

**COMMONWEALTH HEADS OF GOVERNMENT MEETING (SPECIAL POWERS) BILL 2011**

*Consideration in Detail*

Resumed from 6 April.

**Clause 62: Interference with CHOGM event —**

Debate was adjourned after the clause had been partly considered.

**Clause put and passed.**

**Clauses 63 to 67 put and passed.**

**Clause 68: Offence relating to unauthorised entry into restricted airspace —**

**Ms M.M. QUIRK:** Clause 68(2) states —

A person must not, during the CHOGM period and in the course of State air navigation, cause an aircraft to enter, or operate an aircraft within, restricted airspace without an air traffic clearance given by or on behalf of Airservices Australia under the *Airspace Act 2007* (Commonwealth).

The fine is \$250 000. This is just a point of clarification. How will the restricted airspace be delineated?

**Mr R.F. JOHNSON:** That is a good question.

**Ms M.M. Quirk:** A good question! Are you sure I'm not filibustering, minister?

**Mr R.F. JOHNSON:** No, it is a good question. I am interested to know how they will designate what the airspace will be. The answer I have been given is that WA Police will work in tandem with the Civil Aviation Safety Authority, the Australian Defence Force and the airport operators and will delineate the airspace. I obviously cannot provide details today of what that will be. I think it would be of interest only to those who may inadvertently go into that designated airspace.

**Ms M.M. Quirk:** Obviously for the purposes of prosecution, there would need to be some proof that the airspace was restricted. Will it be part of regulations or will it be part of a publication? How will that be done?

**Mr R.F. JOHNSON:** I am told that it is not in this bill but that it will be a declaration by the commonwealth.

**Clause put and passed.**

**Clause 69: Special justification —**

**Ms M.M. QUIRK:** Part 7 deals with miscellaneous matters. Clause 69 is headed "Special justification". Subclause (1) states in part —

... a person has a special justification to be in an area, or to possess or be in control of a thing, only in the circumstances provided for by this section.

Subclause (2) contains a number of paragraphs that outline which persons will have special justification to be in an area, such as a person being a police officer, a person being an authorised person, a person who is required to be in the area for the purposes of that person's employment, or a person who resides in the area. Paragraph (f) states —

the person is in the area in other circumstances prescribed by the regulations.

Can the minister give an example of what is contemplated by that paragraph?

**Mr R.F. JOHNSON:** That is another good question. The answer I have been given is that the sort of person we are looking at would be an air conditioning mechanic, a fire officer, any maintenance person for a building et cetera. People in that category would be authorised.

**Ms M.M. Quirk:** Why would they not come under clause 69(2)(d)?

**Mr R.F. JOHNSON:** It is a bit of an insurance policy. It is a bit of a catch-all one.

**Ms M.M. Quirk:** I just want to know why it is there. The minister cannot tell me why that subclause is needed.

**Mr R.F. JOHNSON:** I suppose it is a bit of insurance, really; in case we have missed somebody that—

**Ms M.M. Quirk:** Can I put it a different way? What is going to be in the regulations?

**Mr R.F. JOHNSON:** If a class of person comes up that is not already mentioned here, obviously that would have to be included in the regulations.

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**Ms M.M. Quirk:** You would have to agree that the list in paragraphs (a) to (e) is pretty exhaustive.

**Mr R.F. JOHNSON:** We might miss one, and we do not want to miss one in this bill.

**Ms M.M. Quirk:** If one is missed, there will not be the opportunity to put it in regulations. That is what I am talking about.

**Mr R.F. JOHNSON:** No, we will by the time we get to do the regulations.

**Ms M.M. Quirk:** Is it possibly a prostitute or something? They are not covered by paragraph (d) because they are effectively breaking the law. I am trying to work out what it could possibly mean.

**Mr R.F. JOHNSON:** I suppose if a prostitute lived in the area and she was carrying on a business of some sort, she would be classified under clause 69(2)(d), but if she was streetwalking, that would be an offence, as the member would be fully aware. I do not think she would get much custom in St Georges Terrace on Friday morning. It is an insurance policy, I suppose, to some extent.

**Ms M.M. Quirk:** If there was a provision stating “such other person as the commissioner deems appropriate”, I could understand. That is fine, because the commissioner would be given discretion on the spot. But this is about promulgating regulations for those persons who need to be covered, which frankly are going to have to be contemplated in advance. The minister is saying this part of the bill is about covering those unforeseen circumstances. In which case, I would say that regulations are completely useless, because they have to be set in advance.

**Mr R.F. JOHNSON:** I quote to the member the APEC Meeting (Police Powers) Act, which covers this area completely. Clause 37, “Special justification”, states in part —

(e) the person is in the area in such other circumstances as may be prescribed by the regulations.

There was a catch-all component in that legislation, and we are simply replicating that here.

**Ms M.M. Quirk:** All right. I am still asking the minister, bearing in mind that APEC was 2007 and obviously there have been some reviews, and we have looked at the review for the APEC regulations —

**Mr R.F. JOHNSON:** There has been a review.

**Ms M.M. Quirk:** The review. There have also been debriefings, and I suspect officers have travelled in New South Wales talking to the people. Is the minister aware of or was there any consultation about whether there were other circumstances arising in that case? Even members of *The Chaser’s* would be covered under paragraph (d).

**Mr R.F. JOHNSON:** No, they would not, because they would not be prescribed in regulation, I would not think. The purpose is to ensure that those people who go about their lawful business will not be disadvantaged by this particular bill.

**Ms M.M. Quirk:** But does the minister understand my point? How can the minister regulate for something when he is saying that this is to accommodate unforeseen circumstances, when if they are unforeseen circumstances, he will not have the capacity to regulate?

**Mr R.F. JOHNSON:** I think there will be the capacity to regulate, because regulations could be done at very short notice, as the member is aware.

**Ms M.M. Quirk:** Yes, but ex post facto, which means if someone has already done what they said they cannot do. I would not have any problem if there was some provision in there such as “such other circumstances that the commissioner determines are appropriate”. I would have no problem about that, but this is providing for regulations for unforeseen circumstances, which, by definition, need to be foreseen if the minister is going to regulate.

**Mr R.F. JOHNSON:** It is what the APEC legislation also did. We have tried to emulate that as much as possible, where police have seen fit to do so.

**Dr J.M. WOOLLARD:** Minister, my question is about clause 69(3)(f), which states —

the person is in possession or has control of the thing in the area in other circumstances prescribed by the regulations.

My understanding is that the regulations would be open-ended so that, although the regulations may stipulate things such as the occupations and the areas that the minister mentioned are referred to in clause 69(2)(d), they would also contain a clause providing that if a person does not fall into one of those categories already listed and wants to go into a particular area during CHOGM, someone would have the power to make a phone call to

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another person who would be able to give authorisation. Basically an opening will be put into the regulations so that if a person belongs to a profession or has a skill that has not been considered previously, someone is able to make a phone call and get permission for that person to go into that area.

**Mr R.F. JOHNSON:** The member for Girrawheen wants the commissioner to be able to authorise additional people. He is already able to authorise that under clause 69(2)(c), which states —

the person is required, authorised or permitted to be in the area by the commissioner or a police officer or an authorised person;

**Ms M.M. Quirk:** In which case it is completely redundant.

**Mr R.F. JOHNSON:** No, it is not. We are trying to ensure we do not disadvantage anybody. That is why we put in this catch-all provision, the same as NSW did for APEC. I am sure the member agreed with the APEC legislation. If the member did not, she should say so. This is what WA Police believe is worthwhile incorporating now, because it studied —

**Ms M.M. Quirk:** We are happy to support it if there is a good reason, minister, but you cannot explain why it is needed.

**Mr R.F. JOHNSON:** Because we —

**Ms M.M. Quirk:** This is the government that talks about removing red tape, and needless regulation is being put in for a circumstance that the minister does not know what it is going to be.

**Mr R.F. JOHNSON:** What? To protect people; to ensure that people are not disadvantaged. If that is the member's view, fine.

**Dr A.D. BUTI:** The problem that we have been having with this legislation and this subclause is that legislation is brought before Parliament to regulate. In this sense it is to regulate people's behaviour during this important event of CHOGM to ensure public safety. Member for Alfred Cove, it is not just a matter of just ringing up someone. It is not like any social gathering and we can just ring up someone and get approval for XYZ. This is a very special power. As the minister has repeatedly told us, this legislation is very important and we agree that it is important to protect all heads of state and also the public. Therefore, we will bring in legislation to do this. However, the legislation has to have some basis and merit to it. As the member for Girrawheen has said, if, as the minister said, clause 69(2)(c) is the appropriate provision, we do not need paragraph (f). We should remove clauses that are not necessary for the purpose of this legislation.

**Mr R.F. JOHNSON:** I have just given a very good scenario.

**Ms M.M. Quirk:** They were excellent.

**Mr R.F. JOHNSON:** I have great people assisting me at this table. And I think they must be getting fed up to the back teeth of being here, and I do not blame them. Let me give an example. At the last minute there may be a school that wants to do a parade of a group of schoolchildren—say, 20 or 30—to carry out some function in that area. They could be covered by paragraph (f), because it would be a late notification that they want to do that. That is something that could be covered by that paragraph. That is what the experts at the table tell me.

**Mr W.J. Johnston:** That would be paragraph (c).

**Mr R.F. JOHNSON:** It could be, yes. But it could also be covered by paragraph (f) because it is something that is unforeseen.

**Mr W.J. Johnston:** You are not going to make a regulation for something unforeseen.

**Ms M.M. Quirk:** This is why it is illogical.

**Mr R.F. JOHNSON:** I go back to my original comment. We are trying to have a catch-all area for the benefit of those people. We do not want to disadvantage anybody. That is why it was in the APEC legislation and that is why we have covered it in this bill.

**Mr W.J. Johnston:** What were the regulations that were produced under —

**Mr R.F. JOHNSON:** I do not know, but that clause is the same as that in the APEC legislation, which I am sure the member would agree with.

**Mr W.J. Johnston:** The New South Wales legislation equivalent is section 37(2)(e). What were the regulations that were produced in accordance with that section?

**Mr R.F. JOHNSON:** Clause 69(2)(c) of this bill is for an individual —

**Mr W.J. Johnston:** Or a class of individuals.

**Mr R.F. JOHNSON:** It could technically be a class of person.

**Mr W.J. Johnston:** What were the regulations in New South Wales; what did they say?

**Mr R.F. JOHNSON:** I do not know; I have not seen them. That legislation had this ability, and that is all I am asking for today.

**Mr W.J. Johnston:** Given that it is not going to be the thing that you just said—it is not going to be the school groups—what sort of thing are you contemplating using the power for? You can't tell us what it was used for in New South Wales and you can't tell us what you would do here. It is pretty simple.

**Mr R.F. JOHNSON:** I will not argue the clause anymore. I simply want to ensure that we have similar legislation to that for APEC because the government and the police believe it is worthwhile. The purpose of this legislation is to try to not disadvantage people, particularly Western Australians, whom we might find at the last minute should be included on that list in the regulation.

**Mr W.J. JOHNSTON:** I am not questioning the minister about the regulation power. I can see the difference between the section in the New South Wales legislation and clause 69(2)(b) in this bill; New South Wales did not have authorised persons but we do, so we need this clause. I understand that. I want to go to clause 69(2)(d) and 69(2)(e) and ask the minister *The Chaser's War on Everything* question. If a person is directed by their employer to pass through the area as part of that person's employment, let us take the example of the cameraman who was part of *The Chaser's* team, will *The Chaser's* cameraman be covered by clause 69(2)(d)? We know that there are many homeless people in the CBD who sleep in certain sections of the city. People who live in the city can tell us where these people reside, so are homeless people covered by the exemption in clause 69(2)(e)?

**Mr R.F. JOHNSON:** The member seems to love coming back to *The Chaser's* every time; he must be a great fan of *The Chaser's War on Everything*!

**Mr W.J. Johnston:** Absolutely I am!

**Mr R.F. JOHNSON:** I have to say that I am not; I find that a lot of *The Chaser's* stuff is trivial. *The Chaser's* team got through because a mistake was made at the roadblock.

**Mr W.J. Johnston:** That's not true.

**Mr R.F. JOHNSON:** That is the information I have been given.

**Mr W.J. Johnston:** That's not what happened; they were directed through.

**Mr R.F. JOHNSON:** Because of a mistake. The police officer thought that *The Chaser's* team were an official member of a delegation there. If that was not a mistake, what does the member call it?

**Ms M.M. Quirk:** He's now working in Dubbo!

**Mr R.F. JOHNSON:** He probably is! I really think that the member is going to enormous lengths.

**Mr W.J. Johnston:** So, could you just answer the two questions I asked?

**Mr R.F. JOHNSON:** Which were specifically?

**Mr W.J. Johnston:** They're very specific questions. There were two questions. Do you remember them?

**Mr R.F. JOHNSON:** No, I do not. One was about *The Chaser's* and —

**Mr W.J. Johnston:** The cameraman for *The Chaser's War on Everything* who is directed by his employer to be there.

**Mr R.F. JOHNSON:** They would be accredited. Cameramen will be accredited, not *The Chaser's War on Everything* cameramen. It is expected there will be 1 000 media people and they may need to, if there is a media conference being held in the convention centre, be authorised to go through to the convention centre. We have different operations from what New South Wales had. We do not intend to have a situation in which *The Chaser's* team or an imitation of *The Chaser's* team would get through.

**Mr W.J. Johnston:** And the homeless person living on the street?

**Mr R.F. JOHNSON:** No.

**Mr W.J. Johnston:** But they live there.

**Mr R.F. JOHNSON:** I am sorry, but they have got to reside in premises.

**Mr W.J. Johnston:** It doesn't say that; it says —

the person resides (whether on a temporary or permanent basis) in premises that are located in the area;

**Mr R.F. JOHNSON:** The clause states “in premises”.

**Mr W.J. Johnston:** So what is going to happen?

**Mr R.F. JOHNSON:** The member asked about a homeless person who lives on the streets.

**Mr W.J. Johnston:** No, they live in alleyways and they live —

**Mr R.F. JOHNSON:** They are not premises.

**Mr W.J. Johnston:** So what are you going to do with the homeless people?

**Mr R.F. JOHNSON:** I do not think that they will be on the list of people who will have a pass to get through.

**Mr W.J. Johnston:** Okay, so what are you going to do?

**Mr R.F. JOHNSON:** They will have to sleep somewhere else for the night, will they not?

**Mr W.J. Johnston:** What arrangements are going to be made?

**Mr R.F. JOHNSON:** I will get a tent and a cushion—I mean, what a stupid question! It really is, for goodness sake!

**Mr W.J. JOHNSTON:** I think it is disrespect the minister shows —

**Mr R.F. Johnson:** So you want somebody dressing up as a homeless person to be allowed to go through there?

**Mr W.J. JOHNSTON:** It is a pretty simple thing. If the minister will not let homeless people sleep where they ordinarily do—if that is the minister's decision, that is the minister's decision—what will he do about it? It is not an unreasonable position, and the heartless and disrespectful —

**Mr R.F. Johnson:** We'll direct them to somewhere else for that period.

**Mr W.J. JOHNSTON:** It is a heartless and disrespectful approach that the minister has towards this situation. Let us face it, I think, 16 people in the electorate of Cannington were listed on the Census as being homeless. I do not know the number of homeless people in the City of Perth, but we all know that the closer a place is to the CBD, the more homeless people there are. There are more homeless people in Victoria Park than in Cannington and there are more homeless people in Perth than in Victoria Park. Everybody knows that. It is not an unreasonable question. The government has plans for this and plans for that. The government has plans for the business program. The government has plans for all these things, so all I ask is: if the government will not permit homeless people a justification to be in the area—fine; that is its decision—what arrangements is it making for those people? It is not an unreasonable question. It is not filibustering—it is not any of those things. I am just asking a very, very simple question.

**Mr R.F. Johnson:** It'll be a question for another minister, not me.

**Mr W.J. JOHNSTON:** With respect, as I understand, this is the minister's legislation and he is the minister who is primarily responsible for this.

**Mr R.F. Johnson:** They won't be allowed in a secure area unless they reside in premises. It is as simple as that. If you want DCS—the department of protection or whatever it is —

**Mr W.J. JOHNSTON:** The Department for Communities, I would imagine.

**Mr R.F. Johnson:** No, it's not called that; it's called the —

**Mr W.J. JOHNSTON:** There are two separate departments: there is the Department for Child Protection and the Department for Communities.

**Mr R.F. Johnson:** They may wish to lay on something, or one of the charity organisations may wish to, but I do not intend to get up and respond to your questions anymore in relation to that; you're just wasting time.

**Mr W.J. JOHNSTON:** I am not wasting time. These are important issues. We would not waste time if the government —

**Mr R.F. Johnson:** Where do you live? We'll send them round to your house if you're really concerned.

**Ms M.M. Quirk:** That is extraordinary!

**Mr W.J. JOHNSTON:** I live in Victoria Park and there are a lot of homeless people in Victoria Park. I tell the minister that one of the organisations that I am very happy to support is the Christian Centre for Social Action on

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Albany Highway in Victoria Park. It used to allow homeless people to sleep on its premises and the local council made the centre put a roller door in to block homeless people from sleeping on the centre's veranda, so do not come that line with me, minister. It would be interesting to see how the minister would respond to the same situations that happen to those of us who have electorates closer to the city where homelessness is a serious problem. I do not believe that the minister should sit at the table and say that this is not a relevant issue. Apparently, what happens at the Burswood Casino during the business program is a relevant issue, even though the legislation is not written properly to cover events happening at the Burswood Casino, but it is not appropriate, according to the minister, to discuss what will happen with homeless people. I do not understand that. If I were a minister of the Crown earning a quarter of a million dollars a year, I would be more interested in the people —

**Mr R.F. Johnson:** Do you object to that money?

**Mr W.J. JOHNSTON:** I earn \$138 000 a year.

**Mr F.A. Alban:** But your wife is earning the same!

**Ms M.M. Quirk:** What's that got to do with anything?

**Mr W.J. JOHNSTON:** With respect —

Several members interjected.

**The ACTING SPEAKER (Ms A.R. Mitchell):** Members! Member for Swan Hills, please refrain, thank you.

**Mr W.J. JOHNSTON:** I am very happy to take that interjection because my wife has a difficult job. She earns her income because she does that job and I earn my income because I do my job. The Premier has raised this idea in the past, so I am very glad that the member for Fremantle and the member for Vasse are now friends because he never raises this issue anymore. I am very happy about that. The idea that somehow a man's wife is considered a chattel, which is reflected in the comments of the member for Swan Hills, is outrageous!

**Mr R.F. Johnson:** It doesn't matter; that had nothing to do with —

**Mr W.J. JOHNSTON:** The member for Swan Hills is the one who raised this outrageous slur!

**The ACTING SPEAKER:** Member for Cannington, I appreciate that you were sidelined a little, but I ask you to come back to the bill.

**Mr W.J. JOHNSTON:** Thank you very much, Madam Acting Speaker. I am very happy for you to do that. I will always object to these outrageous slurs on my wife, and I will never put up with them.

The minister sits in this place and takes up time complaining that the bill is progressing slowly but he is unable to answer questions. I do not think it is unreasonable to know what the plan is.

**Mr R.F. Johnson:** There isn't a plan! It is as simple as that, as far as I am concerned. Ask another minister!

**Mr W.J. JOHNSTON:** It is ridiculous!

**Ms M.M. QUIRK:** On that subject, I would like to know what directions, guidelines or policies will be given to police officers and authorised officers on how they treat homeless people who are in restricted or security areas. That is very germane.

**Mr R.F. Johnson:** They will be directed to go somewhere else during that time.

**Ms M.M. QUIRK:** What is the policy that the police will be making? Will the police be issuing move-on notices? Will they be charging these people under clause 65(2)?

**Mr R.F. Johnson:** Those people will not have passes, so they will not get in. It is only if they reside in premises or they work in an area that they will get a pass.

**Ms M.M. QUIRK:** They may well have been sleeping there from the night before. It is a reasonably large area and without criticising the level of security, which I am sure will be excellent, I am concerned that by mere inadvertence some homeless person will be there. Are they going to be moved on? Will they be criminalised?

**Mr R.F. Johnson:** They will not be criminalised, but they will be moved on.

**Ms M.M. QUIRK:** So they will not be charged under this?

**Mr R.F. Johnson:** I do not believe so, no.

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**Ms M.M. QUIRK:** Maybe the deputy commissioner will be able to give the minister some instruction on what guidelines or instructions will be given to authorised officers and police officers in relation to that category of people and what was the experience in New South Wales.

**Clause put and passed.**

**Clause 70: Onus of proof of lawful excuse etc. —**

**Ms M.M. QUIRK:** This clause refers to the onus of proof of lawful excuse or reasonable excuse or special justification—which is what we were just debating—being on the person accused of the offence or who claims to have lawful excuse, reasonable excuse or special justification or as the case may be. What is the standard of proof that someone must raise?

**Mr R.F. Johnson:** It is the balance of probability.

**Clause put and passed.**

**Clause 71: Proof of unpublished orders and of appointments —**

**Ms M.M. QUIRK:** Division 2 relates to evidential matters, and this clause deals with proof of unpublished orders and appointments. This clause is a matter of some concern. It reads —

- (1) In proceedings for an offence against this Act or any other Act, the following averments in the indictment or prosecution notice are sufficient evidence of the facts ...

The averments include that an order was made under section 8 declaring a stated area to be an additional security area, the date and time when the order was signed, and the period for which the order was made et cetera; that an order was made under section 12 designating an area as a security area; and that a stated person was, at a stated time or during a stated period, a recognised law enforcement officer or an authorised person. Subclauses (2) and (3) outline that this does not apply if an order made under section 8 or section 12 is made in the *Government Gazette*. The minister might be able to clarify. In other words, this clause relates to those emergency-type declarations where an area has not been gazetted. Is that correct?

**Mr R.F. Johnson:** That is correct.

**Ms M.M. QUIRK:** In cases that there is nothing in the *Government Gazette* and there is no written or public evidence, necessarily, of the order that is made, the prosecution will be able to assert that it was done appropriately.

**Mr R.F. Johnson:** Yes.

**Ms M.M. QUIRK:** I would have thought it should have been the other way round; that is, when a matter has been gazetted, an averment is okay because that can be accessed by the defence. In cases in which that has not been done, I would have thought an averment to that effect would be insufficient.

**Mr R.F. JOHNSON:** I am told that the court can still review the action. The end of subclause (1) reads, "... unless the contrary is shown"; that is, on the balance of probability. Does that answer the member's question?

**Ms M.M. Quirk:** No, it does not, because "unless the contrary is shown" means that the defence has been put to the expense and trouble of digging up material, probably contemporaneous material that would make it evident that this declaration was made, which would mean writing to the commissioner and getting prosecution disclosure of documents around that declaration.

**Mr R.F. JOHNSON:** The member is right, and I am told it is used in the Road Traffic Act quite a lot.

**Ms M.M. Quirk:** I am familiar with the concept of averments. In this case, when it is most difficult to source the material, the minister may be —

**Mr R.F. JOHNSON:** I ask that the member let me answer the question. I will basically read what the deputy commissioner has given me. It is standard procedure. It is rebuttable and it is for those instances in which the commissioner was unable to have had time to gazette the declaration.

**Ms M.M. QUIRK:** I understand that, and that is the very point I am making. The cases in which people would want to rebut certain facts are when the material available is less accessible and less able to be verified immediately, and they will have to get contemporaneous documents or documents surrounding the decision of the commissioner to prove, for example, that a declaration was made about the area, for a particular time and was operating at the time of the alleged offence and so on. This is making it harder in cases where there is less public material available.

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**Mr R.F. JOHNSON:** I believe the member is aware of the purpose of this and she would normally support it as a reasonable person.

**Ms M.M. Quirk:** I used to love averments as a prosecutor, but they are not very fair in this case.

**Mr R.F. JOHNSON:** Let us say the police had 100 violent people who needed prosecuting; unless we have this clause, the commissioner would have to front up to every one of these prosecutions —

**Ms M.M. Quirk:** Or his delegate!

**Mr R.F. JOHNSON:** I do not want it to be the deputy commissioner or even one of our assistant commissioners. If there are 100 people who have committed violent offences, I do not think it is reasonable. That is the purpose of this clause, and I think the member is fully aware of that; she may not agree with it.

**Ms M.M. QUIRK:** Can the minister point me to the equivalent provision in the New South Wales legislation? I cannot find it.

**Mr R.F. Johnson:** No; it is Western Australian legislation.

**Ms M.M. QUIRK:** Is it correct that there is no equivalent in the APEC legislation?

**Mr R.F. Johnson:** As far as I am aware, no.

**Ms M.M. QUIRK:** Why was it necessary in Western Australia? Why are WA Police not prepared to put themselves to the same level of effort as the New South Wales police?

**Mr W.J. JOHNSTON:** I would like to explore this a bit further.

I did not hear the minister.

**Mr R.F. Johnson:** I wasn't talking to the member; I was talking to one of my advisers.

**Mr W.J. JOHNSTON:** I am sorry, but I did not hear the minister.

**Mr R.F. Johnson:** I wasn't talking to the member—life is not just about you!

**Mr W.J. JOHNSTON:** As we saw on *Australian Story*, it is not only about you!

**Mr R.F. Johnson:** God forbid we should see you shaving your head and prancing around near naked!

**Mr W.J. JOHNSTON:** There were five minutes in the house last night that will live in my memory forever! I think the member for Rockingham nailed it with his comments about the minister. The minister's problem is that he is fixated. There is a love that dares not speak its name between you and the member for Mindarie! It is quite frightening.

**Mr R.F. Johnson:** I would cut my throat before anything like that!

**Mr W.J. JOHNSTON:** No; I think the love is there, minister.

**Mr R.F. Johnson:** I would cut my own throat.

**Mr W.J. JOHNSTON:** I am sure of it!

**Mr R.F. Johnson:** The member might love him, but I do not.

**Mr W.J. JOHNSTON:** What I want to understand is that clause 71(1)(a) does not apply in accordance with subclause (2) for a section 8 notice, and clause 71(1)(b) does not apply. What is the benefit for the prosecution? It appears that —

**Ms M.M. Quirk** interjected.

**Mr R.F. Johnson:** I have already answered the question.

**Mr W.J. JOHNSTON:** I have not asked it! Not only does he have that special love and affection, he can mind-read people as well!

What I am trying to get at is: if the order is published in the *Government Gazette*, then clause 71(1)(a) does not apply.

**Mr R.F. Johnson:** Yes.

**Mr W.J. JOHNSTON:** Or, if it is in respect of section 12, then clause 71(1)(b) does not apply.

**Mr R.F. Johnson:** Correct.

**Mr W.J. JOHNSTON:** This arrangement is only for those orders that are not published. These are the ones that nobody knows about —

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**Mr R.F. Johnson:** Exactly. That is the point of the title of this particular clause.

**Mr W.J. JOHNSTON:** Yes, okay; but the minister raised the question about 100 violent people. A hundred violent people would be arrested anyway, because if they are committing violence, they are already breaking the law. So, what is the purpose? The behaviour of 100 violent people is already illegal. What is the public policy purpose of what the minister is doing? If the Queen wants to go for a jog one morning and a section of the city is declared a secure zone so she can go for that jog, and we do not want to tell everybody that she is going for a jog, I can understand that—that is what was done for the President of the United States for the things he did while in Sydney. I understand that the minister does not want to flag it.

**Dr A.D. Buti:** Or a horse ride.

**Mr W.J. JOHNSTON:** Or a horse ride; I can understand that. What I do not understand is why, given that that is the case for these very special occasions, the minister wants a lesser standard. If it is in respect of clearing an area for 100 violent people, they can be arrested and charged anyway because they are already breaking the law. What is it? It cannot be that example—it has to be some other example.

**Mr R.F. Johnson:** It has nothing to do with it.

**Mr W.J. JOHNSTON:** What—the 100 violent people? The minister is the one who raised the 100 violent people.

**Mr R.F. Johnson:** If you don't like the clause, vote against it, please.

**Mr W.J. JOHNSTON:** Minister, it is not a question of —

**Mr R.F. Johnson:** I am not going to keep wasting my time standing to answer questions that are totally irrelevant.

**Mr W.J. JOHNSTON:** I do not understand how you can possibly say it is irrelevant when we are talking about how the law applies. If the minister cannot explain how the law applies, how will anybody else know how the law applies?

**Mr R.F. Johnson:** I have already explained that to the member for Girrawheen.

**Mr W.J. JOHNSTON:** Let us not forget there is no police intelligence saying that there will be violent protests at this event—no police intelligence. There is no police intelligence saying that the event is being targeted by people from overseas who are going to come here and do a G8-style protest. If there are violent people, they can already be arrested. The minister is reversing the onus of proof of whether the order is valid. I do not understand that, and neither does the minister.

**Mr R.F. JOHNSON:** If it was gazetted, we will be able to produce that in court. If it is not gazetted, then we would need these clauses and the averment to be able to justify what has happened.

**Mr W.J. Johnston:** That is not right.

**Mr R.F. JOHNSON:** The member may have a different opinion.

**Mr W.J. Johnston:** But that is not what it says.

**Mr R.F. JOHNSON:** Okay.

**Mr W.J. Johnston:** Minister?

**Mr R.F. JOHNSON:** I am not going to waste my time.

**Ms M.M. QUIRK:** I am still referring to clause 71. When an offence is prosecuted, elements of the offence need to be proved. For example, in the case of being in a restricted or secure area, one of the elements will be that the accused was present in that area at the time at which there was one of these declarations in place; in other words, that is an element of the offence. In relation to those areas that have been gazetted, that is something which the defence will be able to access and would be something the court can take into account.

**Mr R.F. Johnson:** Yes.

**Ms M.M. QUIRK:** Because of exigencies or urgencies, if the declaration was not able to be gazetted, the minister is effectively letting the prosecution off proving elements of an offence. These offences attract reasonably significant penalties—imprisonment for up to 12 months. This is not some minor summary offence; it is a serious matter.

**Mr R.F. Johnson:** I am told all this proves is that the area was declared, not that somebody has actually broken the law.

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**Ms M.M. QUIRK:** But that is quite an important element of the offence—that is, presence in a declared area—so therefore if it cannot be proved the area was declared, then the prosecution fails. Given that this is not in the APEC legislation and it is not something that was recommended in the review, I find it extraordinary that the minister is cutting corners like this. We have supported other clauses in this bill in which, for the nature of the event and what have you, it is necessary, for example, to provide non-police officers with powers, but I see absolutely no reason why we should be cutting corners on a prosecution. It will most likely happen after the event has happened, if it is a plea of not guilty. In terms of wasting police resources: firstly, I am sure that the excellent security that Western Australia Police can provide means that the number of these cases will be limited; and, secondly, why the resources cannot be brought to bear on proving the case, as is the obligation of the prosecution, I just do not understand.

**Clause put and passed.**

**Clauses 72 to 77 put and passed.**

**Clause 78: Corruption and Crime Commission may provide assistance —**

**Ms M.M. QUIRK:** This is the area that the opposition takes some considerable issue with. At the risk of being accused of filibustering, we intend to spend some time on this because it is not something that was felt necessary to be used in the APEC legislation. As I understand it, it is a concession by the government to the demands of the Corruption and Crime Commission. The provisions deal with the CCC providing assistance and requiring, in subsequent clauses, to exercise its exceptional powers in relation to so-called CHOGM offences. Clause 78 in particular deals with empowering the CCC to provide assistance. I understand there were communications on a formal level about the CCC possibly providing some manpower and equipment of various sorts; vehicles, whatever.

**Mr R.F. Johnson:** That is correct.

**Ms M.M. QUIRK:** I understand there was some correspondence between—I do not know whether it was the deputy commissioner or the police commissioner—and the then Chairman of the Corruption and Crime Commission, Len Roberts-Smith, QC.

**Mr R.F. Johnson:** That may have happened in the past but the situation at the moment is that the commissioner of the CCC is more than happy to assist in relation to any request from police concerning this bill to give them assistance with manpower, specialist equipment and so on.

**Ms M.M. QUIRK:** In other words, he is happy to do that without any provisions in the legislation such as this?

**Mr R.F. Johnson:** No; he can't.

**Ms M.M. QUIRK:** What is the basis for saying that he cannot?

**Mr R.F. Johnson:** The advice I have been given is that he was of the view that there was no express provision within his act. I am told that he requested enabling legislation, which is what we are dealing with here. This will be enabling legislation so that there will be a very cooperative approach to assist with personnel, specialist equipment, possibly vehicles and anything the CCC has at the moment.

**Ms M.M. QUIRK:** Was that opinion committed in writing?

**Mr R.F. Johnson:** I am not aware whether it was.

**Ms M.M. QUIRK:** Can the minister check with the deputy commissioner?

**Mr R.F. Johnson:** No.

**Ms M.M. QUIRK:** The minister will not check with the deputy commissioner; he is not prepared to answer a question.

**Mr R.F. Johnson:** I am not prepared to get into an area that does not involve this particular bill. This bill is enabling legislation.

**Ms M.M. QUIRK:** It certainly does involve this bill.

**Mr R.F. Johnson:** The member for Girrawheen might want to get hold of correspondence or whatever that might be between both the Commissioner of Police and the then Corruption and Crime Commissioner, but she will need to find other avenues to get that; I am not going to make it available while in this place dealing with this bill.

**Ms M.M. QUIRK:** Because?

**Mr R.F. Johnson:** Because I do not think it's appropriate.

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**Ms M.M. QUIRK:** We are dealing with an assertion by the minister's government and by the minister —

**Mr R.F. Johnson:** Particularly when dealing with operational issues.

**Ms M.M. QUIRK:** It is not dealing with operational issues.

**Mr R.F. Johnson:** You don't know that.

**Ms M.M. QUIRK:** The minister just told us it was a legal opinion by Len Roberts-Smith, QC, that under the CCC act, the CCC could not render the assistance that was requested.

**Mr R.F. Johnson:** That was his view.

**Ms M.M. QUIRK:** Is the minister prepared to at least tell me that that was provided in writing?

**Mr R.F. Johnson:** The member can ask me questions at another time when I can get some more detailed answers, but I am not prepared to have a fishing trip here on this legislation.

**Ms M.M. QUIRK:** It is not a fishing trip. I already know this because the deputy commissioner very kindly and cooperatively told me this yesterday. Did police seek an opinion from the State Solicitor or anyone else in relation to that advice?

**Mr R.F. Johnson:** No, they did not because the commissioner of the CCC, as you will be fully aware, can make his own decision, and that was the situation then.

**Ms M.M. QUIRK:** I am really sorry that the minister is not prepared to cooperate in this regard. As I understand it, the basis for that decision was something that the minister talked about in his response to the second reading debate on this bill; namely, section 16, "General functions", of the Corruption and Crime Commission Act 2003, which reads —

The Commission has the functions conferred or imposed by or under this Act or any other written law.

As I understand it, the view of Len Roberts-Smith was that the CCC had not had any functions conferred on it by law in relation to CHOGM; therefore, the CCC is not in a position to extend to the police the use of its equipment, material, personnel et cetera.

**Mr R.F. JOHNSON:** That is correct. The act the member is talking about does not cover CHOGM.

**Ms M.M. QUIRK:** Yes. This is a roundabout way of saying that clause 78 is about giving the CCC a brief and conferring on it functions under CHOGM. Does the minister agree with that?

**Mr R.F. Johnson:** The purpose is quite clearly set out in clause 78(2).

**Ms M.M. QUIRK:** Perhaps the minister can tell us what the purpose is. My question required only a yes answer, but if he is having trouble with that, maybe —

**Mr R.F. JOHNSON:** The member knows this fully well but I will repeat it for her benefit. Clause 78(2) reads —

For the purposes of this Act, the Commissioner may, by arrangement with the CCC Commissioner —

- (a) make use, either full-time or part-time, of the services of any officer of the Commission; and
- (b) make use of any facilities or resources of the Commission.

**Ms M.M. QUIRK:** Thank you very much. Is it the minister's understanding that this clarifies the reservations the CCC had in relation to the use of personnel, equipment and everything else?

**Mr R.F. Johnson:** I am advised the answer should be yes.

**Ms M.M. QUIRK:** That, basically, eliminates the commissioner's problems about the CCC assisting WA Police, which is a huge enterprise that needs to beg, borrow and steal people and equipment from everywhere. This is basically getting the CCC to pull its weight and muck in as well. Is that correct?

**Mr R.F. Johnson:** I would not put it quite that way, but it is certainly to seek assistance.

**Ms M.M. QUIRK:** That, as I said, relieves their concerns and answers the issues fully so they can fully cooperate. Is that correct?

**Mr R.F. JOHNSON:** I think I have already explained that the previous Corruption and Crime Commissioner felt that the only way they could fully cooperate in the manner described in this bill is under enabling legislation. I believe he was of the view that under the CCC act, he did not have the powers to give that assistance of

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personnel and, indeed, the resources of the Corruption and Crime Commission. This is enabling legislation that will now give them comfort to do that.

**Ms M.M. QUIRK:** This bill will confer functions on the CCC, in the words of section 16 of the CCC act. This will be a written law that confers functions on the CCC?

**Mr R.F. Johnson:** For the purpose of section 16 of the CCC act, yes.

Clause put and a division taken with the following result —

Ayes (25)

Mr P. Abetz	Mr V.A. Catania	Mr R.F. Johnson	Mr A.J. Simpson
Mr F.A. Alban	Mr M.J. Cowper	Mr A. Krsticevic	Mr T.K. Waldron
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Dr J.M. Woollard
Mr I.C. Blayney	Mr B.J. Grylls	Mr P.T. Miles	Mr J.E. McGrath ( <i>Teller</i> )
Mr I.M. Britza	Mrs L.M. Harvey	Ms A.R. Mitchell	
Mr T.R. Buswell	Mr A.P. Jacob	Dr M.D. Nahan	
Mr G.M. Castrilli	Dr G.G. Jacobs	Mr D.T. Redman	

Noes (22)

Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr A.J. Waddell
Ms A.S. Carles	Mr M. McGowan	Mrs M.H. Roberts	Mr P.B. Watson
Mr R.H. Cook	Mrs C.A. Martin	Ms R. Saffioti	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M.P. Murray	Mr T.G. Stephens	Mr D.A. Templeman ( <i>Teller</i> )
Mr J.N. Hyde	Mr A.P. O’Gorman	Mr C.J. Tallentire	
Mr W.J. Johnston	Mr J.R. Quigley	Mr P.C. Tinley	

Pairs

Mr C.C. Porter	Mr E.S. Ripper
Mr M.W. Sutherland	Mr M.P. Whitely
Dr K.D. Hames	Mr J.C. Kobelke
Mr J.H.D. Day	Mr P. Papalia
Dr E. Constable	Ms L.L. Baker

**Clause thus passed.**

**Clauses 79 and 80 put and passed.**

**Clause 81: Part to be read with *Corruption and Crime Commission Act 2003* —**

**Ms M.M. QUIRK:** This clause will confer on the Corruption and Crime Commission the capacity to conduct examinations for the purposes of investigating various relevant offences. It is the use of the CCC’s special powers that the opposition takes exception to. As we have heard, clause 78 empowers the CCC to exercise functions to assist in making use of the full-time or part-time services of any officer, facilities or resources of the commission. That is really what the police wanted; the police wanted that, but the commission was recalcitrant, and the way to get around it was to actually confer that function on the commission by law. It has been done under clause 78. As I understand it, the CCC said it would not agree to it unless it was given the power to conduct examinations. This was not thought necessary in New South Wales and it does not appear in the APEC legislation; nor did it come up as some sort of lacuna in the course of the review of that legislation. I have to say that the CCC has a lamentable record for outcomes of hearings. Under clause 82, it now wants to exercise its powers for the purpose of conducting hearings relating to acts or omissions that are likely —

- (a) to kill or cause serious physical harm to people attending a CHOGM event; or
- (b) to endanger the lives of people attending a CHOGM event; or
- (c) to create a serious risk to the health or safety of people attending a CHOGM event; or
- (d) to cause damage to a venue or facility for a CHOGM event; or
- (e) to disrupt a CHOGM event, whether directly or indirectly (for example by interfering with, disrupting or destroying a telecommunications system, a system used for the delivery of essential government services, a system used for, or by, an essential public utility, or a system used for, or by, a transport system).

Frankly, those offences are all very serious and I would have thought that the police had adequate powers to investigate them under the existing laws. If people are compelled to give evidence, their evidence is not admissible in criminal courts of law. I can see absolutely no utility in these powers being used, and frankly I think it is a distraction. If offences of that nature are likely to be committed, they may well fall under existing

counter-terrorism legislation. I think the minister needs to explain why it is he believes that the exercise of these powers is essential to the effective operation of CHOGM.

**Mr R.F. JOHNSON:** I am going to read a screed of text because I think it is important to get it into *Hansard*, and it will answer the questions that the member has put forward. She may not agree, but I think it will answer her questions and she may, hopefully, have a different view at the end of the day. Part A of the Commonwealth Heads of Government Meeting (Special Powers) Bill 2011 complements existing powers. The compulsory hearings power proposed in this bill is an investigative tool that is complementary to existing powers. Powers currently exist under federal law that enable the compulsory examination of persons in relation to terrorist offences, and under state law in relation to organised crime. The threshold for the use of these powers is extremely restrictive. In respect of organised crime, it is necessary to convince the commissioner of the CCC that there is a reasonable suspicion that two or more people are associated for the purposes of the pursuit of two or more specific and very serious offences listed in the CCC act, the commission of each of which involves substantial planning and organisation. In respect of ASIO, the powers can be invoked only in circumstances in which it is reasonably believed that a person or group of persons has the intent to advance a political, religious or ideological cause and to coerce or influence by intimidation the government of the commonwealth, or a state, territory, or foreign country, or the public, and in doing so intend to cause serious harm or death to a person or persons, or serious damage to a property, or to seriously disrupt or destroy significant electronic systems such as telecommunications or utilities. To effectively prevent risks associated with CHOGM, a rapid response is required. There may be considerable delays in activating and conducting a similar examination of witnesses under the commonwealth framework. The CHOGM coercive hearing powers are aimed at expeditiously investigating any of the many serious offences that fall outside the scope of the existing coercive hearing powers for terrorism and organised crime; for example, a person who has a personal vendetta against a particular delegate and is planning to injure them, for no other purpose than revenge, would not fall within the scope of the existing coercive hearing powers. If police had intelligence that a lone person was making preparations to assassinate a leader, the existing CCC provisions to examine that person would not apply.

The intent of these clauses is to enhance the capacity of police to prevent serious crimes being carried out. I will give members other examples of offences that may be subject to part 8 of the Commonwealth Heads of Government Meeting (Special Powers) Bill 2011 relating to examinations before the Corruption and Crime Commission. The purpose of the compulsive hearings power proposed in this bill is an investigative tool for the investigation of serious offences when either the offence itself or a result of the offence is intend or likely to harm people attending a CHOGM event, to damage a venue or facility for a CHOGM event or to disrupt a CHOGM event. Examples of offences that may be examined under this power are offences that may meet the consideration of the circumstances surrounding the offence. The definition of “relevant offence” is in clause 82 of the bill. Examples of those types of offences and the relevant section under the Criminal Code are racial vilification and harassment, chapter XI; grievous bodily harm, section 297; unlawful wounding, section 301; serious assaults, section 318; assaults occasioning bodily harm, section 317; assaults with intent, section 317A; deprivation of liberty, section 333; offences relating to unlawful threats such as threats with intent to influence, section 338A; statements or acts creating false apprehension to existence of threats or danger, section 338C; stalking, section 338E; criminal damage, section 444; and, causing explosion likely to do serious injury to property, section 454.

They are not listed in schedule 1 of the CCC act, which is why we are looking for these extra powers.

**Mr J.N. HYDE:** I note that this part is to be read in conjunction with the Corruption and Crime Commission Act. The government has stated that it is bringing in amendments to the act. Will the amendments to the CCC act come into place before CHOGM?

**Mr R.F. Johnson:** I do not know. The CCC act is not under me, so I cannot give you an answer.

**Mr J.N. HYDE:** These very powers can only exist in conjunction with the CCC act and are predicated on working with the CCC act.

**Mr R.F. Johnson:** These parts are described as enabling legislation so that the Corruption and Crime Commissioner can accept requests from the police for personnel and for specialised equipment and so on and so forth.

**Mr J.N. HYDE:** The government has announced that it is looking at amending the CCC act relating to the hearings powers of the CCC regarding its organised crime powers. Is it correct that public hearings will not apply under the CHOGM special powers? Is there no ability to hold public hearings with the CCC powers?

**Mr R.F. Johnson:** I am informed that it is anticipated there will be private hearings.

**Mr J.N. HYDE:** “Anticipated” does not sound very precise. My understanding from the briefing notes was that —

**Mr R.F. Johnson:** It would be up to the CCC at the end of the day. That is the advice I am given.

**Mr J.N. HYDE:** Potentially, could a 16-year-old be hauled before a public hearing of the CCC?

**Mr R.F. Johnson:** They will make that judgement in the public interest.

**Mr J.N. HYDE:** In the public interest. If we wanted to send a message to our recalcitrant youth, could the CCC determine to hold a public hearing with a 16-year-old?

**Mr R.F. Johnson:** We are talking about very serious offences, not something minor.

**Mr J.N. HYDE:** As is everything that happens at the CCC. Does the minister have any concerns with the decision by the Chief Justice yesterday regarding the CCC’s powers to compel witnesses to give —

**Mr R.F. Johnson:** I am sure you will appreciate that it is not appropriate for me to comment on another minister’s portfolio. You know full well that this is not my area; it is the Attorney General’s area.

**Mr J.N. HYDE:** With respect, the whole of part 8 is about accessing, embellishing and enhancing examinations before the Corruption and Crime Commission. The minister has just stated in the precis that he has just read that under the existing powers of the CCC, if the CCC was aware that someone intended to assassinate the minister, me or a WA public servant, the CCC could act.

**Mr R.F. Johnson:** I am told that the CCC could act only if the attempt involved two or more people.

**Mr J.N. HYDE:** Is that if there were two or more people involved?

**Mr R.F. Johnson:** Yes. If a lone person wants to assassinate you or another highly recognised dignitary, then the CCC would not be able to do that.

**Mr J.N. HYDE:** They would need one assassin to hold the gun and another to pull the trigger; it would have to be at least two. The point is that if the target was not a public servant or a public officer, the CCC could not act. This legislation provides that if the target is the Queen or someone who is not a WA public servant, the CCC can act. That is the context in which I am asking these questions about these powers.

**Mr R.F. Johnson:** The answer is yes.

**Mr J.N. Hyde:** Yes to what?

**The ACTING SPEAKER:** Either the minister or the member needs to be on his feet.

**Mr R.F. JOHNSON:** The answer is yes.

**Mr J.N. HYDE:** There were about eight questions in our exchange. I apologise for not sitting down.

**Mr R.F. Johnson:** I was answering your questions as we were going along and I was correcting some of the comments you made when I referred to the CCC having the power to act only when two or more persons are involved.

**Mr J.N. HYDE:** That is correct. That was an aside.

**Mr R.F. Johnson:** You are going to vote against this clause, so why don’t we just get the pain over and done with?

**Mr J.N. HYDE:** This is highly important.

**Ms M.M. Quirk:** You need to convince us.

**Mr R.F. Johnson:** I’d never convince you; that’s the trouble. We could be here for another year and I would never convince you.

**Mr J.N. HYDE:** Excuse me, I am on my feet. With respect, minister, one of the very reasons we have had the debate about 16-year-olds and juveniles being able to appear before the CCC is that we were reassured that it would occur only in exceptional circumstances. Certainly the impression was given—as soon as we interrupt this debate, I will search the minister’s and other government members’ media statements on this matter—that it would be for private hearings only. We now understand that a juvenile could be put through a public hearing without the benefit of enjoying the very civil rights that are available to that child in the Children’s Court, let alone in the Supreme Court. That is deeply worrying to us. The minister wants us to forget about it. He does not want to discuss it or justify why the government wants to use these powers. The minister did not respond to my question about him saying that he had no idea about his own government introducing changes to the CCC.

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**Mr R.F. Johnson:** I did not say that. Don't put words in my mouth. Stand there and say what you want to say about your views and what you want to know, and I will use my own words as I go along. You don't have to try to misquote what I have said.

**Mr J.N. HYDE:** Then tell us directly. Part 8 can only operate in hand with the CCC act. Will the CCC act be amended before CHOGM is held in October?

**Mr R.F. Johnson:** I do not know because it is not my legislation. This bill accesses the existing powers of the CCC.

**Mr J.N. HYDE:** Correct. This is the whole point. The minister is getting us to vote on legislation that is predicated on the CCC act, yet the minister does not know how the CCC act will be changed before October when this comes into play. The government has announced that it is changing the CCC act and that it will get the CCC to focus totally on organised crime. We do not know whether this part will apply to non-public servants or to only some public servants. More importantly, we do not know the definition of "organised crime". We should be amending the CCC act as part of this legislation so that the definition of "organised crime" is not defined as two people but can be one person, just as it is in Queensland and other jurisdictions. That would solve 90 per cent of what the minister is trying —

**Mr R.F. Johnson:** That's a debate for another time. Quite clearly, what we are seeking in this legislation is very specific. You can try as much as you like to widen the debate and bring up the concerns you may have with the existing powers of the Corruption and Crime Commission, but that's not relevant. We will work with whatever powers are provided in the CCC act and, if it changes before October, this will still cover that legislation.

**Mr J.N. HYDE:** It will still be covered, but we do not know what it will exist with.

**Mr R.F. Johnson:** I imagine that they will probably have to take into account the legislation we are putting through today.

**Mr J.N. HYDE:** Which only operates with the CCC act, and the minister does not know what the CCC act will be come CHOGM time.

**Ms M.M. QUIRK:** The answer the minister gave about the rationale for the CCC having these powers was, I think, incomplete. The minister gave a rather lengthy explanation. He talked about why it did not currently have jurisdiction. The minister said that it does not have that jurisdiction under existing laws and, therefore, we need to expand it, but the minister has not really explained the rationale for that. He talked about serious offences. The criminal law and other laws already provide mechanisms to deal with serious offenders in the area of counter-terrorism and the more serious events on the criminal calendar. The minister has also not answered my question about the CCC using its hearing powers, and whether that was at its request or that of police. I want confirmation of that.

**Mr R.F. JOHNSON:** There was concern about whether the hearings would be public or private. I refer to section 139 of the Corruption and Crime Commission Act, "Examination to be private unless otherwise ordered". Section 140 of the CCC act outlines when public examinations are allowed. Subsection (1) states —

This section does not apply to an organised crime examination.

Under our bill, clause 88(1)(b), which we have not yet got to, states —

examinations conducted by the Commission under this Part as if they were organised crime examinations;

**Ms M.M. Quirk:** The member for Perth asked that question, not me.

**Mr R.F. JOHNSON:** That means they cannot be public.

**Ms M.M. QUIRK:** The minister has not responded to any of the three questions I asked.

**Mr R.F. Johnson:** I think I have answered your questions already.

**Ms M.M. QUIRK:** No, the minister has not answered my questions.

**Mr R.F. Johnson:** I have. You may not like the answers, but I have answered your questions. I do not intend to repeat myself time and time again.

**Ms M.M. QUIRK:** I am sorry, but I have not asked this time and time again. I have asked it twice. It will now be three times, when I ask it again. Was it the suggestion of police that the CCC be able to use its hearing powers, or did the CCC offer that so that police could use its resources? In other words, whose idea was it?

**Mr R.F. Johnson:** It came up in discussion, and both agencies agreed to it.

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**Ms M.M. QUIRK:** Yes. The only way the police could use the resources of the CCC was if the CCC was able to swan around and use its hearing powers. The minister is not answering that question.

**Mr R.F. Johnson:** That is your opinion. It was not a question; it was your opinion.

**Ms M.M. QUIRK:** Where I come from, minister —

**The ACTING SPEAKER (Ms A.R. Mitchell):** Member for Girrawheen, you had sat down, so you have not sought the call again.

**Mr R.F. JOHNSON:** I will stand up and then I will sit down again.

**The ACTING SPEAKER:** Thank you, minister. I call the member for Girrawheen.

**Ms M.M. QUIRK:** Thank you very much, Madam Acting Speaker.

Where I come from, silence connotes assent. The minister has not answered my question. Do I infer from that that it was the suggestion of the CCC because it wanted to use its hearing powers?

**Mr R.F. JOHNSON:** I repeat, for the second time, that I am advised that it came up in a discussion between the Corruption and Crime Commissioner and the police. The suggestion was put forward and discussed. It was agreed that that was probably a very good use, and the CCC had no problem with the police being able to access those special powers.

**Ms M.M. Quirk:** That was the case if the CCC was able to use its hearing powers.

**Mr R.F. JOHNSON:** I am told it was not conditional.

**Ms M.M. QUIRK:** The minister mentioned a discussion between the police and the CCC. He talked about it being suggested in that conversation. Can I find out who suggested that the CCC should be involved in this legislation to use its hearing powers?

**Mr R.F. Johnson:** I don't have that information with me.

**Ms M.M. QUIRK:** Mr Acting Speaker.

**The ACTING SPEAKER (Mr J.M. Francis):** Someone else has to stand first.

**Mr R.F. Johnson:** She didn't sit down.

**Ms M.M. QUIRK:** I did sit down briefly.

**The ACTING SPEAKER:** Continue, member for Girrawheen.

**Ms M.M. QUIRK:** Thank you very much, Mr Acting Speaker. It is because I am close to the ground that the minister could not see that I had sat down.

Is the minister able to advise whether the deputy commissioner was at those discussions?

**Mr R.F. Johnson:** I am told no.

**Ms M.M. QUIRK:** Mr Acting Speaker.

**The ACTING SPEAKER:** If the member for Girrawheen is seeking the call again, I will have to ask someone else to stand first as she had sat down. Member for Willagee.

**Mr P.C. TINLEY:** I would like to hear further from the member for Girrawheen.

**Ms M.M. QUIRK:** When I asked the minister that question, he actually said "I am told no" before he had a discussion with the deputy commissioner. I want to clarify that the deputy commissioner was not involved in those discussions.

**Mr R.F. Johnson:** Not in relation to coercive examinations—that is what the deputy commissioner informs me.

**The ACTING SPEAKER:** Someone other than the member for Girrawheen needs to stand. Member for Perth.

**Mr J.N. HYDE:** I would like to get further information on this part of clause 82.

**The ACTING SPEAKER:** We are dealing with clause 81, member for Perth.

**Mr R.F. Johnson:** Good thinking; you have given the member for Girrawheen the opportunity to get up. That is fine; I don't have a problem with that. I am not being funny, but we are discussing clause 81. You gave her the opportunity to stand.

**Mr J.N. HYDE:** I was, too, but I thought that clause 82 had been referred to. My apologies if I misheard.

**The ACTING SPEAKER:** That is accepted, member for Perth.

**Clause put and passed.**

**Clause 82: Terms used —**

**Dr A.D. BUTI:** We are back to the old definition of CHOGM. It is very important. In part, clause 82 states —

*CHOGM event* has the meaning given in section 3;

There is a definition in clause 3. Under the definition of “relevant offence” in clause 82, it refers to attending a CHOGM event. That is fine; we know what a CHOGM event is, as defined in clause 3—but that definition does not include associated events. Let us forget about the meaning of “associated event”. Associated events are not included in the terminology. Therefore, surely, associated events will not be caught under part 8 of the bill; otherwise it would make clause 4 completely superfluous.

**Mr R.F. JOHNSON:** I take on board what the member for Armadale says. I respect his expertise in and knowledge of the law. I have given this matter a great deal of thought since it was raised in relation to clause 4, and earlier. I am seeking advice to try to see whether we can clarify this within the legislation. I am happy to give the member a commitment that once that is concluded, if it is deemed necessary to amend the definition to provide greater clarity, I will do that. The place to do that will be in the upper house. It is too late to do it here. I do not want to resubmit the whole bill to do that. I give the member a commitment —

**Dr A.D. Buti:** In respect of clause 82, you would have to also include the words “associated event” because at the moment it has just got “CHOGM event” and not “associated event”.

**Mr R.F. JOHNSON:** Certainly, I want to make that crystal clear. I give the member a commitment that once that has been established, in its passage in the other place, I will almost certainly have an amendment. I am not opposed to amendments; we have done it before. If something has been missed by Parliamentary Counsel—they are human beings, the same as all of us—we need to rectify that, in which case I give the member a commitment that we will amend it, but it is probably more appropriate that it happens in the other place.

**Ms M.M. QUIRK:** I have already read out the relevant offences in clause 82 that activate the use of the hearing powers of the Corruption and Crime Commission, which are “to kill or cause serious physical harm”, “to endanger the lives of people”, “to create a serious risk to the health or safety of people” and “to cause damage to a venue or ... event”. The offence also include interfering with a telecommunications system, transport and so on, and attract a penalty of imprisonment of three years or more. These are not trivial offences. What is the forensic benefit of having hearings on these serious matters, given that any evidence the alleged offenders give before the CCC will not be admissible in criminal proceedings?

**Mr R.F. Johnson:** It could possibly prevent the act from happening. That is one of the purposes here.

**Ms M.M. QUIRK:** Except that the legislation, as I understand it, deals with offences that may be committed or have been committed.

**Mr R.F. Johnson:** Or “is intended or likely”, which is in clause 82.

**Ms M.M. QUIRK:** But it is not limited to stopping offences before they are committed. These are all serious offences for which the police already have considerable powers. As I said, if it is linked to terrorism, there are existing counter-terrorism powers —

**Mr R.F. Johnson:** They don’t have the power to examine individuals.

**Ms M.M. QUIRK:** The CCC does not, but I am asking: what is the forensic advantage of doing that, given that there is absolutely no utility in examining the offenders themselves because that evidence is not admissible?

**Mr R.F. JOHNSON:** I think I have already mentioned that it might stop the event from happening. If we can prevent an offence from happening, particularly the really serious offences, obviously we want to do everything we can to do so.

**Ms M.M. QUIRK:** That begs the question: if the event has not happened, I would have thought —

**Mr R.F. Johnson:** It might be being planned, it might be being —

**Ms M.M. QUIRK:** I would have thought that the last thing we would need to do is get people into a CCC hearing. I would take physical preventive measures by putting in more security. If a particular individual were at risk, I would remove them and change the circumstances. As we know, this legislation also provides the capacity to declare additional restricted areas. All manner of measures can be taken. Frankly, I do not think that the CCC will be at the cutting edge of preventing an offence from being committed.

**Mr P.C. TINLEY:** I would like to hear more from the member for Girrawheen.

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**Ms M.M. QUIRK:** I think the minister also said that the Australian Security Intelligence Organisation will have some powers. I do not have my briefing until next week, so I am not in a position to discuss that in more detail at this stage. However, maybe the minister could tell us his understanding of what ASIO's role in security and the prevention of crime will be.

**Mr R.F. JOHNSON:** ASIO's powers can be invoked only in circumstances in which it is reasonably believed that a person or a group of persons have the intent to advance a political, religious or ideological cause and coerce or influence by intimidation the government of the commonwealth, state, territory or foreign country or the public—I think I have already said this in relation to an earlier clause—and in doing so intend to cause serious harm or death to a person or persons, or seriously damage property, or to seriously disrupt or destroy significant electronic systems, such as telecommunications or utilities. ASIO powers are used for the purpose of security intelligence—as the member would be fully aware—and as such may not be able to be used for criminal evidence and purposes.

**Ms M.M. QUIRK:** That last statement the minister made really relates to circumstances in which ASIO has gathered intelligence that might come from a number of sources and therefore it may well not want to disclose those sources because the source may be undercover agents who will not give evidence, for example, in public and disclose their identity. That is actually the prosecution offence; it does not go to the fact that it has powers and it has a brief and resources in relation to preventing serious crimes. What is the gap in its role that means the CCC needs to become involved?

**Mr R.F. JOHNSON:** I think I previously mentioned the other offences that would not be the province of ASIO.

**Ms M.M. Quirk:** Sorry, what were they—which ones? I don't know, minister.

**Mr R.F. JOHNSON:** They include assault with intent, criminal damage, threats with intent to influence and various things covered under the Criminal Code. I did mention a whole lot of them.

**Ms M.M. Quirk:** But I thought you read that out in the context of what ASIO's brief was. It is similar wording.

**Mr R.F. JOHNSON:** Some of it is, yes.

**Ms M.M. Quirk:** So common assault virtually is not covered, is that what you're saying? Is that the only thing that is not covered? Property damage, which hasn't any political intent —

**Mr R.F. JOHNSON:** I read out offences that were not covered in relation to the CCC.

**Ms M.M. Quirk:** Well, I'm asking about ASIO. What things can't ASIO do that you want the CCC to have some power to do? In other words, where are you trying to fill the gaps in existing powers?

**Mr R.F. JOHNSON:** For instance, section 34E(1)(b), "Issue of questioning warrant", states —

the issuing authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

**Ms M.M. QUIRK:** That is section 34E of what legislation?

**Mr R.F. Johnson:** That is the Australian Security Intelligence Organisation Act 1979. It's a commonwealth act.

**Ms M.M. QUIRK:** The minister read me a provision that stated ASIO can issue warrants. What are the things that ASIO cannot do that means it is necessary to have the CCC —

**Mr R.F. Johnson:** All the ones that I read out are offences they can cover: espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia's defence system or attacks of foreign interference. That's under the ASIO act.

**Ms M.M. QUIRK:** Therefore the minister is saying that if it is an individual act that is not politically motivated—I suspect that could well just be someone, say, with a mental illness—that it would not come under the ASIO brief, even though that might be directed, for example, at a foreign head of state?

**Mr R.F. Johnson:** Correct.

**Ms M.M. QUIRK:** What expertise does the CCC have that makes the minister think that it is the appropriate body to handle that rather than the police?

**Mr R.F. Johnson:** I am advised it is not necessarily the CCC. We would engage senior counsel to examine persons under the CCC act.

**Ms M.M. QUIRK:** That raises the question: does the minister have faith in the CCC?

**Mr R.F. Johnson:** The member is asking for an opinion. That is not appropriate.

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**Ms M.M. QUIRK:** It is not appropriate if it is in question time. It is appropriate in this context, because the minister is asserting that this will solve a particular issue where there is a lacuna in the legislation with respect to the appropriate powers. I will put it in context if the minister has problems with such an abstract question. Yesterday, for example, Chief Justice Wayne Martin threw out a case the CCC brought in relation to witnesses, who I believe were bikies, refusing to answer a question. The prosecution brought by the CCC failed because it failed to lead key evidence that the persons knew the information that they refused to volunteer to the CCC. It is a pretty fundamental element of the offence.

**Mr R.F. Johnson:** I am told he did not throw it out; I am told that the case was withdrawn.

**Ms M.M. QUIRK:** It was withdrawn. So it was a retreat rather than a defeat; is that what the minister is saying?

**Mr R.F. Johnson:** No, I am not saying that at all. That is what the member is saying, obviously.

**Ms M.M. QUIRK:** It is a key element of the prosecution, and these are serious matters. I am just concerned that the minister is placing his reliance on a body that for a number of years, frankly, has had some pretty high-profile blunders. I am concerned that the minister is placing faith in the CCC and is talking about hiring QCs to question people in the context of the CCC. Conversely, he does not have faith in the WA police service, he does not have faith in senior detectives and he does not have faith in the Australian Federal Police to conduct investigations of this nature, but he wants to give the responsibility to the CCC. That is damning on two counts: firstly, the minister has this under-warranted faith in the CCC; and, secondly, he has no confidence in our senior police officers to conduct a serious and important investigation.

**Clause put and passed.**

**Clause 83: Purpose of this Part —**

**Ms M.M. QUIRK:** This clause concerns the purpose of this part. It states—

- (1) The purpose of this Part is to facilitate the investigation of serious offences, where the act or omission constituting the offence, or the result of that act or omission, is intended or likely —
  - (a) to harm people attending a CHOGM event; or
  - (b) to damage a venue or facility for a CHOGM event; or
  - (c) to disrupt a CHOGM event.
- (2) The investigation of an offence includes the investigation of a suspicion that the offence has been, is being, or will be, committed.

Part of the rationale, as I understand it, for getting the CCC involved is that there might be exigencies—that is, it is urgent, there are heads of state here, and we need to get people in and we need to grill them under the powers of the CCC so that we can prevent a crime happening. Is that the general rationale for doing this?

**Mr R.F. JOHNSON:** The general rationale is to try, if we can, to prevent people from causing harm to people attending a CHOGM event, or damage to a vehicle, which is described in clause 83. I think that is pretty clear. That is the purpose of it.

**Ms M.M. QUIRK:** The minister has emphasised that. Why I am having some problems understanding it is that I can understand that the minister's motives are certainly good in preventing the likelihood of a commission of an offence, but if that is unsuccessful and an offence has been committed, frankly the urgency is off as the offence has already been committed. I am asking why in those circumstances cannot normal investigative processes be followed? Why do we have to get the CCC involved?

**Mr R.F. Johnson:** They may do, and they would be dealt with in the normal way.

**Ms M.M. QUIRK:** I can understand if the minister thinks this is another tool to bring in co-conspirators or other people who might be facilitating the commission of a likely offence. I can understand the rationale of wanting to prevent that offence and dragging people in quickly to find out what is going on. But if the offence has already been committed, what is the rationale for getting the CCC involved?

**Mr R.F. Johnson:** The advice I am given is the reason the police are seeking this is that there might be reluctant witnesses, and we might need to use coercive powers to ensure that we get information from those people. There might be intimidation involved.

**Ms M.M. QUIRK:** Which then cannot be used in court, minister.

**Mr R.F. Johnson:** That is right; it may not be.

**Ms M.M. QUIRK:** If the offence has already happened, of what use is that?

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**Mr R.F. Johnson:** As the deputy commissioner quite rightly says, it might be helpful and be used to prevent any further crime. It might be the first in a string of planned offences. The sooner we get in and get those people, we can certainly prevent them from committing further crimes, if they have already committed one crime.

**Ms M.M. QUIRK:** The minister is saying this is limited to cases where either the offence has not been committed or it is suspected there will be a series of offences.

**Mr R.F. JOHNSON:** I am sure the member has read this clearly and is aware of it, but clause 83(2) states —

The investigation of an offence includes the investigation of a suspicion that the offence has been, is being, or will be, committed.

It is covered in all three areas.

**Ms M.M. QUIRK:** Because of my knowledge on these matters in general, I also know that sometimes the use of these powers is not very useful. I am trying to find out from the minister where he considers there is the most likelihood that these powers would be of great utility to police.

**Mr R.F. Johnson:** I genuinely think I answered the question a couple of comments ago.

**Ms M.M. QUIRK:** If an offence has already been committed, why would the police get a co-conspirator?

**Mr R.F. Johnson:** It may be the first in a string of offences that may be planned. They might have committed one offence, but the police might have a concern that they actually plan a string of offences.

**Ms M.M. QUIRK:** The minister said in response to my last question that this is why police suggested the use of these powers and wanted these powers. Can I confirm that it was the police that requested the use of these powers?

**Mr R.F. Johnson:** That is the same question the member asked last time. As I understand it, there were discussions between both commissioners, and it was agreed between both commissioners that these powers could be used and perhaps should be used in relation to the CHOGM legislation.

**Ms M.M. QUIRK:** That is not what the minister said. He said this is why the police want those powers. Did police want the powers, or is it a mutual agreement between police and the CCC?

**Mr R.F. Johnson:** Of course the police want those powers.

**Ms M.M. QUIRK:** That brings me to the next question: why do they want them? This is what I was trying to get at. From what I can gather, it is where there is likely to be a series of offences—in which case, for example, by bringing in one of the co-conspirators, they are being let off scot-free, because any evidence that they give will not be admissible in a court of law. Alternatively, it is after the event has already happened, in which case I am asking: why can normal police powers not be used?

**Mr R.F. JOHNSON:** I have already mentioned intimidated witnesses, and we need to be able to use coercive powers to try to prosecute, to investigate and try to ensure that further offences will not be committed. That is the whole purpose of this. We are trying to prevent initially, ideally, offences being committed. I would have thought that that is what the member and everybody in this house would support.

**Ms M.M. QUIRK:** This is in the context of an offence that has already been committed.

**Mr R.F. Johnson:** I have already said it might be the first one.

**Ms M.M. QUIRK:** Is the minister saying that the only rationale is if there is a belief that it is the first of a series of offences—therefore, where it is a discrete offence—there is little utility in using it?

**Mr R.F. Johnson:** I have already answered the question.

**Ms M.M. Quirk:** Was that yes or no?

**Mr R.F. Johnson:** I have already answered the question.

**Clause put and passed.**

**Clause 84: Commissioner of Police may ask Commission to hold examination —**

**Ms M.M. QUIRK:** This is the procedure for activating the hearing powers of the Corruption and Crime Commission, and the Commissioner of Police may ask the commission to hold the examination. I hope that the minister is not going to tell me that it is a mutual discussion and not something that is at the police's request. Strictly speaking, the CCC can decide to conduct an examination under this part if the commissioner is satisfied. Can the minister confirm that even if police think they would like a hearing, the CCC can, in fact, refuse?

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**Mr R.F. JOHNSON:** I will repeat the question so that I can give an accurate answer. Is the member asking that if the police commissioner seeks a hearing, the CCC can refuse it?

**Ms M.M. Quirk:** Yes.

**Mr R.F. JOHNSON:** That is correct.

**Ms M.M. QUIRK:** Does that not beg the question that the police have the information and they have concerns that a series of offences might be committed, but the CCC can say, “Too bad, too sad; we are not mindful to have a hearing”?

**Mr R.F. JOHNSON:** Yes, the member is absolutely right. The advice I am given is this is viewed as a safeguard to ensure that the police commissioner cannot do whatever he wants. We have the police commissioner seeking to do something and the Corruption and Crime Commissioner making a decision whether or not he will agree.

**Ms M.M. QUIRK:** I refer the minister to clause 84(2)(a) in which the commission may decide to conduct an examination if it finds it is satisfied there are reasonable grounds for suspecting that a relevant offence has been, is being, or will be, committed. What would constitute reasonable grounds?

**Mr R.F. JOHNSON:** I can quote the High Court case of *George v Rockett*, which provides that when a statute prescribes that there must be reasonable grounds for a state of mind, including suspicion and belief, it requires the existence of facts sufficient to induce that state of mind in a reasonable person.

**Ms M.M. QUIRK:** Under clause 84(2)(b), in deciding to hold an examination, the Corruption and Crime Commission must be satisfied —

... there are reasonable grounds for suspecting that there might be evidence or other information relevant to the investigation of the offence that can be obtained by conducting an examination ...

Can the minister advise what sort of evidence can be secured in this way that cannot be secured in the many other avenues and ways that police have?

**Mr R.F. JOHNSON:** I have already explained this. If a witness is unwilling to provide information, this will obviously assist the police in prosecuting an accused person who is planning to commit an offence or who may have committed one offence, but that offence may be the first of a dozen offences that are planned. That is why we seek to include this in this bill.

**Ms M.M. QUIRK:** If the evidence the police gained under compulsion from that witness cannot be used in subsequent criminal proceedings, can the minister set out whether there is any derivative-use immunity of that evidence?

**Mr R.F. JOHNSON:** We may not be able to call that witness for further or future offences, but by having that witness, who might be reluctant, unwilling or might need to be coerced and so on and so forth, the purpose is to try to prevent any further offences by other people that that witness may have knowledge of. Once again, the whole purpose, as I keep saying to the member, is to try to prevent death, serious injury and all of those serious crimes being committed against people who are attending a CHOGM event and, indeed, the general public of WA, because they could be caught up in a serious event—a bombing or somebody using a gun, whatever you like. As Minister for Police, I want to protect the people of Western Australia, along with our visiting heads of state. That is the purpose of this part of the bill.

**Ms M.M. QUIRK:** Sometimes people are called to give evidence and their level of culpability is believed to be quite low, and they are called because the police are after the bigger fish, so to speak. However, if the police then find out that they are quite seriously involved, effectively, they may be hampered from prosecuting those people by virtue of their being called.

**Mr R.F. Johnson:** Correct.

**Ms M.M. QUIRK:** Is that something the government has considered in this legislation? I also repeat my earlier question of whether derivative-use immunity attaches to evidence before the CCC.

**Mr R.F. JOHNSON:** I have already explained this quite a few times. The whole purpose is to try to prevent serious crimes happening. If we bring in somebody who might be considered a small fish and they end up being a slightly larger fish and more heavily involved, that is as it may be. That may give police more information than they would have gathered if the person was a small fish. Once again, the whole purpose is to prevent anything happening in the first place; but, if a crime has been committed, it is to prevent further crimes. That is why we are seeking these powers in this bill. I am not going to get up again.

**Ms M.M. QUIRK:** I am checking on the use that can be made of that evidence before the CCC. I asked the minister on two occasions whether derivative-use immunity attaches to that evidence.

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**Mr R.F. JOHNSON:** In answer to the member's last question, section 145 of the Corruption and Crime Commission Act 2003 relates to the use of statements against the witness and reads —

- (1) A statement made by a witness in answer to a question that the Commission requires the witness to answer is not admissible in evidence against the person making the statement in —
  - (a) any criminal proceedings; or
  - (b) proceedings for the imposition of a penalty other than —
    - (i) contempt proceedings;
    - (ii) proceedings for an offence against this Act; or
    - (iii) disciplinary action.

I am sure if the member for Girrawheen really wants more detail, she can refer to that act for the answer.

**Ms M.M. QUIRK:** In relation to proposed section 84(2)(c), one of the considerations is that conducting an examination would be in the public interest.

Debate interrupted, pursuant to standing orders.

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