satisfied, there is no opportunity to review whether that satisfaction that the commissioner achieves is valid according to the will of this Parliament?

Mr R.F. Johnson: It has to be done with my approval.

Mr A.J. WADDELL: No, it does not.

Mr R.F. Johnson: Unless it is urgent, it has to be done with my approval.

Ms Margaret Quirk; Mr Rob Johnson; Mr Bill Johnston; Acting Speaker; Mr Andrew Waddell; Dr Janet Woollard; Dr Tony Buti

Mr A.J. WADDELL: Let us call a spade a spade. We are giving the police commissioner the power to declare any part of Western Australia a security area, and there will be no review by a court or this Parliament when he does so.

Mr R.F. JOHNSON: It will not be any part of WA. It has to be in relation to CHOGM. He cannot declare Broome to be a security area when it has nothing to do with CHOGM whatsoever. The commissioner will make that sort of order only if there is a very serious security risk, and at the eleventh hour.

Ms M.M. Quirk: Where does it say that?

Mr R.F. JOHNSON: He has to do that, otherwise he has to come to me.

Ms M.M. Quirk: No, he does not.

Mr R.F. JOHNSON: Under clause 8, he does, unless it is urgent; and it would be urgent only if it was at the last minute. We could hardly describe three months out as being urgent, could we?

Mr W.J. Johnston: Why is it not reviewable?

Mr R.F. JOHNSON: It is too late to review it then, is it not? Members opposite need to have a bit of faith in our police commissioner and our deputy commissioner and our senior police officers to do the job that is expected of them.

Ms M.M. Quirk: The converse of that is: what is the problem, then, about providing that level of scrutiny?

Mr R.F. JOHNSON: It is because there would not be time to do that. If it was urgent, it would be at the last minute, I would suggest. I am advised that at two o'clock in the morning, the delegated legislation committee would not be in a position to do the review.

Ms M.M. Quirk: Exactly. So what is the problem?

Mr R.F. JOHNSON: I do not see a problem; members opposite do. Members opposite obviously do not have faith that the commissioner and our senior officers will do the right thing to try to ensure the safety of the Queen and the visiting heads of the commonwealth governments.

Dr J.M. WOOLLARD: I think from what the minister is saying that most of the security areas will come under clause 6, core security areas, and clause 8, additional security areas. The reason for that is that if at the last minute an area was declared an additional security area, this would prevent a person who might not want that additional security area from taking out an injunction.

Mr A.J. Waddell: Are you asking the minister or us?

Dr J.M. WOOLLARD: I am talking to the minister, but I could ask the member, because he would know this very well.

Ms M.M. Quirk: This is about regulations, and why these are held not to be subsidiary legislation. The next clause deals with injunctive relief.

Dr J.M. WOOLLARD: I think, from what the minister has said, that it is not anticipated that there will be many areas that will come under clause 8, additional security areas. The way in which clause 8 is worded at the moment would mean that if an area was at the last minute designated a security area —

Mr R.F. Johnson: If there was an urgent threat, obviously we would have the authority.

Dr J.M. WOOLLARD: That is right. That would mean that no person could prevent that area from being declared a security area.

Mr R.F. Johnson: Exactly.

Dr J.M. WOOLLARD: I think this is a very reasonable clause, minister.

Mr R.F. Johnson: Thank you.

Mr W.J. JOHNSTON: This is really the nub of the problem. Under the APEC legislation in New South Wales, there was no provision of the sort that is provided in clause 9—none. The provision in the New South Wales legislation allowed the minister to issue the order. If this bill was not taking away the authority of the minister, we would have a completely different situation. The minister is accountable to the people through the Parliament; the commissioner is not. The minister said a moment ago that the police commissioner would be accountable. How will he be accountable? What provision of this bill will make the commissioner accountable? I know how the minister is accountable. We can ask the minister questions, and occasionally we find out things

from the minister. However, there is no provision in the bill by which we can hold the police commissioner accountable. Under clause 15, the powers of the court are set aside completely, except in respect of jurisdiction—that goes back to my questions to the minister about clause 12(3)(a). Clearly the reason that this provision was understandable in New South Wales is because in New South Wales, we were dealing with the behaviour of the minister, not the behaviour of the police commissioner. Now we have a question about the behaviour of the Commissioner of Police, not the minister. If we say that we do not trust the police commissioner, that is not the issue. The issue is not about whether a particular individual is a person of integrity or not; it is about whether the system is a system of integrity. Once the minister has set a precedent, it will be hard to reverse. I can very easily imagine a future minister who comes into the chamber and says, “We have already done this before. It is not new; we did it in the CHOGM bill.” It might be a bill to do with picket lines or strike action. The minister must understand his job. Why is there a difference between this and the arrangements for the Asia-Pacific Economic Cooperation forum? From the answers the minister gave us last week, we know that after the review of the APEC arrangements, no recommendation arose from that review that said the Minister for Police should be sidelined and made irrelevant under this bill. There was no suggestion from the APEC review, as the minister explained to us last week, for this type of arrangement. We do not agree with it. It is not a sensible arrangement to sideline the minister. This is about why the minister would give over these powers when he does not have to.

Mr R.F. JOHNSON: Under clause 15(3), the advice I am given is that if the Commissioner of Police acted *ultra vires* —

Mr W.J. Johnston: I am not suggesting that it would be *ultra vires*. It might be within power.

Mr R.F. JOHNSON: Then what is the member worrying about?

Mr W.J. Johnston: It might be done improperly or for an improper purpose.

Mr R.F. JOHNSON: That would be *ultra vires*.

Mr W.J. Johnston: No, it would not. How would it be *ultra vires*?

Mr R.F. JOHNSON: My advice is that the police believe that it would be. The member talked about APEC. The reason that the New South Wales legislation was slightly different from ours is that it had a huge area that was designated as a security area. That is very different from what we are doing in Perth.

Mr W.J. Johnston: This is about the emergency power. New South Wales had an emergency power. You directed me to it at the last sitting. When you read that emergency power, it is the minister’s responsibility, not the police commissioner’s. This is fundamental. Why don’t you want to have this power? Why are you giving this authority to someone who is not elected by the people of this state?

Mr R.F. JOHNSON: Our legislation refers to both the commissioner and the minister.

Mr W.J. Johnston: No, it is not —

Mr R.F. JOHNSON: I did not finish. Ours is the minister and the commissioner, unless the situation is so urgent that the commissioner has to make a very urgent decision. The commissioner then has to inform me, at the earliest opportunity, of what he has done. That is covered in this bill.

Mr W.J. Johnston: Yes, but you cannot reverse the decision of the police commissioner. Once he issues the order, it is valid. In New South Wales, only the police minister —

Mr R.F. JOHNSON: If it is urgent.

Mr W.J. Johnston: In the New South Wales provision to do with an urgent situation—you directed me to this—it is the police minister who issues the urgent order, not the commissioner.

Mr R.F. JOHNSON: I cannot delegate my responsibilities as minister. The commissioner can usually delegate his responsibility, if he is not around, to the deputy commissioner, if necessary.

Mr W.J. Johnston: That is not what we are talking about.

Mr R.F. JOHNSON: We are talking about an urgent situation in which I am not available for the commissioner to also get me to sign off.

Mr W.J. Johnston: Can you tell me of one occasion in Sydney at APEC when there was an urgent situation in which the minister was not available?

Mr R.F. JOHNSON: No, I cannot.

Mr W.J. Johnston: In fact, the reverse was true.

Mr R.F. JOHNSON: APEC had one-third of the number of delegates compared with the number of delegates who will attend the Commonwealth Heads of Government Meeting in Western Australia. As I said, the security area at APEC was huge. It was not a bit here and a bit there; the whole area was declared a security area.

Mr W.J. Johnston: Are you saying that there is no power in clause 9 for the commissioner to order a large area as a security area?

Mr R.F. JOHNSON: I would think that unless we suddenly got invaded by a few thousand people who were out to disrupt CHOGM and attack some of the delegates who are attending—let us be sensible; he will not declare a huge area.

Mr W.J. Johnston: That is not what I asked. I asked about the power, not whether he would do it. You are the one giving him the power, not me.

Mr R.F. JOHNSON: The Parliament is giving him the power, not me. The commissioner has to comply with clause 8(4). The member might want to read that. I hope it will give him some comfort. It relates to the size and the area.

Mr W.J. Johnston: Why don't you want to have the authority that the police minister in New South Wales had?

Mr R.F. JOHNSON: We are different from New South Wales. I think most people would prefer the commissioner to have the power in this respect because the commissioner is on the front line. He knows what is happening and is privy to the latest up to the moment security alerts that come through, including any dangers, threats and risks. I am more than happy, as I am sure are most members of Parliament, to give the commissioner the power, in the event of a very urgent situation, to declare that area a security area. That is what most people think. If the member is not happy for the commissioner to have that power and he wants me to have it, I am sorry, but that is not what the legislation says. The legislation is designed so that the commissioner will have that power only in the case of a very urgent situation. The member is asking me to give an operational direction.

Ms M.M. QUIRK: The minister had no problem making an operational direction the other day, but I will not go into that because we have already canvassed that on radio. We are dealing with clause 14, which is the capacity to treat these declarations as subsidiary legislation. The minister has explained to us that these orders are to be used only in urgent circumstances. The minister is also saying that it is his understanding that the Commissioner of Police will use the power only when it must be done urgently. Is that correct?

Mr R.F. Johnson: Only if it significantly compromises the security or safety of the CHOGM event, which is dealt with under clause 9.

Ms M.M. QUIRK: But in that provision there is the element that it will be done at the last minute or because it is urgent. Is that correct?

Mr R.F. Johnson: Under clause 9.

Ms M.M. QUIRK: Or if there is a compromise of security. There could be a circumstance when there is a compromise of security and therefore it should not be disclosed to the scrutiny of Parliament. Is that what it is about?

Mr R.F. Johnson: There is the word “and” in clause 9, as the member is aware.

Ms M.M. QUIRK: Is the minister saying that that restricts the operation of the exclusion of the review in those circumstances in which there are security implications?

Mr R.F. Johnson: It has to be urgent and security must be significantly compromised.

Ms M.M. QUIRK: That is a very small number, and it would be unlikely to occur, given the sophisticated intelligence and everything else that is happening. It is a remote possibility that that would happen.

Mr R.F. Johnson: That is my view, yes.

Ms M.M. QUIRK: On top of that, the minister also knows the processes of this Parliament. If it is likely that the matter is urgent, it would happen at the last minute. As I understand it, Parliament is not sitting the week before CHOGM. As the minister knows, the Joint Standing Committee on Delegated Legislation meets only when we are in session. Accordingly, the prospects of this, at the last minute, getting to the committee are almost non-existent. I am at a loss as to why this clause was regarded as necessary at all.

Mr R.F. Johnson: I have explained the urgency.

Ms M.M. QUIRK: No. I do not know why it is necessary.

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Mr R.F. JOHNSON: I will give the member an example that has just been relayed to me. If we experienced something like the Mumbai attack in which vessels that were travelling up the Swan River posed an immediate threat because they were carrying all sorts of weapons that could do a lot of damage and kill and injure a lot of people, and we had just half an hour's notice, an urgent decision would need to be made to declare an area. I will not be sitting on the river; this is an operational matter that the police would be dealing with.

Ms M.M. Quirk: That is not the issue. The issue is why you are not treating this as subsidiary legislation. That is the issue in clause 14. Why are you excluding it from being subsidiary legislation?

Mr R.F. JOHNSON: We will not have time to review it.

Ms M.M. Quirk: That does not stop it from going ahead. As you know, subsidiary legislation operates at the time of gazettal or whatever way is relevant to deal with the instrument, so why is it not —

Mr R.F. JOHNSON: It would all be over by the time we did that.

Ms M.M. Quirk: Exactly. That is why I am asking why this clause even needs to be there. I do not understand why it is necessary.

Mr R.F. JOHNSON: Parliamentary counsel thinks it should be in there; the police think it should be in there.

Ms M.M. Quirk: Can you explain why?

Mr R.F. JOHNSON: Because they are obviously trying to cover every eventuality —

Ms M.M. Quirk: What?

Mr R.F. JOHNSON: — of an urgent decision that needs to be made.

Ms M.M. Quirk: That does not stop it being urgent; it does not in any way impede the operation of whatever it is that the Commissioner of Police wants to do.

Mr R.F. JOHNSON: That is the member for Girrawheen's view, but we have a different view.

Ms M.M. Quirk: No; I would like to know why parliamentary counsel thinks that.

Mr R.F. JOHNSON: Clause 80 deals with the review of the act, which will obviously explain a lot of this detail, and then Parliament will get an opportunity to discuss and review that. As the member knows, under clause 80, the commissioner has to do a review of CHOGM within three months —

Ms M.M. Quirk: We want you to explain it now, minister.

Mr R.F. JOHNSON: I am sure that the member would.

Ms M.M. Quirk: It's your bill and we want to know why this clause is in it. That is not unreasonable.

Mr R.F. JOHNSON: It is because the Standing Committee on Delegated Legislation would not have time to review the legislation prior to CHOGM happening.

Ms M.M. Quirk: Exactly; so why is it needed?

Mr R.F. JOHNSON: I know what the member is playing at. She has a different view from what I have and from what my advisers are telling me. Therefore, if she does not believe in this clause, she can vote against it.

Mr A.J. WADDELL: I am concerned by an element of what the Minister for Police has said. He said that if weapons of mass destruction were coming down the Swan River —

Mr R.F. Johnson: I did not say that; they were your words, not mine.

Mr A.J. WADDELL: Weapons of a devastating nature or whatever the term was —

Mr R.F. Johnson: I never said that.

Mr A.J. WADDELL: If a serious threat was coming down the Swan River, we would need the Commissioner of Police to make an urgent declaration. Is the minister telling me that, in the event of an urgent threat coming down the Swan River tonight, our police would not have any powers to act?

Mr R.F. Johnson: CHOGM is not happening; that is the advice I have been given. Of course the police would try to evacuate an area.

Mr A.J. WADDELL: Will the current powers that the police enjoy be suspended for the purposes of CHOGM?

Mr R.F. Johnson: No.

Mr A.J. WADDELL: So why do we need these extraordinary powers if the police have the power to deal with such an incident right now; and why are we exempting them from the normal review processes of this Parliament?

Mr R.F. Johnson: Because if a boat is coming down the Swan River with weapons, the Commissioner of Police has to make an urgent decision.

Ms M.M. Quirk: This doesn't stop that.

Mr R.F. Johnson: I know that the member for Girrawheen does not like the clause. If she does not like it, she should vote against it.

The ACTING SPEAKER (Mr J.M. Francis): Could someone please stand or I will put the question.

Mr R.F. Johnson: The Acting Speaker can put the question. If the member for Girrawheen does not like the clause, she can vote against it. I will not waste any more time on this clause.

Ms M.M. QUIRK: The minister is verballing us. It is not that we do not like the clause; it is just that we do not understand it, and the minister does not understand it either.

Mr R.F. Johnson: Come on; you are doing every clause. You said that last time.

Ms M.M. QUIRK: The minister made the comment earlier about an abuse of power being the same as ultra vires. This segues into the next clause, but I want to make my comments in the context of this clause. Jurisdictional abuse and abuse of power are two different things. With one, for example, the power is conferred on the Commissioner of Police or his officers to do certain things under the legislation. If they go above that power, that can be reviewed. However, they may well just abuse their power. For example, they have the power in certain circumstances to search people, but they may use it improperly. They might decide, for example, that everyone wearing a turban around Perth should be searched. They might, strictly speaking, have the power to do that under the legislation, but it would be a highly improper use of the power. Therefore, there is a distinction. I think we will get into that in clause 15; therefore, I will not delay the passage of clause 14 anymore. I just comment that there is a distinction that we will now explore.

Mr W.J. JOHNSTON: I want to go to the question that we are somehow talking about trust. This is not about trust; it is not about whether we think a person can do their job. This is about the responsibility that people have to be properly accountable. We are giving an enormous power to one individual, a power that he could use improperly—not ultra vires, but improperly. I am not making any suggestion that that would occur, but the problem is that we can look at the history of the world today and see people who have made those decisions. Why is it that the Minister for Police does not want to hold to account the behaviour of the Commissioner of Police? What is the Minister for Police scared of? This idea that just because something is urgent the Minister for Police will not be available is ludicrous. The Asia-Pacific Economic Cooperation forum was much more likely to draw protests than CHOGM is. If there are protests at CHOGM, we should all be very happy, because CHOGM, as I explained in my contribution to the second reading debate, is an event about people from the developing world, with emerging economies, telling us what we should be doing for them. That is why there is not the same level of angst at these types of events that there is at World Trade Organization, G7, G8 or other events. I watched ABC TV news last night illustrating a story about CHOGM with video footage of violent protests in London that had nothing at all to do with CHOGM. Why does the Minister for Police not want to step up to the plate like the Minister for Police of New South Wales did? This issue is about responsibility and accountability. It is about ensuring that we do not set precedents that we will not like in the future. This concern is important, it is significant and it is about people's responsibilities. This is no small thing. The Minister for Police can dismiss it and say that we are exaggerating—that is fine.

Mr R.F. Johnson: So, you know that none of these anarchists are coming to CHOGM?

Mr W.J. JOHNSTON: Can the minister tell me whether there is any suggestion that anarchists are on their way to CHOGM? Has he had any security briefing that has made any suggestion that there are anarchists on their way?

Mr R.F. Johnson: You would not know whether they are to be on their way at this stage.

Mr W.J. JOHNSTON: I am asking the minister.

Mr R.F. Johnson: Not at this stage, no.

Mr W.J. JOHNSTON: The minister has the intelligence.

Mr R.F. Johnson: But it is quite possible. But you're telling me they won't come.

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Mr W.J. JOHNSTON: This is not an operational matter; this is about powers. The decision to issue an order under clause 9 is not an operational decision. If it was an operational decision, there would be no need for clause 9; it would not exist if it was an operational issue because the Commissioner of Police would already be able to act in any way he chooses.

Mr R.F. Johnson: He already has enormous powers in relation to the counterterrorism act —

Mr W.J. JOHNSTON: That is right.

Mr R.F. Johnson: But you seem concerned that he has the power under this legislation. I cannot understand your reasoning.

Mr W.J. JOHNSTON: My reasoning is pretty simple. This is about accountability. These provisions, clause 14, and clause 15, when we debate it in a moment, are about accountability; they are about setting aside accountability. This is not operational. It is not about operational issues; it is about the orders that are issued to create rights that the police will be able to exercise. The minister is asking Parliament not to delegate to him, who is accountable back to us in Parliament, but to a person who is not accountable to us. That is what he is asking us to do. Where these matters have been looked at in other states, the answers have been different. When they have been looked at and the answer was different, and when the review was held, no recommendation was made to change the procedure, because this is not about operational issues; this is about power and the authority that Parliament is granting to the Commissioner of Police for this period of time. It is not a minor thing. I know that the minister does not seem to appreciate the position that we put to him. Just because he does not understand does not diminish the important issue that we raise with him.

Clause put and passed.

Clause 15: Orders not open to challenge —

Dr A.D. BUTI: This clause was obviously put into the bill to ensure that no-one could challenge an order through the period of CHOGM in regard to clauses 8 and 12 concerning restricted areas that people are allowed to enter or not enter. I note that clause 15(4) states —

This section expires when the CHOGM period ends.

That is obviously reasonable. I would like a point of clarification from the Minister for Police to be put on the record. Would this clause allow a person to seek a declaration after the CHOGM period had ended that an order made under clauses 8 or 12 was illegal? If that is the case, the immunity provision in clause 76 would provide a defence only if it was made in good faith. Therefore, in the situation that an order under clause 8 or 12 was not made in good faith, a person would have the legal right to seek a declaration after the end of the CHOGM period and that, of course, may lead to other possible legal action, such as for wrongful imprisonment.

Mr R.F. JOHNSON: Clause 76, “Protection from liability for wrongdoing”, states —

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith —

The clause then continues with more explanation of that.

Dr A.D. Buti: But it has to be in good faith.

Mr R.F. JOHNSON: Yes.

Dr A.D. Buti: But my question was that if it was not in good faith, could it lead to an opening for a legal remedy.

Mr R.F. JOHNSON: If it was not in good faith, I am advised that, yes, it would.

Dr A.D. Buti: I wanted it on the record.

Clause put and passed.

Clause 16: Special powers only available during CHOGM period —

Ms M.M. QUIRK: Again, this is simply a point of clarification. Clause 16(1) states that the powers may be exercised only during the CHOGM period. I understand that will be provided by way of regulation at some stage. It also states “or in relation to, a CHOGM security area”. That is the point I want clarification on. Is a CHOGM security area a core security area, an additional security area, a restricted security area or all the aforementioned areas?

Mr R.F. JOHNSON: I am told that the member needs to refer to clause 3. It means both—the core security area or an additional security area.

Mr W.J. JOHNSTON: What circumstances would be examples of “in relation to, a CHOGM security area”?

Mr R.F. Johnson: We’re having difficulty understanding your question. You may need to refer to clause 6.

Mr W.J. JOHNSTON: If the minister looks at clause 16(1), he will see some words—namely, “or in relation to”. Therefore, it is not only a CHOGM security area but also in relation to a CHOGM security area. What did the minister envisage “in relation to” would authorise? I understand what the minister said in answer to the member for Girrawheen’s question; the CHOGM security area means a core security area or an additional security area. This clause states “or in relation to, a CHOGM security area”, and there are two commas in the full sentence. What does that authorise? What additional powers are being authorised to be exercised “in relation to”? It is not a CHOGM security area; it is in relation to a CHOGM security area. What does that mean?

Mr R.F. JOHNSON: It could be vehicles that have to be—I would not say confiscated but perhaps impounded, although even that is not the right word because that interferes with hoon acts and all the rest of it—taken away because they are deemed to be a possible risk. I refer the member to clause 31, “Power to close roads”, which covers a road in the vicinity of a CHOGM security area or a road along a route being taken, or to be taken, by vehicles that are being, or are to be, used for conveying people attending CHOGM and so on and so forth. I think the answer to the member’s question is in clause 31. That is just an example.

Mr W.J. JOHNSTON: Would the minister say that “in relation to” would be a vehicle attempting to enter the CHOGM security area?

Mr R.F. Johnson: It could be.

Mr W.J. JOHNSTON: If the CHOGM security area is the Hyatt, is it a vehicle going past Hill Street? Is that what the minister is suggesting? Is that “in relation to”?

Mr R.F. Johnson: It would depend where the designated security area is. I do not know at this stage whether Hill Street would be designated in that.

Mr W.J. JOHNSTON: I am just giving an example, minister. I am trying to clarify what the phrase “or in relation to” in this clause means. It is clearly not the CHOGM security area; otherwise, it would not be in relation to it.

Mr R.F. Johnson: I am advised that the powers relate to not only a period but also a geographical area.

Mr W.J. JOHNSTON: Clearly, that is what we are discussing. This is a geographic question.

Mr R.F. Johnson: Exactly.

Mr W.J. JOHNSTON: So what does it mean? How far is it expanded? How far is “in relation to”?

Mr R.F. Johnson: Once those areas are gazetted, it would be within that gazetted area.

Mr W.J. JOHNSTON: No, it cannot be because the clause states “or in relation to”. If that phrase was not included, the minister would be right; however, that phrase is there. I am trying to work out why the minister has included that phrase and what powers the minister intends to grant in addition to the security area.

Mr R.F. JOHNSON: I am advised that, for instance under clause 27, it is the disposal of a prohibited item surrendered, seized or detained. If an item is seized, detained or surrendered in that security area, it would not be disposed of there, it would be taken to a police station to be disposed of.

Mr W.J. Johnston: Is the minister saying that the powers that we are granting in respect of the CHOGM security area would go with the vehicle to the impoundment?

Mr R.F. JOHNSON: That specific power applies to that specific clause and a vehicle.

Mr W.J. Johnston: What else apart from a vehicle?

Mr R.F. JOHNSON: A prohibited weapon that somebody may be carrying.

Mr W.J. Johnston: A person?

Mr R.F. JOHNSON: The advice is that I do not think it would be a person.

Clause put and passed.

Clause 17: Restrictions on exercise of special powers —

Ms M.M. QUIRK: This clause states —

The powers conferred by this Part may be exercised only in accordance with the terms of any regulations or orders made under this Act which limit —

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It lists, among other things, who may exercise the powers, which powers can be exercised, where the powers can be exercised and when. We will discuss the use of those powers in subsequent clauses. We know that there will be personal authorisations for each authorised person as to what they can and cannot do. Hundreds, if not thousands, of personnel will be on the ground who may all have differing levels of authority. There are some provisions in the legislation for what authorised persons can do as opposed to what police officers can do and what both of them can do. We also have a provision stating that these powers will be set out in regulations. Can the minister confirm that when people need to investigate whether someone is authorised to exercise particular powers, they will need to look to the act, they will need to look to the regulations and they will need to look to their own personal instrument of authorisation signed by the commissioner?

Mr R.F. JOHNSON: I understand that the powers conferred by part 3, which is in the explanatory memorandum, are subject to any regulations or orders made pursuant to clauses 6, 8 or 9, which limit those powers. I am sure that the member is aware of that.

Ms M.M. QUIRK: I do not know what the minister is talking about. I would be grateful if he could expand on that. I do not understand the explanation. That is why I am asking the question.

Mr R.F. JOHNSON: Those powers limit the powers to individual authorised persons, depending on who they are and where they are.

Ms M.M. QUIRK: There may be two authorised officers but they can effectively have different levels of authorisation of what they can or cannot do. Is that correct?

Mr R.F. Johnson: Yes.

Ms M.M. QUIRK: As I understood it, the limitation or expansion of a particular person's powers can be done by their instrument of authorisation, which is signed by the commissioner.

Mr R.F. Johnson: Correct.

Ms M.M. QUIRK: We now have a situation in which there are also some distinctions in the legislation such that police officers can do certain things, authorised officers can do certain things —

Mr R.F. Johnson: Police officers have all the powers, always.

Ms M.M. QUIRK: I am saying that there are differentiations set out in the act between what authorised officers can do and what police officers can do in some situations. We have the substantive act and the individual instruments of authorisation. This clause deals with the capacity to make regulations to further delineate the extent or ambit of somebody's powers or limits of authorisation.

Mr R.F. Johnson: That is correct, in regards to their location, for instance.

Ms M.M. QUIRK: The minister is saying that in addition to these two areas in which the powers will be circumscribed, there can also be regulations that circumscribe the powers of a particular authorised person.

Mr R.F. Johnson: I am told that they can limit them.

Ms M.M. QUIRK: I am trying to ask why that would not just be done with the authorisation that they are issued. Why would there be a further need for regulations about where those people can operate?

Mr R.F. Johnson: Some areas might need a traffic controller or a crowd controller, for instance, as opposed to a police officer.

Ms M.M. QUIRK: They would be given an individual authorisation. Can they not be told that they will be able to act as a traffic controller as instructed by the police within the restricted area?

Mr R.F. Johnson: It gives the police a bit more flexibility to be able to restrict some of their powers. For instance, we might have an authorised person who is helping with a roadblock but we would not want them to have the power to search somebody.

Ms M.M. QUIRK: Can I have confirmation that auxiliary officers will not be deployed? If they will be deployed, will they be deployed as authorised officers?

Mr R.F. Johnson: We might well use auxiliary officers in a roadblock situation.

Ms M.M. QUIRK: I will just finish up on this clause. If anyone needs to know with any level of certainty whether a particular officer was authorised to do an act, they would need to go to the act, possibly the regulations and the individual authorisation.

Dr J.M. Woollard interjected.

Ms M.M. QUIRK: I did not ask the member for Alfred Cove. She has a tendency to confuse the issue. I want to get an answer from the minister.

Mr R.F. JOHNSON: As a general principle, a police officer has all these powers. We do not tell people exactly what powers they have.

Ms M.M. Quirk: I am not worried about police officers.

Mr R.F. JOHNSON: What is the member worried about?

Ms M.M. Quirk: I am worried about the authorised officers.

Mr R.F. JOHNSON: I would suggest that with a security operation of this magnitude, we cannot have enough police officers to assist with security, roadblocks and things like that. We need other people who will be given limited authorisation to do certain jobs. Whether we use auxiliary officers is neither here nor there. If we think that auxiliary officers would be —

Ms M.M. Quirk: I am not concerned; I just want clarification. I am concerned about the other issue though.

Mr R.F. JOHNSON: What issue?

Ms M.M. Quirk: The issue of the three possible places in which powers can be conferred on an individual.

Mr R.F. JOHNSON: They are the areas in which the authority can be conferred upon an individual. The member is quite right.

Ms M.M. QUIRK: Maybe I will finish that. We will have a situation in which we will be dragging senior police officers from all over the state. It will be highly charged in the sense that although people will be well trained, a lot of adrenaline will be flying. There has not been a lot of time to get on top of who is doing what. It just seems to me that the lines of authority are somewhat blurred. I cannot believe that there is not some clearer way of delineating who does what.

Mr R.F. Johnson: Have a look at clause 53, “Appointment of authorised persons”. It goes into quite a lot of detail about exactly how those authorisations are given.

Ms M.M. QUIRK: I am aware of that but my problem is that someone working down the street should be able to say, “That bloke at that roadblock is an authorised officer. He will have the power to do X, Y and Z. I must comply with his directions to do X, Y and Z because he has the power to issue them.” We will not know at first blush whether that bloke is allowed to stand on the corner of William Street and St Georges Terrace and issue those directions. What is worse, some of the people who will be giving him the directions—police officers—may not know what he is authorised to do.

Mr R.F. JOHNSON: If they are inside a venue, obviously, they would have similar powers to those security officers have inside venues such as the Burswood. Security officers inside the Burswood have specific powers that they are allowed to use. I am advised that there is no intention to use people such as that at roadblocks. They would use police officers.

Ms M.M. Quirk: That’s the whole purpose. You told us last time that they would effectively be people who were contracted.

Mr R.F. JOHNSON: I did not say that.

Ms M.M. Quirk: They are authorised, aren’t they?

Mr R.F. JOHNSON: They may be authorised but if the member is concerned that the public would not know who is authorised and who is not authorised, the intention is certainly to have a police officer in those sorts of situations such as roadblocks.

Ms M.M. Quirk: You could then ask the officer, “Is this person authorised to do what they are purporting to do?”

Mr R.F. JOHNSON: The police officers can give that direction. The member knows that.

Ms M.M. Quirk: I just think it is very unclear.

Mr R.F. JOHNSON: I am sorry. The member is not paying much respect to parliamentary counsel, which has drafted all this legislation. If she were in my shoes and the Labor Party were in government, she would be doing exactly what I am doing.

Ms M.M. Quirk: I’d send it back and say, “Nice try. Can we have another draft?”

Mr R.F. JOHNSON: The member would not say that if her side were in government.

Ms M.M. Quirk: I've done it, minister.

Mr R.F. JOHNSON: I do not think the member would, but I read the play of what is going on tonight.

Mr A.J. Waddell: Democracy.

Mr R.F. JOHNSON: The member is debating every single clause, and this is a bill the opposition says it supports! Can I suggest to members opposite that if there is anything they really do not like in this bill, they vote against it.

Ms M.M. Quirk: We will.

Mr R.F. Johnson: Please do. Let us have some commonsense in this place.

Dr J.M. WOOLLARD: Clause 17 states that the powers conferred by this part may be exercised only in accordance with the terms of any regulations or orders made under this act, and then it goes on to discuss those powers. This clause relates to who may exercise special powers in, or in relation to, a CHOGM security area. I believe this clause provides the flexibility for the police commissioner to possibly change the powers of appointment on who may exercise the powers and which powers they can exercise. Clause 8 relates to any additional security threat that may appear at the last minute. Therefore, it is not possible to stipulate all those powers under regulations. This clause then allows that flexibility that is needed under clause 8.

Mr R.F. Johnson: The member for Alfred Cove understands the legislation perfectly.

Clause put and passed.

Clause 18: Check points, cordons and roadblocks —

Ms M.M. QUIRK: I know that the minister would be disappointed if the opposition did not at least canvass in some detail the stop-and-search powers that will be conferred. The first of those powers relates to checkpoints, cordons and roadblocks and gives powers to establish one or more checkpoints, place cordons around an area or establish one or more roadblocks that lead in or out of that area and effectively confers the power to stop and search a person's vehicle and prevent persons entering or leaving a CHOGM security area without the permission of an police officer or authorised person, and so on. Earlier I asked about the delineation between a restricted area and a security area, and what form a roadblock is likely to take, and whether in this subclause there is a differentiation between what an authorised person can do and what a police officer can do.

Mr R.F. JOHNSON: Can the member repeat the nub of the question?

Ms M.M. Quirk: Firstly, what is the physical form the roadblocks are likely to take; and, secondly, is there any distinction between what an authorised person can do and what a police officer can do?

Mr R.F. JOHNSON: It could be a police vehicle parked across the road or one of those red and white barriers that the member referred to earlier. What was the second part of the question?

Ms M.M. Quirk: Is there any distinction between what a police officer and an authorised person can do?

Mr R.F. JOHNSON: Yes, there is.

Ms M.M. Quirk: Where is that in that clause?

Mr R.F. JOHNSON: It is not in this clause. It is limited in their appointment or in relation to that specific area. We might have an authorised person assist at a roadblock who is authorised to stop a vehicle, but it would be a police officer who would carry out the search, which is under a different clause. It would only be a police officer authorised to search somebody or a vehicle.

Ms M.M. QUIRK: Subclause (3) refers to a police officer or an authorised person exercising a power conferred by this clause. We have established previously that an authorised officer may be a traffic control person from, say, Macmahon Contractors or a security guard from Chubb Security, or whatever, and it could be an auxiliary officer. I also understand that defence personnel could be seconded to or working for CHOGM. Will they be able to exercise these powers?

Mr R.F. Johnson: Not under this legislation—not defence personnel.

Ms M.M. QUIRK: Subclause (3) states that a police officer or an authorised person may be assisted by any person the police officer or the authorised person considers necessary. Therefore, the person rendering assistance to the police officer or authorised person does not need to be authorised, other than orally by the authorised person. They can just drag someone along and ask someone to give them a hand to do X and Y. They can be deputised.

Mr R.F. Johnson: I am told this clause is only about setting up checkpoints, cordons and roadblocks.

Ms M.M. QUIRK: That is the heading, but it does not say that.

Mr R.F. Johnson: Subclause (1) is the power, and subclause (2) is the purpose.

Ms M.M. QUIRK: Subclause (2) states that the purposes referred to in subclause (1) are stopping and searching persons, vehicles or vessels under this part and preventing persons entering or leaving a CHOGM security area without permission of a police officer or authorised person.

Mr R.F. Johnson: That refers to the powers in clause 21.

Ms M.M. QUIRK: It refers to subclause (1); it does not say “this Part”.

Mr R.F. JOHNSON: The advice I am given is that subclause (2) sets out the power under subclause (1) to be able to set up a roadblock or cordon around an area.

Ms M.M. Quirk: If there are four people from Macmahon Contractors putting up the roadblock, this contemplates that only one of them would be standing with a police officer, who is authorised to stop people going in and out and establishing checkpoints.

Mr R.F. JOHNSON: Correct.

Mr W.J. JOHNSTON: I want clarification on subclause (1)(c). Let us assume that the powers here are exercised over the Burswood Entertainment Complex—we know that it is intended that the business forum will be held at Burswood convention facility. Subclause (1)(c) refers to “any road that leads into or out of ... an area”, and Burswood is the example I have given the minister. Would the minister be referring to Bolton Avenue, Glenn Place or Resort Drive, or would he also be referring to Great Eastern Highway and those other roads that lead to the casino?

Mr R.F. Johnson: I am advised it is very unlikely to apply to Great Eastern Highway. You’ll know when we gazette the areas.

Mr W.J. JOHNSTON: No, no, no; that is not right, minister. I am just asking for clarification: I am trying to get at what a road is that “leads into or out of”. Does it mean one that actually specifically crosses the boundary of the gazetted area? Is that what the minister is referring to?

Mr R.F. Johnson: It states leads into or out of.

Mr W.J. JOHNSTON: So is the minister satisfied that this covers only roads that actually cross the boundary of the gazetted area?

Mr R.F. Johnson: Leading into or out of.

Clause put and passed.

Clause 19: Power to require disclosure of identity —

Ms M.M. QUIRK: This is just for the clarification of something that arose out of the briefing provided to members of the public last night, which I attended. This clause deals with the power to require disclosure of identity, and the requirement for a person to disclose their personal details. Personal details is defined in clause 3 as —

- (a) the person’s full name; and
- (b) the person’s date of birth; and
- (c) the address where the person is residing; and
- (d) the address where the person usually resides, if that is different from the address referred to in paragraph (c);

That is relatively straightforward. At the briefing last night there was discussion about photo identification, and the issue of what would happen if people provided what is set out in clause 3 but did not have photo identification with them.

Mr R.F. JOHNSON: I think the deputy commissioner might have set this question up to some extent because I think the member is referring to comments he made at the public meeting yesterday.

Ms M.M. Quirk: Yes—and very sage they were, too, minister!

Mr R.F. JOHNSON: I am sure they were; I would expect nothing less from our deputy commissioner. Ideally, we are seeking a driver’s licence in this type of situation, because photo identification would be much better than just simply a written form of identification. That is what we are seeking. I am advised that clause 19(2) states that the person may be required to provide proof, whereas section 16(3) of the Criminal Investigation

(Identifying People) Act 2002 requires a person to produce evidence of the correctness of the detail. So we are looking for a slightly higher standard of identification.

Ms M.M. Quirk: Section 16(3) of what, minister?

Mr R.F. JOHNSON: Of the Criminal Investigation (Identifying People) Act 2002. They are the normal police powers, obviously.

Ms M.M. QUIRK: I seek an assurance, minister, that if people are going about their daily business, the authorised officers who will be operating the checkpoints will not escalate the situation just because someone does not have a driver's licence with them, because under clause 19(2) additional details will be required only if a police officer has some concern. I am concerned that there may be a situation of argy-bargy when people provide those details, and then the authorised officer, or the police officer, may get annoyed because people do not have a driver's licence on them.

Mr R.F. JOHNSON: It is not intended that authorised persons will act unilaterally as a group; the police officer will be the person who will be exercising the powers under this bill. Does that satisfy the member?

Ms M.M. Quirk: I would have thought that if the police officer was busy, the authorised officer may well not be under 100 per cent supervision by a police officer.

Mr R.F. JOHNSON: The member is giving the example of a lot of argy-bargy going on, and presenting a scenario to the house.

Ms M.M. Quirk: I am presenting someone who may be a bouncer in real life and who is not known for his people skills being an authorised officer, and even a simple thing like not providing a driver's licence could lead to some form of dispute.

Mr R.F. JOHNSON: I am advised that if any sort of situation were to escalate, then obviously an order would be issued for a police officer to step in and deal with it.

Ms M.M. Quirk: Good; thank you.

Dr J.M. WOOLLARD: Minister, clause 19(2) states —

A police officer or an authorised person may also require a person who is required under this section to disclose the person's personal details to provide proof of those personal details.

“Personal details” is defined in clause 3 as —

- (a) the person's full name; and
- (b) the person's date of birth; and
- (c) the address where the person is residing; and
- (d) the address where the person usually resides, if that is different from the address referred to in paragraph (c);

So under this clause it does not need to be a driver's licence, and there does not need to be photographic evidence; other information could be provided.

Mr R.F. Johnson: Once again, you are absolutely right, member for Alfred Cove. You have dealt with this legislation very well.

Dr A.D. BUTI: I am a little bit nervous that authorised persons other than police officers will be able to collect personal details. Will any clause of this bill protect that information? If an authorised person, not a police officer, obtains the personal details of a person, including the address and phone number of a person, what legislative protection will there be that that information will remain confidential? Of course, the police, under their general policies and the general Police Act, have to abide by confidentiality clauses, but I am a bit concerned with regard to authorised persons.

Mr R.F. JOHNSON: I am advised that we will certainly have procedures in place that will cover those eventualities.

Dr A.D. Buti: Will any penalties be imposed on an authorised person who releases that information or uses it inappropriately or unlawfully?

Mr R.F. JOHNSON: Is the member anticipating that an authorised person, not a police officer, would gain the personal details of somebody and then keep them and use them inappropriately?

Dr A.D. Buti: Yes; very much so.

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Mr R.F. JOHNSON: No specific penalties have been incorporated in the bill, but I would suggest that if they were a licensed security officer, they would lose their licence and their livelihood because that could be deemed an inappropriate action.

Dr A.D. Buti: I understand the minister's clarification, although I would be much happier if this legislation included a penalty provision, because it could actually lead to dire consequences. Let us not mince words; it is possible that an authorised person such as a security officer et cetera might come across a person they find extremely attractive and obtain their details—it might be the minister himself—and pay them a visit.

Mr R.F. JOHNSON: As long as it is a female security officer, I do not mind.

Dr A.D. Buti: It could have some serious consequence, and I think there should be some form of protection.

Mr R.F. JOHNSON: There will be guidelines and policies issued to those authorised persons, and I am pretty sure that will be part of that. If they contravene those, I would suggest that that would be a cause for losing their licence, which they would then have to apply to the police to retain. I would deem that circumstance as being totally inappropriate. There will also be procedures in place as to how they record those names. I think it will be made quite clear in the guidelines.

Ms M.M. Quirk interjected.

Mr R.F. JOHNSON: We do not ask for phone numbers. People have to give that sort of detail if they enter licensed premises now.

Mr W.J. Johnston: No, they don't.

Mr R.F. JOHNSON: A lot of them do. It is not compulsory, but some of the nightclubs, I understand, insist on seeing a driver's licence.

Mr W.J. Johnston: Their behaviour is unlawful.

Mr R.F. JOHNSON: It can be a condition of entry.

Mr W.J. Johnston: Those pubs in Northbridge are breaking the commonwealth privacy laws in the way they treat —

Mr R.F. JOHNSON: That is a separate argument, and the member has that view, but we know for a fact that there are some licensed premises in Northbridge that insist, as a condition of entry, on people showing their driver's licence as proof of age.

Mr W.J. Johnston: They can do that, but the problem is they pass that information on to other parties, and that is unlawful.

Mr R.F. JOHNSON: That is unlawful; of course it is.

Mr W.J. Johnston: It's the police who get them to do it. It's outrageous what happens in Northbridge. As you say, it's unlawful, and the police are doing it.

Mr A.J. WADDELL: Clause 19 deals with police officers or authorised persons requiring someone to provide personal details and potentially requiring them to provide better and further personal details if they are not satisfied. Under clause 18 there is a provision for creating checkpoints, cordons and roadblocks. It is suggested that they are there for the purpose of stopping someone from entering or leaving a CHOGM area. However subclause (4) quite clearly states that an officer or authorised person must not refuse permission to a person to leave a CHOGM security area unless they think that there is a risk to the public safety or their own safety. My question comes down to the matter of having to provide identification. If a person finds himself in a CHOGM security area, there must be some point in time at which an area switches from being a non-CHOGM area to a CHOGM area. It will not happen by osmosis; there will be a defined time. If a person happens to find himself on the wrong side of the line at that time, can the person be compelled to provide his identification even if it is his intention to leave the CHOGM area?

Mr R.F. JOHNSON: Under clause 18(4), a police officer or authorised person must not refuse permission for a person to leave a CHOGM security area unless it is reasonably necessary to do so to avoid a risk to public safety or to the person's own safety. The answer to the question is, in effect, clause 18(4).

Mr A.J. Waddell: I understand that, minister, but my question is about if someone is leaving the CHOGM security area and gets to the roadblock, the police are not to stop them, but they do have the power to ask for their identification whilst they are inside the CHOGM area. If they deem a person to be suspicious or whatever, I assume they have the powers to say, "Give us your ID; and, if you don't pass your ID, even though you're trying to leave the area, you're potentially guilty of an offence that carries 12 months' imprisonment".

Mr R.F. JOHNSON: Correct, if they are unauthorised to be in that area.

Mr A.J. Waddell: So merely being on the wrong side of the line at the time that the CHOGM area becomes a CHOGM area basically guarantees that they will have to declare their identification to the state or face the consequences. There is no opportunity for those people to vacate the area quickly without suffering those consequences.

Mr R.F. JOHNSON: The member is actually getting into clause 64, which provides for failure to disclose personal details or provide proof of personal details. A person must not, without reasonable excuse, fail to comply with a requirement made of the person under clause 40(2)(c) for the person to disclose his or her personal details or provide proof of his or her personal details. That is covered under clause 64(1).

Mr A.J. Waddell: My point is that when that clock ticks over into CHOGM time —

Mr R.F. JOHNSON: The scenario that the member has presented would come under that clause—reasonable excuse.

Mr A.J. Waddell: Would that be the case if I was already there when it became a CHOGM area?

Mr R.F. JOHNSON: It could be, yes. We do not know the circumstances, do we? I do not have a crystal ball.

Clause put and passed.

Clause 20 put and passed.

Clause 21: Power to search persons —

Ms M.M. QUIRK: Under the power to search persons, a police officer or authorised person stopping a person entering a CHOGM security area can require, as a condition of entry, that the person submit to a search, or they may stop and search a person who is in a CHOGM security area. The clause makes the distinction between the powers of an authorised officer and the powers of a police officer. It particularly makes reference to a police officer being able to perform a basic search of a person, and an authorised person performing a basic search minus the frisking. A basic search is defined under clause 22(1), which we will get to shortly. My question relates to this clause, but I am also looking at section 10 of the APEC Meeting (Police Powers) Act 2007. In that legislation, the power to search a person is limited to police officers. I am wondering why it was felt necessary to extend that power further.

Mr R.F. JOHNSON: They do not have authorised officers in the APEC act, and they had 15 000 police officers compared with our just under 6 000. This is a much bigger event than APEC, and, as the member is aware, we could not do it without having some authorised officers assist with this particular job.

Ms M.M. QUIRK: It is really a question of numbers. Is it contemplated that the authorised persons will be the ones doing the wandering and putting people through security arches and metal detectors, while the police will be, if the minister will excuse the pun, more hands-on?

Mr R.F. JOHNSON: It could well be, yes, because it is just like the airports.

Dr A.D. BUTI: My reading of clause 21 is that it will allow a person to be stopped and searched if they seek to enter a CHOGM area, and no other reason need be given. In other words, the only justification needed for a police officer or authorised person is that the person seeks to enter a CHOGM event; is that correct?

Mr R.F. Johnson: Correct.

Dr A.D. BUTI: I presume the reason for this stop-and-search legislation is that we are trying to protect world leaders because it is a special event.

Mr R.F. Johnson: Correct.

Dr A.D. BUTI: The minister would probably then agree with the premise that stop-and-search legislation should be enacted only for very special events, and not as a general law.

Mr R.F. Johnson: Good try. I have a different view from you. I believe in protecting innocent people, whether they are heads of government or Western Australians going into Northbridge.

Clause put and passed.

Clause 22: Basic searches and frisk searches —

Ms M.M. QUIRK: It is proposed that there will be frisk searches and also electronic screening. Is it contemplated operationally that frisk searches will be done only if the screening picks up something, or will frisk searches be done routinely?

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Mr R.F. JOHNSON: A frisk search may not necessarily be conducted only in the event that a person has gone through a metal detector. The member would have read in the paper today that some weapons cannot be detected by metal detectors, because of the new technology for those particular weapons. It would be an operational decision by the police officers as to whether a frisk search was necessary, and that would be based on a risk assessment, and on reasonable suspicion.

Ms M.M. Quirk: Reasonable suspicion! That is a novel concept, is it not, minister?

Mr R.F. JOHNSON: It is, yes. It did not appear in my legislation, and it did not appear in the member's, either!

Ms M.M. QUIRK: The minister would be aware of the precepts of the Sikh religion—clearly not; the minister is being told what it is—the adherents to which carry a ceremonial dagger of some form. For example, the Prime Minister of India is a Sikh. What arrangements will be made to ensure that people from that religion, of which I think there will be some at CHOGM, are searched in a respectful way?

Mr R.F. JOHNSON: I am advised that the police have issued, and will be issuing more, cultural awareness guidelines on how people of that particular ethnic origin should be treated. I think the member for Girrawheen has attended some of the sessions at the Police Academy.

Ms M.M. Quirk: Three days' worth, minister! It might have been four days! I am not sure.

Mr R.F. JOHNSON: Therefore, the member would be aware that a basic policy is now in place to ensure that police officers in their actions —

Ms M.M. Quirk: The problem is that if they have been officers for some time, they would not necessarily have had the benefit of that training.

Mr R.F. JOHNSON: I am told that they do go back and do that training.

Ms M.M. Quirk: No; very rarely.

Mr R.F. JOHNSON: There is also a specific police manual policy in relation to that.

Ms M.M. Quirk: Can you tell us what that policy is?

Mr R.F. JOHNSON: I do not have that in front of me. I am sure the member would not expect me to have that in front of me. The member will be aware that the police do have a special policy manual on that aspect.

Ms M.M. QUIRK: If the minister could advise us of that by the time of the third reading, I would be very grateful to know. We cannot have a situation in which the Prime Minister of India was asked to take off his turban; that would be completely unacceptable.

Mr R.F. Johnson: I agree with you.

Mr W.J. JOHNSTON: If an authorised person was acting under the powers provided under subclause (1)(b) and there was some conflict, how would that be resolved?

Mr R.F. Johnson: Can the member elaborate?

Mr W.J. JOHNSTON: It is pretty clear, minister. Subclause (1) says —

A person who is authorised by section 21 to do a basic search of another person may do any or all of the following —

...

- (b) remove the other person's headwear, gloves, footwear or outer clothing (such as a coat of jacket), but not his or her inner clothing or underwear;

What would happen if there was a conflict and the person said, "You're not touching my shoes"?

Mr R.F. JOHNSON: The person would be refused entry. However, if it was inside a security area, the police would have the power to search the person anyway.

Mr W.J. Johnston: I am talking about on the way in.

Mr R.F. JOHNSON: On the way in where?

Mr W.J. Johnston: To a security area.

Mr R.F. JOHNSON: Is that a restricted area?

Mr W.J. Johnston: I refer to where the police are empowered to do these things. It is pretty simple, minister. What would happen if the person said no?

Mr R.F. JOHNSON: It is a condition of entry. If they refuse the search or part of the search, they will be turned away.

Mr W.J. Johnston: Okay, so why does it say that they are given the power to remove the other person's clothing? Why would it not say "require the removal of blah, blah, blah"?

Mr R.F. JOHNSON: That is for people who may be found inside the area.

Mr W.J. Johnston: Okay, but you are authorising a bouncer to remove someone's gloves, footwear or outer clothing—I am leaving aside headwear; I do not want to get into that, as that is cultural; I am not even talking about that—so, why would you do that?

Mr R.F. JOHNSON: It is only an authorised person.

Mr W.J. Johnston: Yes. An authorised person doesn't have to be a police officer.

Dr J.M. Woollard: Clause 22(4)(c) says that the searcher must tell the person why it is necessary —

Mr W.J. Johnston: That's about a frisk. I am not talking about a frisk.

Mr R.F. JOHNSON: Only a police officer can do a frisk.

Mr W.J. Johnston: Yes, but I am not talking about a frisk. I am talking about the power in clause 21(1)(b).

Mr R.F. JOHNSON: We are talking about a basic search, not a frisk. That is for an authorised officer.

Mr W.J. Johnston: No, I am not talking about a search. I am talking about the power that is given in paragraph (b). It is not the power to search; it is the power to remove these things. If you go to the airport wearing a jacket, you have to take it off. Everybody knows that.

Mr R.F. JOHNSON: Yes.

Mr W.J. Johnston: But the security guard doesn't remove it from you; you take it off.

Mr R.F. JOHNSON: Yes.

Mr W.J. Johnston: Given that you are trying to have airport-style security, why are you authorising a security guard to remove somebody's jacket?

Mr R.F. JOHNSON: It is a condition of entry. If they do not want that, they have to turn around and go out.

Mr W.J. Johnston: Yes, but it doesn't say that. It says that the security guard is entitled to do that.

Mr R.F. JOHNSON: It does; in clause 21(1)(a).

Mr W.J. Johnston: I am not talking about clause 21(1)(a). I am talking about clause 21(1)(b). It is a different subclause.

Mr R.F. JOHNSON: It only happens if they are authorised.

Mr W.J. Johnston: Yes.

Mr R.F. JOHNSON: Clause 22(1)(b) is only when they are authorised under clause 21(1)(a).

Mr W.J. Johnston: That is right.

Mr R.F. JOHNSON: Which means it has to be by consent, I am told.

Mr W.J. Johnston: No, it doesn't. Where in paragraph (b) does the word "consent" appear?

Mr R.F. JOHNSON: Clause 21(1)(a) states —

... as a condition of entry, that the person submit to a search of the person;

Ms M.M. Quirk: And you are saying that by "entry" it is implicit that they are consenting.

Mr W.J. Johnston: That makes it worse!

Mr R.F. JOHNSON: I am sorry. Paragraph (b) applies if they are actually in the area. Paragraph (a) applies if they want to seek entry.

Mr W.J. Johnston: Where does it say that?

Mr R.F. JOHNSON: That is in clause 21(1)(a).

Dr J.M. WOOLLARD: I think the member was asking the why they might be removed.

Mr W.J. Johnston: I can ask my questions.

Mr R.F. Johnson: The member for Alfred Cove understands the legislation very well indeed, I have to say.

Mr W.J. Johnston: Obviously she doesn't, because she doesn't know what I'm asking.

The ACTING SPEAKER (Mr J.M. Francis): Member for Cannington!

Dr J.M. WOOLLARD: The member asked why they might want to remove the headwear, gloves, footwear or outer clothing. Clause 22(4)(c), in relation to a basic search, states —

the searcher, if he or she proposes to remove any article that the person is wearing, must tell the person why it is considered necessary to do so.

From that, I assume that if there were problems with people entering and the police were concerned that someone may have a weapon in their shoe or headwear, they might want people to remove their shoes or headwear so that they could look at them. This clause also allows the police to search people on an ad hoc basis if the security of the area requires those measures to be taken.

Mr W.J. JOHNSTON: I want to make clear what I was saying to the minister. If the minister can explain how else it works, I will be perfectly relaxed. Clause 21 does indeed provide for the matters that it provides for and clause 22 provides for the matters that it provides for. I am drawing to the minister's attention that clause 22(1) states —

A person who is authorised by section 21 to do a basic search of another person may do any or all of the following —

Who is a person authorised by proposed section 21? We will go back and have a look. Clause 21 provides the powers that a police officer or an authorised person may use without a warrant. Clause 21(a) and (b) sets out those powers, and subclauses (2), (3) and (4) set out further powers. Let us go back to clause 22(1), which is the clause that we are discussing. A person is authorised to do a basic search under clause 21. We have seen that that is what the authorisation is. There is no limiting factor in clause 22(1)(a), (c) or (d). Clause 22(1)(b) gives the person the power to —

remove the other person's headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not his or her inner clothing or underwear;

When a person goes through a scanner at an airport, the security staff do not remove the person's clothing. Everyone knows that they have to take off their jacket to go through an airport security device. Everyone knows that. Everyone also knows they have to take off their shoes. Even in the United States, which has a much higher standard of searches at airports, people still remove their own shoes. Why is it that we are authorising a security guard to remove a person's clothing? If the minister is saying that it is only in respect of powers when a person is already inside the cordon, why would it not say that in clause 21(1)(b), given that it does not say that at all?

I note that the member for Alfred Cove raised a red herring in respect of clause 22(4)(c). That clause says what must be done before they do it. It does not limit their right. It just says that when it is done, these other things are done too. I do not understand why we are authorising a security guard to remove a person's shoes. Why would we not have a provision that says "direct them to remove their clothing", and have another provision that relates only to where the search is being done when the person is already in the security area? I can understand that, if an anarchist is flown in especially from America and breaches the security cordon, security would want to search that person. I do not have a problem with that. What I do not understand is why the bill gives the power for a security person at an airport-style security area to remove a person's clothing. If the minister wants to say that a person does not have to come in, he should not give people the power to do it. We are dealing only with the words in the bill, not with words that should be in the bill. If the minister can explain to me why he is authorising people to remove a person's shoes rather than directing that the shoes be removed, I will be happy.

Mr R.F. JOHNSON: The member is going on as though this is something brand new that has never happened in Western Australia before. Is that right? Does the member think that we are giving powers that have never been used here?

Mr W.J. Johnston: That is not what I am saying. As the Premier says, the lowest form of debate is to put words in other people's mouths. That is not the question I asked. I asked a very simple question.

Mr R.F. JOHNSON: I will give the member a very simple answer. I direct the member to part 8 of the Criminal Investigation Act 2006 —

Mr W.J. Johnston: That is about suspicion when you think someone has done something wrong. This is not.

Mr R.F. JOHNSON: This is the Criminal Investigation Act. Part 8 is headed "Searching people".

Mr W.J. Johnston: That is where you have a reasonable suspicion of something improper occurring.

Mr R.F. JOHNSON: I am sorry, but it does not actually say that.

Mr W.J. Johnston: Yes, it does.

Mr R.F. JOHNSON: I have it in front of me. Does the member have it in front of him?

Mr W.J. Johnston: Well, minister, you should read the whole thing.

Mr R.F. JOHNSON: I will read section 63 to the member. It states —

63. Basic search, meaning of

- (1) A person who is authorised by this Act to do a basic search of a person may do any or all of the following —
 - (a) scan the person with an electronic or mechanical device, whether hand held or not, to detect any thing;
 - (b) remove the person's headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not his or her inner clothing or underwear, in order to facilitate a frisk search;

Mr W.J. Johnston: But that is when there is a reasonable suspicion of something having gone wrong. This is a general power that you are giving to security guards.

Mr R.F. JOHNSON: We are giving a general power in relation to entering a security area. If people do not want to be searched, they can turn around and leave the premises. If they want to remain there or go into the area and if they do not agree to the details outlined in this provision —

Mr W.J. Johnston: That's not what this provision says.

Mr R.F. JOHNSON: Clause 22(4)(b) provides that it must not be any more intrusive than is reasonably necessary in the circumstances. If the member does not like this clause, please vote against it.

Mr W.J. JOHNSTON: It is not a matter of whether I like the clause; it is a matter of its purpose. Why would this authority be given to somebody when it is unnecessary? As I say, I do not have a problem if the police have a reasonable suspicion of something being wrong or some illegal act happening, as indicated in the section of the act that the minister read out. If there is a reasonable suspicion, the police will act. But that is not what this provision will do. The minister is saying that people can refuse to have their headwear, gloves, footwear or outer clothing removed. The minister's answer to me was that people do not have to subject themselves to the search. Why is this provision written in the way that it is written? Whether or not the person consents, these are the powers of the security guard. It does not make any sense. If the provision said "on consent", the answer the minister gave me would have been apposite. Sadly, it does not say "on consent". This power is being given to security guards, and they will be able to exercise it unless some provision prevents them from doing that. At the moment, there is no provision that will prevent them from exercising it.

Mr A.J. WADDELL: I again raise the concern about people who find themselves in a defined area when it becomes a defined area. I fully understand what the minister is saying about the opportunity for people to turn away from an event if they do not want to be searched and do not want to go into the area. But what will happen to people who find themselves in the area when it becomes a security area? This is of particular concern given that it is quite feasible that some of the CHOGM areas will cover areas where people have their residential address. There are apartments on St Georges Terrace and people live near Kings Park, so it is not beyond the realm of possibility that some of the security areas will cover areas where people live. What opportunity will those people have to leave the area without being subjected to a search if that is their desire? Can we get it on the record that the minister would view that as a reasonable excuse under section 63 for a person to be somewhere and therefore a reasonable excuse for not complying with a search order or for not providing personal details?

Mr R.F. JOHNSON: The advice I am given is that if people live in the area, they will have special justification for being in the area. But if police found someone in an area who did not have authorisation to be in the area—that is, the person did not live there, run a business there or work there; the person may have been committing an offence for all the police know—the police will quite possibly want to search that person to see whether they have committed an offence. Does that answer the member's question?

Mr A.J. Waddell: It does. So people who are residents of the area will largely be exempted from these requirements in the sense that you will view that as a sufficient excuse for them not to agree to being searched or to provide details?

Mr R.F. JOHNSON: In a CHOGM security area that may be okay, but not a restricted area, obviously, because they would not have any cause to be in a restricted area.

Clause put and passed.

Clause 23: Ancillary powers for searches —

Mr A.J. WADDELL: Clause 23(1) states —

A person who is authorised by section 21 to search another person may do any or all of the following ...
I am concerned with paragraph (b), which states —

search any thing being carried by or under the immediate control of the other person;

Would that authorise an authorised person or a police officer to carry out a search of an electronic device, such as a mobile phone or a computer, and to examine the contents of that device?

Mr R.F. JOHNSON: In general terms, possibly yes, but I suggest that “any thing” that somebody may be carrying could be a bag, a holdall or a suspicious parcel—it could be any of those sorts of things. Does that answer the member’s question?

Mr A.J. Waddell: Yes.

Clause put and passed.

Clauses 24 to 26 put and passed.

Clause 27: Disposal of prohibited items surrendered, seized or detained —

Ms M.M. QUIRK: Clause 27(1) states —

A police officer or an authorised person —

Which is what I am concerned about —

to whom a thing is surrendered, or who seizes a thing ... need not return it to the person who surrendered it or from whom it was seized.

I understand that at the time there may not be the police personnel on the ground, so it may well be a necessary contingency that the authorised person seizes the item, but I am concerned that the police should make the decision about whether the thing is returned. I want the minister’s explanation of why this clause takes this form.

Mr R.F. JOHNSON: Clause 27(3) covers the member’s concern. It states —

If an authorised person does not return a thing to the person who surrendered it or from whom it was seized, the authorised person must deliver the thing to a police officer.

Therefore, it will be a police officer’s decision, at the end of the day, whether to return the thing and he can review that decision.

Ms M.M. QUIRK: Does the police officer need to make a formal record or something of the nature of his decision not to return that thing to the person?

Mr R.F. Johnson: We would normally record property items, which is the normal practice for police.

Ms M.M. QUIRK: So it would be recorded as a normal property item.

Mr R.F. Johnson: Most certainly, yes.

Ms M.M. QUIRK: What would be the reasons for not returning the item?

Mr R.F. Johnson: That comes under clause 29. It is the processes by which they can dispose of that property.

Ms M.M. QUIRK: Yes, but I am just asking the minister about it under clause 27.

Mr R.F. JOHNSON: I am told that if it were something noxious, obviously, that would not be returned. It would be disposed of by the police.

Ms M.M. Quirk: Or if it were an unlicensed firearm or whatever.

Mr R.F. JOHNSON: Yes, we certainly would not give that back!

Clause put and passed.

Clause 28: Power to seize things relevant to offence —

Ms M.M. QUIRK: Subclause (2) states —

If a police officer doing a search ... finds a thing that is not a prohibited item but that is a thing relevant to an offence, the police officer may seize it ...

The question is pretty technical. Does this add anything to the powers that a police officer already has under the Criminal Investigation Act?

Mr R.F. Johnson: This provision is taken straight from that act.

Ms M.M. QUIRK: What is the reason for it being here?

Mr R.F. JOHNSON: I am advised that it refers specifically to the search power under the act.

Clause put and passed.

Clause 29 put and passed.

Clause 30: Power to give directions —

Dr A.D. BUTI: Subclause (4) states —

If a direction under this section is given to a group of persons, it is not necessary for the police officer or authorised person to repeat the direction to each person in the group.

I understand that. What is a group of persons? I am not trying to be funny; I am just wondering what a group of persons is.

Mr R.F. Johnson: More than one, I would suggest.

Dr A.D. BUTI: Is it different groups?

Mr R.F. Johnson: It is more than one group if there is a group of people.

Dr A.D. BUTI: Subclause (5) states —

However, just because the police officer or authorised person is not required to repeat a direction does not in itself give rise to any presumption that each person in the group has received the direction.

So what? What is the purpose of this clause? If a person does not obey the direction, what happens? Is there any penalty?

Mr R.F. Johnson: They could be arrested and/or removed from the premises.

Dr A.D. BUTI: Subclause (5) states, in part —

... does not in itself give rise to any presumption that each person in the group has received the direction.

Therefore, if there is not a presumption that a person has heard the direction, how can that person be arrested for not obeying the direction? Surely that would be a farce.

Mr R.F. JOHNSON: We are trying to overcome, for instance, 20 people sitting in a restricted area. There is a presumption that the police officer has told everybody individually. A police officer would say, “Everybody here, I want you outside” or whatever. A police officer would have to give them a direction. It would be deemed that that direction was given to all 20 people individually.

Dr A.D. Buti: Subclause (5) does not say that; it says that a direction does not give rise to a presumption that each person in the group has received the direction. That is contrary to what you just said.

Mr R.F. JOHNSON: The police officer can give a direction to the crowd to move away. However, the police officer would have the power to move a person away who claims they did not hear the direction. The police officer would not arrest or charge that person but they are able to physically remove the person. It would be up to the police to try to prove later that that person did hear the instruction.

Ms M.M. QUIRK: I refer to subclause (3). As we have heard at length, CHOGM will be attended by delegates from something like 52 countries. Although England is our mother country, it might not be beyond the realms of possibility that people who may not have a good command of the English language will be protesting against certain countries or leaders or delegates attending. We could have people from the Tamil Nadu region protesting. I note in subclause (3) that, although there is the requirement that the direction needs to be given in a manner that is likely to be audible, it does not necessarily have to be likely to be understood. I think the deputy commissioner would agree—he is not guilty of this particular sin, but it has been known to occur—that there is something known as “police speak”. A police officer could say, “I direct that you deploy yourselves in an easterly direction.” It might be audible in normal circumstances, but frankly that might not be readily understood. I am

also concerned that if there is also shouting, that would not be audible. The minister's answer might be time, place and circumstance, but it seems that that requirement sets the bar a little low.

Mr R.F. JOHNSON: The deputy commissioner advises me that the police often have to give instructions to, say, a group of 30 individuals. Officers are well trained in how to deal with that, and they usually get results in moving those people from one place to another. That is what would happen in the normal course of events.

Ms M.M. Quirk: I was really asking about people protesting who have English as a second language. "Audible" does not mean it is going to be understood.

Mr R.F. JOHNSON: It is not an offence to carry out a peaceful protest. In fact, I suggest that we are expecting that. From what I saw on television last night, a group of 15 people are already meeting to decide when, where and how they will carry out their protest. The member may have seen that program, and she probably knows some of the people in that group—I do not know. Certainly, there are people who will protest and take the opportunity to make their point, whether they are Western Australians or people who come from other countries—I suggest there will be both—and police are well versed in how to deal with those people. If they want them to move on, then they will say so. It is not an offence to protest, but it would be an offence if they resisted a police officer's instruction to move on.

Ms M.M. Quirk: The minister can see from subclause (3) that the requirement is that the instruction be audible; it does not require that it be comprehensible or understood by that group.

Mr R.F. JOHNSON: Our police officers are not going to give the same instruction in 53 different languages, obviously.

Ms M.M. Quirk: No, I am not expecting they will, but I need that concession.

Mr R.F. JOHNSON: Most people who are carrying out a protest or something similar to that would know full well that if a police officer gives an instruction in an audible voice—I suggest it would be accompanied by hand signals to move in a certain direction—that is exactly what the police officer is trying to instruct them to do. I would certainly not be willing to give an excuse to those people who do not obey the lawful instructions of a police officer in WA.

Mr W.J. JOHNSTON: What are the lawful directions that may be given under this clause? Let us assume that a person has a lawful reason to be in the CHOGM security area, what are the directions that can be given in accordance with this clause?

Mr R.F. JOHNSON: The lawful directions are covered under subclause (2) which states —

A direction under this section must be reasonable in the circumstances for the purpose of substantially assisting 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.

Mr W.J. Johnston: So what sorts of things are you talking about?

Mr R.F. JOHNSON: It could be simply to move from one area to another.

Mr W.J. Johnston: What would the limit of the direction be?

Mr R.F. JOHNSON: As long as it complied with clause 30(2).

Clause put and passed.

Clause 31: Power to close roads —

Ms M.M. QUIRK: Clause 31, "Power to close roads", states —

(4) It is not necessary to give public notice of the closure of a road under this section.

It is the general intention that there be lots of publicity about and lots of notice given when roads will be closed to minimise inconvenience. However, there may be circumstances in which it is necessary, at short notice, to close a road. Is this what this subclause is about or is there something else behind it?

Mr R.F. JOHNSON: As I have said, we have every intention of trying to minimise any disruption to not only Western Australians, but also anybody visiting from another country. If we had, for example, a head of state or a delegation that needed to go to the airport at a time different from everybody else, the police may have to close some intersections on the journey to the airport for security purposes. Does that answer the member's question?

Ms M.M. Quirk: Yes.

Mr R.F. JOHNSON: Does the member want to respond by way of interjection or does she want to keep getting up?

Ms Margaret Quirk; Mr Rob Johnson; Mr Bill Johnston; Acting Speaker; Mr Andrew Waddell; Dr Janet Woollard; Dr Tony Buti

Ms M.M. Quirk: Yes, that answered my question; but I have another one.

Mr R.F. JOHNSON: I am sorry; I was going to give the member the opportunity to ask another one while I was still standing.

Ms M.M. QUIRK: Thank you, minister. Clause 31(2) states —

A police officer or an authorised person may, at the direction of the Commissioner, close any relevant road for any of the following purposes —

...

- (c) facilitating the movement of vehicles that are being, or are to be, used for conveying people attending CHOGM ... to or from their accommodation, an airport or a venue or facility for a CHOGM event;

Is that provision limited to CHOGM events? For example, the Queen will attend CHOGM and she may well attend other events. Although officials may well want to facilitate the movement of the Queen, the power in clause 31(2)(c) is available only in relation to her attendance at CHOGM events.

Mr R.F. Johnson: To or from.

Ms M.M. QUIRK: Yes.

Clause put and passed.

Clause 32: Effect of road closure

Ms M.M. QUIRK: Can I have a quick clarification from the minister? Clause 32 refers to the effect of road closures and prohibits people from driving on a road while it is closed. Subclause 5 states that a road does not cease to be and that the Road Traffic Act continues to apply. In other words, it continues to be a public road and people can therefore still be found guilty of driving under the influence, or speeding or what have you.

Mr R.F. Johnson: Correct.

Clause put and passed.

Debate adjourned, on motion by **Dr J.M. Woollard.**

House adjourned at 11.09 pm
