

COMMONWEALTH HEADS OF GOVERNMENT MEETING (SPECIAL POWERS) BILL 2011

Consideration in Detail

Resumed from 5 April.

Clause 33: Removal of vehicles, vessels and things from CHOGM security area —

Debate was adjourned after clause 32 had been agreed to.

Ms M.M. QUIRK: I have a point of clarification. Clause 33 deals with the removal of vehicles, vessels and things from the CHOGM security area—for example, a parked vehicle that may be on the route of a motorcade on, say, St Georges Terrace. I understand that parked vehicles will not be allowed along a motorcade route, so this clause will facilitate the exercise of removing parked vehicles from that route.

Mr R.F. Johnson: Absolutely correct, yes.

Ms M.M. QUIRK: I have also heard—I think the minister and the deputy commissioner mentioned this—that there will be ample publicity so that people are not caught, unwittingly, parking their cars in a location from which they are likely to be removed.

Mr R.F. Johnson: Absolutely correct.

Mr A.J. WADDELL: Further to that, if in the event that a vehicle is removed from an area, will there be some signage or anything to indicate to the owner that they can collect it from the police and that it has not been stolen? Will there be some way that people will know that has happened?

Mr R.F. JOHNSON: No, that will not be the case. If someone finds their vehicle missing, they will contact the police and the police will obviously inform them that it has been removed because it was in a security area. The person will be able to collect their vehicle from a particular location, which, in effect, is covered under clause 37, “Notification of removal”. The police would also take advantage of notifying the owner of the vehicle, through their registration plates, but it will depend on who notifies whom first. When a vehicle is removed, if the police are able to contact the owner of the vehicle, they will; if not and the owner of the vehicle came along before the police had an opportunity to notify them, the owner would phone the police and obviously what has happened would be flagged by the person saying that the vehicle was on St Georges Terrace, for instance, on Friday, the day of the CHOGM procession, if I can call it that, or motorcade. Obviously, the person would be informed in a similar manner.

Clause put and passed.

Clauses 34 and 35 put and passed.

Clause 36: Additional powers in relation to removing vehicles and vessels —

Ms M.M. QUIRK: Clause 36(2) states —

In taking any action authorised by subsection (1), the police officer, authorised person or person assisting is not liable for any damage to the vehicle or vessel that the police officer, authorised person or person assisting causes.

The person assisting could potentially be a tow truck operator. Will the person whose car has been removed be charged for the towage and storage of that vehicle? The bill seems to be silent on this aspect.

Mr R.F. JOHNSON: I am advised that if, for instance, the police broke down a door during the execution of a search warrant, the police would normally repair that door. I think that this is a similar situation. I am advised by the deputy commissioner that if some damage occurred in the removal of a vehicle from a security area, it would be more than likely that the police would ensure that the damage is rectified.

Ms M.M. Quirk: But this subclause seems to suggest the opposite in that if people assert that the police or person assisting the police caused damage, the police or the person assisting would be under no legal obligation to repair that damage.

Mr R.F. JOHNSON: The member is absolutely correct as individuals, but the state, vis-a-vis the police —

Ms M.M. Quirk: Where does the legislation state that?

Mr R.F. JOHNSON: State what?

Ms M.M. Quirk: That the state will pick up the cost of that damage.

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Mr R.F. JOHNSON: It does not; it is silent in this bill as far as that is concerned, but there would be the normal practice of the police. As I explained to the member, that is the normal practice: if any damage is done, obviously —

Ms M.M. Quirk: This is why we need to filibuster, minister, as you so kindly, charitably, call it, because if stuff is not in the legislation, that is a reasonable question to ask. Now that we have your words in *Hansard*, people can be given assurances that that will be the case.

Mr R.F. JOHNSON: I am advised that normal torts would apply under common law. Being a lawyer, the member would know that only too well, I am sure.

Ms M.M. Quirk: Being a lawyer, I would have thought that that would exclude liability. I would have thought statute law overcame common law.

Mr R.F. JOHNSON: That may well be the case, but in any event the advice I am given is that the police would do what they believe is the right thing and try to ensure that any repairs were carried out—the same as they would if a door is broken down in the execution of a search warrant.

Mr W.J. Johnston: Minister, while you are on your feet, by interjection I re-ask the question the member asked: what about charges? Let us say that XYZ towing company takes it away. Who pays for the cost of the removal of the vehicle?

Mr R.F. JOHNSON: I am advised that the Western Australia Police would pay in this instance, because it is the designated security area and it is the police who want it removed. The person may not have committed any road traffic offence. I would suggest it is highly unlikely that somebody would even be allowed to get through the roadblock or the cordon with a vehicle to park at that particular time. As I have said, we will certainly advertise extensively exactly what is happening in what areas and on what roads, and people should not attempt to park their vehicles there either the day before or the day after. If they do, it will have to be removed. I think people are going to act responsibly.

Mr W.J. Johnston: Yes, but it is good to have on record. The minister has explained something that is not clear from the bill—that is, who is going to pay.

Clause put and passed.

Clauses 37 and 38 put and passed.

Clause 39: Excluded persons list —

Ms M.M. QUIRK: This clause deals with the so-called excluded persons list. We are interested in a bit more detail and information about how it is anticipated this will work. Frankly, this may well save time in the other house, as I suspect there might be interest in this list upstairs. Therefore, the more clarification we can get on how this list will work might ultimately expedite the passage of the bill through the other house. Clause 39 states, in part —

- (1) The Commissioner may compile one or more lists of persons ... who the Commissioner is satisfied are persons who would pose serious threats to the safety of persons or property (or both) in a CHOGM security area during the CHOGM period.

What is the standard of proof of satisfaction for the commissioner? Is it on the balance of probabilities? Is it something higher than that? What would be the basis of the commissioner forming that view? Will it be based on intelligence? Will it be based on previous conduct by these persons? Maybe the minister can also explain the rationale for the list.

Mr R.F. JOHNSON: It is more than just a view of the commissioner. That is why he has to be “satisfied”.

Ms M.M. QUIRK: But at what level?

Mr R.F. JOHNSON: The person could pose a serious threat, under this clause, to the safety of persons or property or both.

Ms M.M. QUIRK: On the balance of probabilities, is he likely to do it? Will he be satisfied beyond reasonable doubt? What is the standard of proof? What information would he have before him that would make him feel that he was satisfied?

Mr R.F. JOHNSON: It would be based on police intelligence.

Ms M.M. QUIRK: But what level of intelligence?

Mr R.F. JOHNSON: I would suggest a fairly high level of intelligence.

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Ms M.M. QUIRK: If, for example, a person had a proclivity for wearing a Sex Pistols T-shirt advocating anarchy, would that be sufficient? Would that be enough to form a basis of satisfaction?

Mr R.F. JOHNSON: I would suggest that they had very poor taste in clothing, but I do not believe that that would satisfy the commissioner that they posed a serious threat. It is pretty strong; it is not just some whim. It is a very strong suspicion that somebody would pose a serious threat, and that would have to satisfy the commissioner. That person would obviously then be one of the persons who would be on the list. For instance, there were 61 individuals on the New South Wales Asia-Pacific Economic Cooperation group list, so to some extent we are mirroring the list.

Ms M.M. QUIRK: Can the minister maybe flesh out the character or the type of people who would most likely end up on that list?

Mr R.F. JOHNSON: I am advised the standard is taken from section 26 of the APEC Meeting (Police Powers) Act, which states —

- (1) The Commissioner may, from time to time, compile one or more lists of persons (an *excluded persons list*) that the Commissioner is satisfied are persons who would pose serious threats to the safety of persons or property (or both) in an APEC security area during the APEC period.

Then it goes on obviously with what the commissioner needs to do by publishing the list in the *Government Gazette* and the newspaper and so forth. Further—I think we have the same clause here, if I remember rightly—the APEC act states —

- (4) A failure by the Commissioner to notify the public of the contents of an excluded persons list does not affect the validity of the list or otherwise limit any powers conferred by this Act in relation to persons named in the list.

That has virtually been taken word for word from the APEC legislation.

Ms M.M. QUIRK: I have it in front of me; thank you, minister. I am just trying to get an idea of the kinds of people who are likely to be considered candidates to be on any such list.

Mr R.F. JOHNSON: It will be people who are considered to be a serious threat.

Mr W.J. Johnston: What is an example? Can you give, say, two examples of people from the Sydney city list?

Mr R.F. JOHNSON: I will give two examples. They may include persons who have criminal convictions for assaulting persons who hold public office. Somebody who has a conviction would be on the list. Persons who have made bomb threats would be on the list. They are the sorts of people who the member would know warrant being on that list.

Mr W.J. Johnston: Minister, when we had the briefing upstairs, the police suggested the example of serial pests—the guys who run on the racecourses. They do not appear to be covered by this because it says “serious threats”.

Mr R.F. JOHNSON: They would be a serious threat if they ran in front of the Queen’s vehicle.

Mr W.J. Johnston: How would that be a serious threat?

Mr R.F. JOHNSON: It could be a serious threat if the Queen’s vehicle had to pull up sharply and the Queen was shot forward. I do not know whether the Queen wears a seatbelt, quite frankly. She may not; she may be an excluded person.

Mr W.J. Johnston: That is not a serious threat.

Mr R.F. JOHNSON: It would be a serious threat, because the vehicle might have to swerve and smash into something.

Mr W.J. Johnston: But that is not a serious threat.

Mr R.F. JOHNSON: The member does not think so, but I do.

Mr W.J. Johnston: But it is not a serious threat.

Mr R.F. JOHNSON: That is the member’s opinion. In my opinion, that would be a serious threat. Does the member think that somebody who has a propensity for running in front of vehicles is not a serious threat—to endanger people’s lives through either death or injury?

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Mr W.J. Johnston: I am happy to get involved in it, but what I would say is that that is not a serious threat. I do not have a problem with them being on the excluded list, but that is not a serious threat. How would the police commissioner put them on the list if it is not a serious threat?

Mr R.F. JOHNSON: Because he would consider that they would be a serious threat.

Ms M.M. QUIRK: Can I just ask a couple of questions about this power of the commissioner? Is this a power that the commissioner can delegate to other police officers, such as the deputy commissioner?

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

Ms M.M. QUIRK: So it may well be someone other than the commissioner making that list?

Mr R.F. JOHNSON: Yes.

Ms M.M. QUIRK: Secondly, I think the member for Cannington made a very valid point as to what constitutes serious. There must be a threat of injury to persons or property that is real.

Mr R.F. JOHNSON: As has been pointed out, there could be a dangerous threat to themselves, never mind to somebody else.

Ms M.M. QUIRK: I will give an example. I cannot remember the fellow's name—I should have googled it this morning. There is a fellow who goes around these sorts of events with cream pies; he likes hitting world leaders with cream pies. That is probably a common assault; I do not know that it is anything higher than that. Would that come within these kinds of activity? It might be embarrassing for the security, but is it a serious threat? Are members of *The Chaser's*, for example, a serious threat? I would think not, but they certainly cause serious embarrassment. I just want to get a feeling for the kinds of activity that the minister believes would definitely fall within this category.

Mr R.F. JOHNSON: They could be a serious threat to themselves. They could endanger themselves, and obviously police have to do everything in their power to ensure that people are not a danger to others and, indeed, to themselves. The earlier part of the member's question was in relation to delegation. The delegation goes to the deputy commissioner. It can go to an assistant commissioner. That is the lowest level at which any delegation in this area would take place. I think the member would appreciate that that is necessary. I perhaps have a different view from that of the member for Girrawheen. I believe that somebody who runs in front of the Queen's car could be considered a serious threat to anybody—to themselves, to the Queen or to the driver of the vehicle if the driver had to swerve to avoid them. That is why I believe a person who has a propensity for doing that should be on that list. That is my view. I ask whether the member would be happy for people who have a propensity to run in front of vehicles and cause a disruption to be on that list or whether she would be happy for them to run in front of the Queen's car.

Ms M.M. Quirk: I think the courts take account of the views of the individual who is introducing the legislation. My personal opinion has no forensic value in interpreting this legislation.

Mr R.F. JOHNSON: If any matter happened to come before the courts, I am sure the courts would look at the comments that every member made.

Ms M.M. Quirk: That is not correct. Extrinsic aids to interpretation are limited to the minister.

Mr R.F. JOHNSON: I have made it quite clear that I would consider those people a serious threat, but that it is not what I would consider; it is more what the police commissioner would consider. If he has intelligence that the person could be a serious threat and if he is satisfied—he must be satisfied—that that criterion exists, he will put them on the list. I do not have a problem with that at all, and I am very happy for any court to interpret those words that I say today.

Ms M.M. Quirk: I think the criminal record situation is quite clear. Let us say there is low-level intelligence of a person who likes to participate in demonstrations; he is a stirrer and he has an attitude problem. Is it the general practice that the commissioner, deputy commissioner or assistant commissioner—whoever makes the decision—would need secondary intelligence or would that be sufficient?

Mr R.F. JOHNSON: I think we have already referred to this in debate on previous clauses. It is not a crime to protest. It is a crime to commit a criminal act—to assault and to do damage to a person or property. That is the criminal act involved, obviously. We have no wish or desire to stop people peacefully protesting.

I will just give the member an example of what happened. I was in Edinburgh during the G8 summit about five years ago—in 2005, the year of the London bombings. I was actually on Princes Street. The member asked last night whether we thought activists would come from abroad. I believe that there is every possibility some activists will be coming —

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Mr W.J. Johnston: Do you have any intelligence to support that?

Mr R.F. JOHNSON: The member for Girrawheen is asking my opinion and I am telling her.

Mr W.J. Johnston: No. I am asking whether the police have intelligence to support that information. That is what I am asking.

Mr R.F. JOHNSON: They may not have intelligence at this stage, but I would suggest that they would have intelligence nearer the event. They may not have intelligence because they may not know. The Australian Security Intelligence Organisation may not know—it is very heavily involved in this matter—about the travel intentions of people from another country. When I was in Edinburgh, activists came from all over Europe—the biggest, ugliest looking thugs I have ever seen.

Mr W.J. Johnston: Yes.

Mr R.F. JOHNSON: They were a nightmare. I was on Princes Street when they rioted there.

Ms M.M. Quirk: “Nightmare on Princes Street” would be a good name for a film!

Mr R.F. JOHNSON: Nightmare on Princes Street, yes, and that is what it was! But I have to say that the UK police did a fantastic job. I am confident that our Western Australia Police, with the assistance of our brother and sister police officers from the other states and New Zealand and the federal police will do a fantastic job as well. I would have thought everybody in WA would want as peaceful a time as possible while the heads of state and the Queen are here, so that people can enjoy not only watching the procession, if they wish to, but also a lot of events that will take place around that time. That is a good thing for people in WA. That is why we have moved the public holiday: so that people can have a good weekend, if that is what they want when they come to Perth. If they are not bothered, they will not be interrupted.

Ms M.M. QUIRK: The minister did not answer my question. He is aware of the conduct of *The Chaser's* gentlemen at the Asia–Pacific Economic Cooperation group forum. I wonder whether that conduct would fall within the clause or whether it would be conduct of the necessary level that would get those people on the excluded-persons list.

Mr R.F. JOHNSON: We are talking about the list at the moment.

Ms M.M. Quirk: Yes.

Mr R.F. JOHNSON: The member raised *The Chaser's* but nobody knew that the people from *The Chaser's* would carry out the stunt that they carried out.

Ms M.M. Quirk: All right. Now that they have done that —

Mr R.F. JOHNSON: The member wants to know whether the people from *The Chaser's* would be on the list.

Ms M.M. Quirk: I am just wondering whether they would be considered.

Mr R.F. JOHNSON: If the police had intelligence that they were planning a similar sort of stunt in WA in that they would dress up as terrorists and go into an area where there would be armed police, they may well —

Mr W.J. Johnston: They didn't dress up as terrorists.

Ms M.M. Quirk: They dressed up as Canadians, didn't they?

Mr R.F. JOHNSON: Yes, but they may decide to dress up as terrorists. I am saying that if they did dress up as terrorists or if they gave the impression that they may be terrorists, they would be taking a very big chance.

Mr W.J. Johnston: That's not what the member asked. The member asked a specific question. Are you going to answer it or not?

Ms M.M. Quirk: In other words, knowing about their conduct there —

Mr R.F. JOHNSON: As far as I am aware, there is no intelligence at this stage that people from *The Chaser's* are going to carry out a stunt, in which case they would not be on the list.

Ms M.M. Quirk: Even though they have form, to use the vernacular?

Mr R.F. JOHNSON: Even if they have form.

Ms M.M. Quirk: So, even if it became apparent that they were going to engage in the same conduct in WA in which they engaged in Sydney, would that fall within the category in the clause of “serious threats to the safety of persons or property (or both)”?

Mr R.F. JOHNSON: I am seeking some advice on this.

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Ms M.M. Quirk: That is fine, minister.

Mr R.F. JOHNSON: My personal view is that I do not think that conduct would fall into that category. They would be an absolute nuisance, obviously.

Ms M.M. Quirk: Yes.

Mr R.F. JOHNSON: But their stupid actions in doing something out of the blue could be interpreted as possibly causing a serious threat to endanger other people's lives. They might try to swerve their car to avoid being stopped by police. Who knows? At this stage I certainly do not believe police intend to put the people from *The Chaser's* on the list. Does that answer the member's question?

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

Mr A.J. WADDELL: This clause refers to a list of persons. I am wondering whether there is the capacity in the clause for the commissioner to declare a class of persons.

Mr R.F. JOHNSON: No.

Mr A.J. WADDELL: Therefore the list could not say, "Anyone who is a member of the anarchists club is an excluded person"?

Mr R.F. JOHNSON: No.

Mr W.J. JOHNSTON: I just want to quickly ask the minister—it should not take terribly long to answer—what the provisions are for procedural fairness in this clause. There is a common law right to natural justice, so what is the intended procedure for the police to ensure that the common law right to natural justice is exercised?

Mr R.F. JOHNSON: I am advised that subclause (2) refers to that, which reads —

The Commissioner may (but need not) cause an excluded persons list to be published by whatever means the Commissioner considers appropriate.

Mr W.J. Johnston: That's not natural justice.

Mr R.F. JOHNSON: Before the member for Cannington starts laughing, let me finish the answer.

Mr W.J. Johnston: But it doesn't relate to the question.

Mr R.F. JOHNSON: The member has not heard all the answer yet.

Mr W.J. Johnston: But you're directing me to subclause (2) and I've referred to subclause (1). That's not related to the question I asked. The question I asked is about natural justice.

Mr R.F. JOHNSON: The member did ask that, and whether that person would receive natural justice. I am telling the member about what will happen. I am informed that as a first step the police will notify that person, and they may not publish the list.

Mr W.J. Johnston: No; I am talking about before they issue the order. You are saying that the person, before the commissioner compiles the list, will be told that they are potentially on the list.

Mr R.F. JOHNSON: No, I am not saying that.

Mr W.J. Johnston: That is natural justice. That is the question I am asking the minister. What is the police commissioner going to do to afford natural justice? The person might say, "But, commissioner, that's not right. That's not what happened. Your intelligence is wrong."

Mr R.F. JOHNSON: I go back again. The commissioner must be satisfied that the person could pose a serious threat. The commissioner would then have, I believe, the legal right to put that person on the list if the commissioner was satisfied that the person posed a serious threat. That is why we have this provision in the bill.

Mr W.J. Johnston: So, you are saying that there is no contemplation of natural justice for the people who will be included on the list?

Mr R.F. JOHNSON: I am advised that a person does not have a natural right under common law to simply get off the list. The commissioner might say to the person, "I am putting you on the list so that you are aware, because I see you as a serious threat and I am satisfied that that is the case." Once again, this is about the APEC legislation. I know that the member is in favour of the APEC legislation so I will read something to him because it answers his question perhaps more clearly than I have done so far. The legality of the excluded persons list was tested in the Supreme Court by persons excluded in *Padraic Gibson and Others v Commissioner of Police and Others* [2007] NSWCA 251. The challenge was rejected by the court as the arguments were considered to be insubstantial. The court findings are included in the discussions under civil rights. Being an excluded person was

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not an offence; it curtailed movement in only one small defined area for a limited time and has no ongoing legal effect. Ensuring the procedural fairness of the interpretation of this clause may be considered in any future legislation with similar powers. APEC basically had the same thing that we have. We took most of our legislation from APEC because it worked.

Mr W.J. Johnston: Yes, but then you changed it.

Mr R.F. JOHNSON: We have tailored it to suit Western Australia.

Ms M.M. Quirk: Broadened it.

Mr R.F. JOHNSON: We may have broadened it slightly. Why? Because we have 53 heads of state and the Queen coming here, which is a heck of a lot more than went to the APEC meetings. They had only 21 visiting dignitaries —

Ms M.M. Quirk: Only George Bush.

Mr R.F. JOHNSON: Is his life worth any more than other heads of state from commonwealth countries?

Mr W.J. Johnston: No, but he is much more likely to draw a crowd. When was the last time there was a significant demonstration aimed at the Queen?

Mr R.F. JOHNSON: I think the member will find that Prince Charles —

Mr W.J. Johnston: Prince Charles got caught up in another issue. That is not what I asked you.

Mr R.F. JOHNSON: But that was done by an unruly crowd that got out of hand. We recently saw the riots in London. It was a peaceful protest but it was taken over by activists who then caused all sorts of damage to the shops and businesses.

Mr W.J. Johnston: I ask the exact question again: when was the last time there was a violent demonstration that was aimed at Queen Elizabeth II?

Mr R.F. JOHNSON: I cannot give the member that information.

Mr W.J. Johnston: Because in your living memory there has not been.

Mr P.C. Tinley: And you're older than the Queen so you'd remember.

Mr R.F. JOHNSON: The member should not be silly.

Ms M.M. QUIRK: I have two other matters that I wish to raise on this issue. I think the first feeds on from the questions asked by the member for Cannington. The minister might recall the case in the United States post 9/11 in which some 10 or 11-year-old child had the same name as an associate of al-Qaida. Every time this kid presented at an airport, he was given the third degree because he had the same surname. Firstly, what measures or steps are in this bill to exclude that possibility? Secondly, do police have the right to share this list with other agencies such as immigration?

Mr R.F. JOHNSON: The scenario that the member has just presented would initially not be the responsibility of WA Police. It would be the responsibility of the Australian Customs and Border Protection Service because they handle international ports and anybody who comes from those ports into Australia.

Ms M.M. Quirk: How can you prevent someone who is an innocent third party getting on the list because they have the same name as someone who should be on the list?

Mr R.F. JOHNSON: I would suggest that it would be a very, very unlikely event. The member has picked one case out of the whole world where unfortunately someone has the same name as a terrorist. But if in the billion to one chance that was to happen, that person has the right to contact the Commissioner of Police —

Ms M.M. Quirk: After the event.

Mr R.F. JOHNSON: The list is published beforehand. They will be contacted. To me, it is a case of natural justice.

Ms M.M. Quirk: What about sharing it with other agencies?

Mr R.F. JOHNSON: Obviously in a situation such as this information is shared between WA Police, the Australian Security Intelligence Organisation and in some circumstances the armed forces. There would be a sharing of information amongst everybody to do with security in Australia.

Ms M.M. Quirk: Finally, we do not know what level of information the commissioner's delegate needs to have to be satisfied. Can the minister at least tell us where the information is likely to be sourced from? It can obviously be sourced from criminal records or ASIO. What other intelligence sources can information be

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sourced from? For example, can information be gained from the Indian secret service, whatever it is called, that a terrorist is likely to be in town? Is reliance placed on that? If so, what weight is that given? I just want to know what the sources of information are likely to be.

Mr R.F. JOHNSON: As advised by the deputy commissioner, the commissioner has to satisfy himself. He does not have to take notice of an external agency. The member questioned what level of information is needed. As I understand it, in a normal court of law, it is what any reasonable person would assume would be a serious threat and they would be satisfied in themselves that that is a serious threat. That is the level that I believe we are looking at.

Clause put and passed.

Clauses 40 to 42 put and passed.

Clause 43: Restrictions on exercise of special powers —

Ms M.M. QUIRK: I think we dealt with these restrictions a bit last night. I just need some clarification. This clause relates to restricted areas only. Basically, any powers conferred on authorised persons or police can be limited as to their scope, who can exercise them, where they can be exercised and the manner in which they are exercised. I just need confirmation that that is in addition to any personal appointment made in relation to an individual, so that there can be regulations that restrict how they act, which is what this clause allows; there can be a personal appointment; and there can be constraints that are currently within the substantive legislation.

Mr R.F. Johnson: The answer to that is yes.

Clause put and passed.

Clause 44: Power to enter and search premises —

Mr P.C. TINLEY: Clause 44(3)(b) states —

under the authority of a search warrant or under another written law that authorises the entry.

Does that other written law include, in the estimation of the local commander, that a search is needed to be conducted without a warrant because of imminent danger?

Mr R.F. Johnson: No.

Mr P.C. TINLEY: So it is not an emergency circumstance. The reason I ask is that clause 44(3) states —

This section does not authorise a police officer to enter any part of premises being used for residential purposes,

I note that some of the restricted areas may be used for residential purposes, and we note that those restricted areas can be applied at relatively short notice to different places. Some of those restricted areas will have a mixed use—residential, commercial et cetera. I will give an example. I might have missed this last night, but a restricted area may well be an area in which we are housing, for example, some of the seconded police officers and so on.

Mr R.F. Johnson: It could be.

Mr P.C. TINLEY: I will give an example. Leeuwin Barracks in East Fremantle has a significant overwatch from residential premises, yet they seem to be excluded in this section—they may be accounted for in some other clause—from being searched at the direction of the local commander.

Mr R.F. Johnson: In residential properties, yes.

Mr P.C. TINLEY: Why are residential premises excluded when, in fact, the requirement for restricted use is to provide a secure area?

Mr R.F. JOHNSON: This is a substantial power. If they are going to go into a residential property, a search warrant would be required. If they needed to arrest somebody in a residential property, that gives the police the power to go inside that residence and make an arrest; it does not to allow them to do a search. I hope that answers the member's question, or is he concerned about something else?

Mr P.C. Tinley: I am concerned about making sure that restricted areas are just that, and that the capacity to maintain the integrity of a restricted area includes the capacity to conduct searches. We have allowed them to conduct a search without a warrant and to enter and search any premises located in a restricted area.

Mr R.F. JOHNSON: That is providing they are not residential properties.

Mr P.C. Tinley: It seems that would create a mismatch of the secure perimeter.

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Mr R.F. JOHNSON: We have to balance this with the right of individuals to have the freedom of their own homes. Police would need to have intelligence. If they want to arrest a person who has suddenly run into their own home, they can arrest them.

Mr P.C. Tinley: The power contained in clause 44 is reactive, as opposed to a proactive arrangement to provide a secure area.

Mr R.F. JOHNSON: It can be proactive as well, and they can certainly do it with consent.

Ms M.M. QUIRK: Could the minister clarify that this clause does not require a reasonable suspicion of a police officer?

Mr R.F. Johnson: No.

Ms M.M. QUIRK: Could the minister let us know the circumstances in which he contemplates the clause will be used? I presume it is to secure premises within a restricted area and there might be a need to go in and have a look. I want to understand the circumstances in which police feel it is necessary to exercise that power. Having said that, I note this clause mirrors terms in the APEC legislation. Could the minister give us examples of why he thinks this power is needed? Presumably there is an issue of urgency and there is not time to obtain a warrant. Could the minister run through the situations in which he believes this clause will be needed?

Mr R.F. JOHNSON: The sort of situation in which this would happen would be for a public or private car park, for example, a Wilson Parking car park. Police will almost certainly be entering any underground car parks that are within the prescribed security area to ensure there are no vehicles with bombs left there or to search for any other items—it could be weapons or whatever. They need these powers to do that.

Ms M.M. QUIRK: I also note that subclause (2) contains a specific and express provision that the police officer must do as little damage as possible.

Mr R.F. Johnson: Correct.

Ms M.M. QUIRK: We talked in a previous clause about the power to take vehicles. There was no such provision in the APEC legislation. There is a legal principle that the express mention of one thing excludes all others. Therefore, from the fact it is mentioned in this case, but is not mentioned in relation to the taking of vehicles, the inference might be made at law that there is no requirement on police not to do as little damage as possible in removing a vehicle.

Mr R.F. JOHNSON: The same will apply to the removal of a vehicle, and the police will do as it says in subclause (2): they must do as little damage as possible. If there was some damage, then police would pay to have that damage repaired, as they would if they removed a vehicle and damage was caused to the vehicle. That is a very reasonable step to take. The purpose of this clause is so that officers can get into these areas. Underground car parks are a classic case, and there may be other similar areas—I am not sure—that could be used to store vehicles, a bomb, weapons or whatever. That is the purpose of this clause, and it is very similar to the APEC legislation.

Ms M.M. QUIRK: Again, I need to clarify this for the record: restricted areas will be as small as possible?

Mr R.F. Johnson: Yes.

Ms M.M. QUIRK: The opposition is agreeing to this provision without knowing the extent and without having that information before us on the basis that it is the intention of police to keep these areas as narrow as possible and the argument cannot be raised that they will be running amok around Perth, because these broader powers have a restricted use.

Mr R.F. Johnson: Correct.

Clause put and passed.

Clause 45: Power to obtain disclosure of identity —

Ms M.M. QUIRK: This clause deals with the power to obtain disclosure of identity in a restricted area. A police officer or an authorised person may, without warrant, require a person whose identity is unknown to the officer or authorised person to disclose his or her personal details if the person is seeking to enter a restricted area or if the person is already in a restricted area. Effectively, they can require disclosure of personal details and ask for proof. We talked about this last night. That disclosure is not limited to a driver's licence, as a police officer or an authorised person can satisfy themselves in a number of ways.

Mr R.F. JOHNSON: The member is right. They may not hold a driver's licence, but some other proof of identity. With a bit of luck, we may have passed some legislation through both houses of Parliament by that time

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and police may be able to use the tasking and data information system to access somebody's details. Although if they do not have a driver's licence they would not be on TADIS, but there may be another way of identifying a person who does not have a driver's licence. A driver's licence is the simplest way because of the requirement for a photograph. They will be able to pull that person's photograph and details and match them against the person they are talking to. But there are other ways; for example, a passport.

Mr W.J. Johnston: My daughter uses a passport as proof of identity because she does not have a driver's licence, but it does not have her address on it. The passport does not accord with the definition for personal details in clause 3.

Mr R.F. JOHNSON: I am advised that at least it establishes who they are.

Mr W.J. Johnston: Sure, but it is not sufficient under the definition of personal details in subclause (3). That is all I am pointing out.

Mr R.F. JOHNSON: I take the member's point, but if they do not have a driver's licence, we have to go to the next best thing.

Ms M.M. QUIRK: I have one other point. Subclause (3) talks about a police officer or an authorised person having to warn an individual that failure to provide these details may result in the person being refused entry into a restricted area or, as the case applies, being removed from a restricted area. Is it also the case that that person may be committing an offence?

Mr R.F. Johnson: It is possible.

Ms M.M. QUIRK: Therefore, should not that warning include the fact they may potentially be making themselves liable for the commission of an offence?

Mr R.F. JOHNSON: They may not be committing an offence, but if they are in a restricted area and the police officer or the authorised person asks them to provide proof of personal details, they must also warn the person that failure to reply with the requirement, may result in their being refused entry. That is very clear. The other part at the end of subclause (3) states —

... or, as the case requires, removed from the restricted area.

Therefore, if someone suddenly says, "I don't give a stuff what you want. I'm not going to show you any identity; I'm going to stay here", that gives the police the right to remove that person from that restricted area.

Ms M.M. Quirk: What about clause 64, minister?

Mr R.F. JOHNSON: We have not got to that yet.

Ms M.M. Quirk: No, but that creates an offence of failure to disclose personal details or provide proof of personal details. Surely that is the very conduct we are talking about. That is in relation to clause 40(2), not clause 45.

Mr R.F. JOHNSON: Yes, the member is quite right; that is in relation to clause 40(2), not clause 45.

Ms M.M. Quirk: So, in relation to clause 45, we have a situation in which no offence is created. That is strange.

Mr R.F. JOHNSON: Obviously, under this clause they can be removed and, pursuant to that removal, under clause 40(2) they may then be required—not just requested but required—to give their personal details.

Ms M.M. Quirk: But clause 40(2) deals with excludable persons.

Mr R.F. JOHNSON: If the member refers to clause 40(2)(c), I am advised that is —

Ms M.M. Quirk: Clause 40(2)(c)?

Mr R.F. JOHNSON: Yes, clause 40(2)(c).

Ms M.M. Quirk: Yes, but that is about excludable persons; it is not about general people. All of clause 40 deals with excludable persons. I want to deal with those people who are in a restricted area and who fail to give their name and address. Presumably, if they do that, they are guilty of —

Mr R.F. JOHNSON: I am advised that somebody who fails to give their name and address becomes an excludable person.

Ms M.M. Quirk: Under which clause?

Mr R.F. JOHNSON: We will find the actual clause for the member.

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Mr W.J. Johnston: The member's question is very important, because you're saying that if a person does not provide identification, they're committing an offence, but under that provision they are not warned of that.

Mr R.F. JOHNSON: I think there is a warning in the legislation. Clause 45(3) states —

A police officer or an authorised person who requires a person to disclose the person's personal details or to provide proof of the person's personal details must also warn the person that failure to comply with the requirement may result in the person being refused entry to the restricted area or, as the case requires, removed from the restricted area.

As I understand it, if it goes that far, we go to clause 46(1)(b)(iii), which states —

any person who, without lawful excuse, fails to comply with a requirement made of the person under section 45 to disclose his or her personal details or provide proof of his or her personal details.

Ms M.M. Quirk: We are talking about the warnings. You are saying that they can be liable for an offence; therefore, they should be warned of that fact.

Mr R.F. JOHNSON: That is what clause 45(3) says.

Ms M.M. Quirk: No; they are warned that the failure to comply with the requirement may result in the person being refused entry. It says nothing about being liable for prosecution or the commission of an offence.

Mr R.F. JOHNSON: It continues by stating "or, as the case requires, removed from the restricted area."

Ms M.M. Quirk: Yes. There is no warning that it may leave them exposed to the commission of an offence.

Mr R.F. JOHNSON: Once again, the advice I have been given is that under section 16 of the Criminal Investigation (Identifying People) Act, a police officer has the authority and the right to seek personal details; and, if the person fails to give those details, it can be deemed an offence.

Ms M.M. Quirk: With all due respect, minister, if the person does not have proof of identity on them, they are hardly likely to have a copy of the criminal investigation act on them and know that they are liable for an offence. All I am asking is —

Mr R.F. JOHNSON: The point I am making is that there is no warning under that legislation.

Ms M.M. Quirk: No. Here we are talking about special exceptional powers, and if they are given a warning that is incomplete, isn't it worse than not giving any warning at all?

Mr R.F. JOHNSON: The warning is pointing out the special powers to remove them.

Mr W.J. JOHNSTON: I will give the minister a bit of time to digest what the member for Girrawheen has said. I draw the attention of the minister to the fact that these powers are different from the powers provided in the Asia-Pacific Economic Cooperation legislation. The APEC legislation states —

A police officer may request a person whose identity is unknown ...

Blah, blah, blah. It continues —

A police officer may also request ...

Blah, blah, blah. Whereas this legislation gives a police officer the ability to require a person to disclose personal details, in the APEC legislation clause 45(3) did not exist; it is a new provision. It would be interesting to know whether the new provision arose from the report done after the APEC meeting; whether it was decided that it was something extra that was needed following the review of the APEC meeting. The other point is: the requirement on a police officer or an authorised person in subclause (3) is to warn the person that they might be removed. If, potentially, the person might also be committing an offence, why are they not warned of that? Does the minister see what I mean? It seems pretty simple. Perhaps we should not have that provision, which is what happened in New South Wales, although in New South Wales there was no ability to require the production of identity; there was only the ability to request the production of it. But even if the government has made that change for whatever reason—the minister will tell me in a minute—why do we have this incomplete caution? If a person can be not only removed, but also charged with an offence, surely that is the thing that the person should be warned about. That is even more significant than the fact that the person will be removed.

To summarise, to make sure that the minister understands my question, why is there a difference? Why does the provision in this legislation allow the police officer or authorised person to require the production of the identity document, whereas in New South Wales it was only a request? Did that arise from the review of the APEC meeting? And why is the caution provided in subclause (3) limited to these matters and not extended to include the fact that the person may be committing an offence?

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Mr R.F. JOHNSON: Clauses 19(3) and 45(3) provide the power for a police officer to act. In both those clauses, the police officer has to warn the person. The penalty comes under clause 64 if a person does not give those personal details. Clause 64, which we will deal with at a later stage, is headed “Failure to disclose personal details or provide proof of personal details”, and it contains a penalty of imprisonment for 12 months. If the member looks at clause 64, which we will come to, he may not agree with that, and he may want to vote against that clause—I do not know.

Mr W.J. Johnston: We might want to vote in favour of it, but we do not understand why the person is not warned that they could be committing an offence.

Mr R.F. JOHNSON: They are.

Mr W.J. Johnston: Why don’t we warn them?

Mr R.F. JOHNSON: Because the police officer requires them to do that.

Mr W.J. Johnston: Why don’t we warn them?

Mr R.F. JOHNSON: If an officer —

Mr W.J. Johnston: What is the policy reason for not warning them?

Mr R.F. JOHNSON: We are. We are warning them twice—under clauses 19(3) and 45(3).

Several members interjected.

Mr R.F. JOHNSON: I am told that the policy under a normal power is that police do not warn. Under the Criminal Investigation (Identifying People) Act, police do not warn people. I am told they do in practice, but under that particular act they do not. They do not have to. Under this bill, we are suggesting that they should warn.

Mr W.J. Johnston: No; you are making it a requirement that they warn them. What is the policy reason? It was not in the New South Wales act—why is it in this act?

Mr R.F. JOHNSON: I am advised that we are actually being a bit fairer than the APEC act. We are requiring our police officers to give that warning, in clauses 19(3) and 45(3).

Mr W.J. Johnston: But in the New South Wales act it was only a request; here it is a compulsory production of the document.

Mr R.F. JOHNSON: There was no requirement to warn them.

Mr W.J. Johnston: Yes, but there was no consequence if the document was not produced. It was only a request. Under this bill, it is not a request.

Mr R.F. JOHNSON: I am told that New South Wales police would have removed them if they did not give their name and address details. We would expect them to do that.

Mr W.J. Johnston: Under the New South Wales act, if I was in a secure area and a police officer came to me and said, “I don’t know who you are”, they could not require me to provide evidence of who I am. Of course they could remove me, but they could not require me to produce evidence of who I am.

Mr R.F. JOHNSON: Not under that act, but I do not know under what other acts New South Wales operates. If they have other acts that require people—like our Criminal Investigation (Identifying People) Act—they can insist on a person providing his or her details, and they do not have to provide a warning.

Mr W.J. Johnston: But you have not got a clue whether that is true. You do not know. You just said you are not aware of the powers of a New South Wales police officer. It is an interesting debating point but it does not go to the question.

Mr R.F. JOHNSON: Section 36(3) of the APEC act—the member likes looking at this one!—states —

Nothing in this Act limits any powers, or prevents a police officer from exercising any powers, that the police officer has under any other Act or law.

Mr W.J. Johnston: Which provision of another act in New South Wales authorises them to —

Mr R.F. JOHNSON: I do not know that.

Mr W.J. Johnston: That is what I am asking. You do not have a clue —

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Mr R.F. JOHNSON: The member should do his research if he is interested in that. I am happy with the bill as it is. If the member does not like it, he can research it. If he thinks that this is not as fair as the New South Wales act —

Mr W.J. Johnston: That is right; it is not.

Mr R.F. JOHNSON: Is that your view—that it is not as fair to an individual?

Mr W.J. Johnston: I am saying to the minister the drafting instructions prepared by cabinet were inadequate. That is what I am saying to you.

Mr R.F. JOHNSON: That is the member's view.

Ms M.M. QUIRK: In relation to clause 45(3), the minister made reference to the Criminal Investigation (Identifying People) Act. There is a power in that act for police officers to require name and address, and so on. There is no problem with that. I understand those powers are not available to the authorised officers. It does not cover the whole situation that this clause sets out. The authorised officers cannot rely on powers conferred on police officers under the Criminal Investigation (Identifying People) Act.

Mr R.F. Johnson: Correct.

Ms M.M. QUIRK: That is not really an answer to the situation we are putting up. In the example before us, someone is being asked by someone who is not a sworn police officer to do certain things. We will not labour this point. I make the point that people are being asked by individuals who are not police officers to do certain things. I would have thought they needed to err on the side of caution. I will give an example. I was in Paris some years ago. I was about 300 metres from the Élysée Palace. Apparently the President of France was meeting a president from another European nation—I think it might have been Germany. I was a considerable distance away. A fellow in an anorak came up to me and told me to move on. He did not identify himself as a police officer.

Mr J.N. Hyde: En français.

Ms M.M. QUIRK: Yes, en français.

He did not identify himself as a police officer in any language whatsoever. I thought, “Who is this bloke telling me to move on? What right does he have?” He produced no police identification; nothing. When I started to question him, I found that I was pushed up against a wall.

Mr R.F. Johnson: Parlez-vous français.

Ms M.M. QUIRK: He did not need any language to push me up against the wall!

Mr R.F. Johnson: Did he not show you any identification at all?

Ms M.M. QUIRK: No.

Mr R.F. Johnson: All our authorised officers will have identification.

Ms M.M. QUIRK: All I am saying is that is a situation in which he was obviously trying to secure the scene. I was unaware that he was a police officer and I was unaware that there was anything going on at the Élysée Palace to which I, apparently, constituted a threat. In those situations I think the minister needs to err on the side of being a bit more helpful and explain these matters instead of wielding the big stick.

Mr J.N. HYDE: Further to that, another issue that came up when we were discussing the issue of move-on notices within the Northbridge area, being a multicultural area, related to the requirement to have some ability to provide information in languages other than English, or not requiring only English to be spoken when dealing with a multicultural community. We are continually told there will be 53 countries here during CHOGM. Has there been any decision to ensure that police have some multicultural sensitivity in identifying themselves to people from culturally and linguistically diverse communities?

Mr R.F. JOHNSON: I am advised that many police officers are multilingual. All those multilingual officers will be deployed so that they can assist, should the situation arise that the member suggested.

Mr J.N. Hyde: More to the point, if somebody, who is in a new city, wanders down a laneway that has suddenly been blocked off—only residents with local ID can get through—there could be a police officer who has been brought down from Mingenew or somewhere who speaks only English or a variant thereof. What is the situation in that respect?

Mr R.F. JOHNSON: We cannot guarantee there will be a multilingual officer at every roadblock. That would be impossible. It is much the same as in France by the Eiffel Tower and the Champs Élysée, when the member for Girrawheen was thrust up against a wall by somebody in a duffel coat.

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Ms M.M. Quirk: It is the most luck I had in Paris, I have to say!

Mr R.F. JOHNSON: Was it?

Ms M.M. Quirk: It is very sad.

Mr R.F. JOHNSON: I thought the member came back with a smile on her face!

We are not guaranteeing we will have multilingual police everywhere. We have not got that number, but the multilingual ones we have will be deployed in the necessary areas. Like any capital city throughout the world, not every police officer is multilingual. People have to recognise “No Entry”. Most people can read “No Entry”. If a police officer or an authorised person—who would be in a uniform—stops that person, I think most sane people would know they are not allowed to go any further. It will be well publicised, member for Perth.

Mr J.N. Hyde: In English?

Mr R.F. JOHNSON: Yes, in English.

Mr J.N. Hyde: What about a Hindi-speaking person struggling down King Street with a backpack who suddenly finds himself in the middle of a barricaded area? That person might not know whether it is a barricade to get a good position to see the Queen passing by or whether it is a sensitively closed-off area because there is a suspicion of a bomb in a rubbish bin.

Mr R.F. JOHNSON: The police tell me that they deal with this sort of situation every day, and this will not be any different. No matter what capital city people go to, I can tell the member —

Mr J.N. Hyde: If it’s not going to be any different, why do we need a special CHOGM bill? The police already have the powers; this is the whole point we are trying to make. You are agreeing there is no difference.

Mr R.F. JOHNSON: The member for Perth should not twist my words—he is very good at that. I am saying that the police deal with this sort of situation every day. If they come across someone who does not speak English, they, of course, cope with it. If they have an officer who is multilingual who can assist, they will call that officer or translators.

Clause put and passed.

Clause 46 put and passed.

Clause 47: Recognition of law enforcement officers of other jurisdictions —

Ms M.M. QUIRK: We have heard there are likely to be officers from all states and territories in Australia and, I think, New Zealand and, of course, the Australian Federal Police. They are appointed as recognised law enforcement officers. That appointment can be made by not only the commissioner but also his delegate. Clause 47(5) states —

The appointment of 2 or more recognised law enforcement officers may be in one instrument of appointment.

I envisage there will be a front sheet that says, “I, Karl O’Callahan, Commissioner of Police, hereby appoint the law enforcement officers of another jurisdiction.”

Mr R.F. Johnson: They will be listed by name.

Ms M.M. QUIRK: The officers will appear in the schedule under what will be section 47 of this proposed Commonwealth Heads of Government Meeting (Special Powers) Act, and there will be a schedule of the list of names. There could be an instrument with 50 or 60 names on it. As I said, if some of these officers have restricted duties, there is also the potential for separate authorisation.

Mr R.F. Johnson: Yes. Nothing in this bill will restrict duties of an authorised police officer, whether they come from another state or not.

Ms M.M. QUIRK: I am saying that they can be authorised to have restricted powers.

Mr R.F. Johnson: I am advised only in the appointment.

Ms M.M. QUIRK: Yes; that is what I am saying. There can be an individual appointment if we want to restrict the powers of particular officers.

Mr R.F. Johnson: Under clause 49(2).

Ms M.M. QUIRK: Similarly, there can be provisional regulations for the restriction of special powers.

Mr R.F. Johnson: Yes to that as well.

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Mr J.N. HYDE: Approximately how many appointments of officers from other jurisdictions does the minister expect will be made?

Mr R.F. Johnson: I am advised more than 500, but we do not know the final number yet.

Mr J.N. HYDE: A minimum of 500?

Mr R.F. Johnson: Yes. That is the advice I have been given.

Clause put and passed.

Clauses 48 and 49 put and passed.

Clause 50: Command and control of recognised law enforcement officers —

Ms M.M. QUIRK: Clause 50 provides that recognised law enforcement officers remain under the command and control of the police force of which they are members during their term of appointment as recognised law enforcement officers. If these officers are errant in some way, are there internal disciplinary procedures? We heard earlier in debate on clause 48 that their appointment can be withdrawn. WA Police will have no involvement in those procedures, so the officer will be removed of his appointment, sent back home and disciplined there and we will have no control whatsoever irrespective of the conduct.

Mr R.F. JOHNSON: We may be asked to be witness to what has happened but they would come under the control and command of their own police commissioner.

Ms M.M. Quirk: Is that something that has been a condition of respective state and territory forces and the New Zealand police force?

Mr R.F. JOHNSON: I am told it has. There have been many joint task forces of police officers from different jurisdictions.

Ms M.M. Quirk: Is that a standard procedure when there is a joint task force?

Mr R.F. JOHNSON: Yes.

Ms M.M. QUIRK: Does the CCC have jurisdiction in relation to any conduct by those recognised enforcement officers?

Mr R.F. Johnson: No; because they are public officers, but —

Ms M.M. QUIRK: They are not members of WA Police.

Mr R.F. Johnson: And they are not public officers under the WA public service.

Ms M.M. QUIRK: They are public officers under this legislation, minister.

Mr R.F. JOHNSON: I apologise, I misled the member then. Under the powers in this bill they would be considered that, but not in their normal appointments.

Ms M.M. Quirk: Does the fact that they are public officers subject them to possible jurisdiction of the CCC?

Mr R.F. JOHNSON: I am advised possibly.

Ms M.M. Quirk: Good; that'll encourage them to come over here!

Mr R.F. JOHNSON: I am sure they will be very happy to come here. Who would not want to come to the sunny west and the beautiful city of Perth?

Clause put and passed.

Clause 51 put and passed.

Clause 52: Production or display of identity card —

Ms M.M. QUIRK: Law enforcement officers will be given identity cards for the purpose of doing their job under this legislation. Given events at the Asia–Pacific Economic Cooperation conference —

Several members interjected

Ms M.M. QUIRK: The member for Wanneroo seems to want to contribute here.

What procedures are in place to eliminate the chances of fraud in relation to those identity cards?

Mr R.F. JOHNSON: I will try to answer the question. Those police officers from other jurisdictions will not be in Western Australia Police uniforms; they will be in their own police uniforms. The initial appearance of them as police officers will be clearly obvious.

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Ms M.M. Quirk: The deputy commissioner is pointing at something for the minister.

Mr R.F. JOHNSON: It is about the identity card they will carry. The identity card must contain a recent photograph or digital image of the recognised law enforcement officer and be signed by the recognised law enforcement officer, and it goes on. They will be specifically designed as identity cards.

Mr W.J. Johnston: Will they have them shown attached to their clothing?

Mr R.F. JOHNSON: Not if they are in plain clothes. There will be plain-clothes officers operating.

Mr W.J. Johnston: You said they would be wearing them.

Mr R.F. JOHNSON: If they are uniformed officers, they will be wearing them.

Mr W.J. Johnston: You do not know what they will be doing; they could be wearing anything.

Mr R.F. JOHNSON: I am sure this is a very amusing one.

Mr W.J. Johnston: You are contradicting what you just said.

Mr R.F. JOHNSON: I am not; the member for Cannington takes my words and twists them.

Mr W.J. Johnston: No, I don't. You said they would be wearing the uniform of the police service they left.

Mr R.F. JOHNSON: I said those who are wearing uniforms.

Mr W.J. Johnston: Which ones will be wearing uniforms?

Mr R.F. JOHNSON: I said they would not be wearing WA Police uniforms. However, if they are plain-clothes officers—there could be some from New South Wales, for instance, and certainly some WA Police officers will be in plain clothes—they will have their ID cards on them; they will not walk around with them displayed. They will be able to show them so that people know exactly who they are.

Ms M.M. QUIRK: Thank you.

I want to know—I understand the sensitivity of this—whether consideration has been given to how we protect the integrity of those cards and eliminate possible chances of fraud or copycat cards being produced, given what happened at APEC.

Mr R.F. JOHNSON: Western Australia Police will produce the cards in-house using the latest technology available, including enhanced digitalisation and so on and so forth. I am not an expert on this subject. However, the cards will be produced in-house and I would not think that they would be issued until the last minute. They have to be signed. It is not as though everyone will be walking around with them two weeks before the event. I believe it will be very difficult for anybody who tries to duplicate or forge the cards.

Mr J.N. HYDE: Minister, will there be special identity cards for WA police? My reading of this legislation indicates a normal police ID will suffice.

Mr R.F. Johnson: Correct.

Mr J.N. HYDE: Given legislation provides specific expiry dates for CHOGM powers, that would seem to contravene the normal expiry date of police ID. What is the normal expiry date?

Mr R.F. JOHNSON: If my memory serves me correctly, we will cover this aspect later. The member's concern is covered further on in the bill. I have re-read this bill three or four times, and I believe that it will be an offence for anybody to not return the ID. Authorised persons will have to return their ID cards; if they do not, they will face quite a substantial monetary penalty.

Mr J.N. Hyde: But clauses 51 and 52 specify that there has to be an expiry date. A WA Police officer will have a normal expiry date on his ID card.

Mr R.F. JOHNSON: Yes.

Mr J.N. Hyde: But surely, in many cases, that will exceed the expiry date of the CHOGM legislation.

Mr R.F. JOHNSON: Yes; of course it will. The deputy commissioner's warrant card and badge will not expire at the end of CHOGM.

Ms M.M. Quirk: He will feel like expiring!

Mr R.F. JOHNSON: He might do! He might do after spending all this time in this chamber. However, his badge and his warrant card—as it is today—will be in place during CHOGM and will continue to be in place

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until, I suspect, the deputy commissioner wants to take up early retirement. After the time he has spent in this chamber, that might be sooner rather than later!

Mr J.N. Hyde: Will Tasmanian police officers be able to flash a badge or will they be given a special one?

Mr R.F. JOHNSON: No; definitely not—and they will have to return the identification badge that they will have been given by WA Police.

Mr J.N. Hyde: What is the expiry date on these visitor badges?

Mr R.F. JOHNSON: It will not be beyond 5 November, which is the expiry date. That is all covered further on in the bill. The member for Perth is getting ahead of himself.

Mr J.N. Hyde: I am. We have a whole-of-government response despite having only three government members in the chamber. A more churlish member may talk about the “Q” word and do something about it. The minister is lucky that I am not churlish.

Clause put and passed.

Clause 53: Appointment of authorised persons —

Ms M.M. QUIRK: We have already heard that authorised persons will be deployed, which is, I think, a departure from the APEC legislation that conferred powers on police officers only and not on “authorised persons”. Authorised persons will include, for example, auxiliary police officers, security guards and traffic controllers—all could be authorised persons. I am particularly interested in subclause (2), which states —

The Commissioner may appoint a person to be an authorised person only if the Commissioner believes that the person has the necessary expertise of experience to be an authorised person.

What expertise is required in the conduct of an authorised person?

Mr R.F. JOHNSON: As the member for Girrawheen quite rightly stated, clause 53(2) states —

The Commissioner may appoint a person to be an authorised person only if the Commissioner believes that the person has the necessary expertise of experience to be an authorised person.

Let me give the member some examples. It could be a traffic controller. It could be a council ranger. If the commissioner is satisfied that they have the necessary experience and expertise to be able to carry out the function of an authorised person, he would appoint them.

Ms M.M. Quirk: I think the wording in subclause (2) puts enormous onus on the commissioner because he has to turn his mind to each individual. That would seem to be a very onerous requirement.

Mr R.F. JOHNSON: Obviously, the commissioner will not interview each individual person and assess that person.

Ms M.M. Quirk: He needs to form an independent judgement of each person.

Mr R.F. JOHNSON: He does; but that can be delegated. Obviously, he will rely on the deputy commissioner and his assistant commissioners.

Mr W.J. Johnston: Minister, if we were to take McMahon’s, one of the contractors around the place, as an example, the police service cannot just authorise McMahon employees to do something; it has to make an individual decision about each person.

Mr R.F. JOHNSON: Correct. Absolutely. Yes.

Ms M.M. Quirk: Would that involve a criminal record check? What will that process be?

Mr R.F. JOHNSON: It would obviously include a criminal record check and consideration of their training, their experience and their expertise—all these things will form the criteria when the commissioner makes the decision whether to afford them these powers.

Ms M.M. Quirk: To give the minister an example, let us say someone from McMahon’s contractors—I do not mean to be defamatory—had no criminal record, was an exemplary employee, but there was police intelligence that he was a member of a neo-nazi group or some such racist organisation, would that criteria be relevant to the person’s appropriateness to be dealing with people from all over the world?

Mr R.F. JOHNSON: Yes; it would be. Obviously it would be—and for very good reasons. The member has outlined those good reasons.

Clause put and passed.

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Clause 54 put and passed.

Clause 55: Statement of powers —

Ms M.M. QUIRK: Subclause (1) relates to the “instrument of appointment of an authorised person”. It appears that, unlike recognised law enforcement officers, these need to be done individually; that is, they cannot be done in bulk lot. Can the minister confirm that?

Mr R.F. Johnson: Correct.

Ms M.M. QUIRK: That is correct—and then the appointees may be restricted in what they can do.

Mr R.F. Johnson: Correct.

Ms M.M. QUIRK: As I think I said earlier, and just to confirm, they will have an instrument of appointment, but will there be any obligation on them to carry that instrument with them? How will the police officer overseeing the person know?

Mr R.F. Johnson: They will have to carry only the identity card.

Ms M.M. QUIRK: How therefore will the police officer supervising the authorised person know the extent of their authority? I think the minister has already said they will be subject to some supervision by a police officer and I am wondering how the police officer will be aware of the extent of the authorised person’s authority.

Mr R.F. Johnson: I am told it will come under operational orders, as they normally do, and those orders will contain details of the specific authorisations the member is referring to.

Ms M.M. QUIRK: We may have a certain situation. I am concerned. I do not mean to harp on, but we may have a situation in which there is some sort of contingency and police have to deploy personnel at another location. It seems to me that there could be some confusion about an authorised person with somewhat limited authority who is sent to another location and who then exercises powers that they do not have the authority to exercise.

Mr R.F. JOHNSON: The advice I am given is that that is part of the planning process. If the police believe that they have not given them enough powers, obviously it will have to ensure that those extra powers are covered.

Clause put and passed.

Clauses 56 to 58 put and passed.

Clause 59: Appointees are public officers —

Ms M.M. QUIRK: Clause 59 provides that appointees—that is, law enforcement officers and authorised persons—are given the status of public officers for the purpose of the Criminal Code. That issue arose earlier. I want to confirm that this clause means that if someone assaults an authorised officer, that person is liable to a mandatory term of imprisonment under the Criminal Code.

Mr R.F. JOHNSON: Mandatory sentencing does not apply to all public officers; it applies to only Western Australia Police officers. I am a little surprised at that. I would have thought we would have covered our interstate cousins in the same way, but that is not the case under this particular bill. The member for Girrawheen may or may not be pleased that that is the situation.

Ms M.M. Quirk: I am just clear which is the mandatory, minister.

Mr R.F. JOHNSON: I am just saying that that is the advice I am given. A person would have to cause bodily harm or grievous bodily harm and that would have to be assessed, as it is at the moment, by a senior officer before a charge could be laid stipulating that it was an assault against a police officer causing either bodily harm or grievous bodily harm. That is the only way that particular part of the Criminal Code would be affected by the bill.

Ms M.M. QUIRK: If these recognised law enforcement officers and authorised persons are to be taken as public officers but not police officers, because they are referred to as police officers under the Criminal Code, what do these public officers equate to? What other public officers are they equivalent to? Would it be ambulance officers?

Mr R.F. JOHNSON: The answer I am given is: persons exercising a power under statute, but obviously not a meter reader or somebody like that. Mandatory sentencing, as I said, does not apply to that, but a person could be charged with assaulting a public officer.

Clause put and passed.

Clause 60: Unauthorised entry to CHOGM security area —

Ms Margaret Quirk; Mr Andrew Waddell; Mr Rob Johnson; Mr Bill Johnston; Mr Peter Tinley; Mr John Hyde;
Mr W.J. Johnston.; Acting Speaker; Dr Tony Buti

Mr W.J. JOHNSTON: I would like to know whether the wording in this clause is *The Chaser's* amendment, because it appears to me that this is designed to prescribe that somebody who has been allowed into the security area is nonetheless guilty of an offence. Clause 60 says —

A person must not enter or remain in a CHOGM security area unless the person —

(a) has the consent of the organiser of the CHOGM event being held or to be held in the area;

I raise this because we may get the cast from *The Chaser's War on Everything* turning up in a Canadian limousine with a card clearly stating that it is not a security card, but the police wave them through, which is exactly what happened at APEC. *The Chaser's* cast were not guilty of an offence in New South Wales because it was determined that they were authorised to enter, but here it says that the “organiser of the CHOGM” is the person who gives them the consent. Is that what this clause is designed to achieve; so that even if the police let someone in, a person would still be guilty of the offence? Is that the purpose of this clause?

Mr R.F. JOHNSON: I am advised that the short answer to that is no, but to expand on that, it is “or otherwise authorised”. That would possibly include a police officer’s authorisation.

Mr W.J. Johnston: Is the minister saying that if a police officer lets somebody in, that is sufficient to give them authority to be in the area?

Mr R.F. JOHNSON: Possibly yes.

Mr W.J. Johnston: Yes or no?

Mr R.F. JOHNSON: It depends on the facts and the circumstances. The advice I am given is that a police officer could do that. Police officers make mistakes sometimes; they are human, like we all are.

Mr W.J. Johnston: As we all do.

Mr R.F. JOHNSON: Yes, exactly. If a police officer makes a mistake and gives somebody authorisation to go into a CHOGM security area and it is later found out that the officer should not have given authorisation, I am sure the Commissioner of Police would have something to say.

Mr W.J. Johnston: Yes, but that is not related to whether it is an offence.

Mr R.F. JOHNSON: Exactly.

Clause put and passed.

Clause 61: Unauthorised entry to restricted area —

Ms M.M. QUIRK: Clause 61 deals with unauthorised entry to a restricted area and states —

(1) A person must not, without reasonable excuse, enter or remain in a restricted area.

I think this comes up elsewhere in the legislation, but I want to check whether mere inadvertence is a reasonable excuse; for example, if someone said, “I did not know I was in a restricted area.”

Mr R.F. JOHNSON: I am told that that is specifically addressed under clause 61(2) —

(2) A person has a reasonable excuse for the purposes of subsection (1) if the person establishes that, at the time when the offence is alleged to have occurred —

(a) no steps had been taken under section 13(1)(a) to notify the public that the area that is the subject of the prosecution had been designated as a restricted area under section 12; and

(b) the person did not know that the area was a restricted area.

Ms M.M. QUIRK: Would inadvertence be a reasonable excuse?

Mr R.F. Johnson: If a person did not know the area was restricted, yes.

Ms M.M. QUIRK: Is the onus of proof reversed? Is it up to the person to prove?

Mr R.F. Johnson: I am told it is, yes.

Ms M.M. QUIRK: What standard is that onus of proof?

Mr R.F. Johnson: Balance of probabilities.

Ms M.M. QUIRK: Thank you.

Clause put and passed.

Clause 62: Interference with CHOGM event —

Ms Margaret Quirk; Mr Andrew Waddell; Mr Rob Johnson; Mr Bill Johnston; Mr Peter Tinley; Mr John Hyde;
Mr W.J. Johnston.; Acting Speaker; Dr Tony Buti

Ms M.M. QUIRK: Clause 62 relates to the offence of interfering with a CHOGM event. Amongst other things it provides —

A person must not, in a CHOGM security area —

...

(b) interfere with the reasonable enjoyment, by another person, of a CHOGM event.

I would like some examples, if the minister can provide some, of what constitutes “interfere with the reasonable enjoyment”. This is a very subjective concept and it carries a penalty of 12 months’ imprisonment, so I would like to know what conduct is contemplated.

Mr R.F. JOHNSON: I think the classic case would be if a person made their way into an official opening while the Queen was making her speech and made a nuisance of themselves. That would be covered under clause 62(a) and (b).

Ms M.M. Quirk: What do you mean by “made a nuisance of themselves”? Would that be heckling, streaking or whatever?

Mr R.F. JOHNSON: I think certainly streaking would be totally inappropriate and would constitute an offence under this clause.

Mr W.J. Johnston: What about a person standing with their back to the Queen while she is giving a speech?

Mr R.F. JOHNSON: No, I am advised not.

Ms M.M. Quirk: If someone was to stand in front of a person and restrict their view, could we say that was interfering with the reasonable enjoyment of that person at the CHOGM event?

Mr R.F. JOHNSON: No, the advice I am given is that that would not be seen as interference with reasonable enjoyment.

Ms M.M. Quirk: How do we know that?

Mr R.F. JOHNSON: It depends on the facts and the situation.

Ms M.M. Quirk: Trust me, because I am short and I miss what is going on a lot of the time.

Mr R.F. JOHNSON: Sorry?

Ms M.M. Quirk: I find that that behaviour certainly limits my enjoyment of events. It happened to me at a police graduation not so long ago, when they put some 6’8” police officers in front of me and I saw nothing.

Mr R.F. JOHNSON: We will try to make sure the member gets front row.

Ms M.M. Quirk: Well, you did after that, thank you very much, minister. I am asking: what sort of minimum level of conduct will bring that provision into play?

Mr R.F. JOHNSON: I suppose it would have to come to the attention of a police officer or authorised person that someone was disrupting, interfering with, delaying or obstructing the conduct of a CHOGM event. It is often a matter of judgement by police officers; they have to make judgements every day of the week. The Commissioner of Police has said at every graduation —

Ms M.M. Quirk: Time, place and circumstances.

Mr R.F. JOHNSON: Yes, but also that if a police officer makes a decision in a split second, as they very often have to do, and that decision is made in good faith, the commissioner will stand by his officers. And I say the same thing.

Ms M.M. Quirk: Let us say, for example, that someone at an event attended by the Queen was wearing a T-shirt with anti-monarchist tendencies on it. A lot of people would regard that as offensive.

Mr R.F. JOHNSON: They would not be breaking the law. Quite frankly, I do not think those people would get an invitation to be that close to the Queen. I think it would be most unlikely. But it would not be an offence for someone standing on the street to wear something that says, “I don’t like the Queen”.

Mr J.N. Hyde: During the Pope’s visit, we had the case of the person who was wearing controversial garb on the freeway. That person was arrested because that was deemed to be offensive to the Pope. So you’re saying to us that anything goes.

Mr R.F. JOHNSON: The member for Perth can wear whatever he likes at a CHOGM event.

Ms M.M. Quirk: And he frequently does!

Mr J.N. Hyde: On a more serious note, what is your definition of a CHOGM event?

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Mr R.F. JOHNSON: We have dealt with that. I will not go over that again. We dealt with that the last time this bill was debated.

Mr J.N. Hyde: If any of these amazing public arts events that the Minister for Culture and the Arts seems to be including as part of CHOGM —

Mr R.F. JOHNSON: The member is going back to a previous clause, and I am not going to discuss that now.

Mr J.N. Hyde: Yes, you are—on this clause.

Mr R.F. JOHNSON: No. Read the clause carefully. It is headed “Interference with a CHOGM event”. I will not answer spurious questions.

Mr J.N. Hyde: I am asking you politely and carefully what a CHOGM event is.

Mr R.F. JOHNSON: I have already answered that. If the member reads *Hansard*, he will see.

Mr J.N. Hyde interjected.

The ACTING SPEAKER: Member for Perth!

Mr W.J. JOHNSTON: It is worth addressing the issue raised by the member for Perth, because the problem is that this goes to the fundamental weakness of the bill. It goes to the fundamental failure of the drafting instructions to encapsulate what the minister discusses at the table. The problem for the minister is that this clause will not apply to the youth forum, the people’s forum or the business forum because none of those events is a CHOGM event. The minister referred the member for Perth to the definition of “CHOGM event” in clause 3. It states —

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

I have previously pointed out to the minister the website of the Commonwealth Secretariat. The words in the bill have only the meaning that they have. CHOGM Perth is the Commonwealth Heads of Government Meeting in Perth. That is what the legislation says and that is what it means. Those other events are not part of CHOGM Perth. This provision will not apply to the business forum, the youth forum or the people’s forum. The member for Perth has quite correctly raised this issue. According to the words of the minister in *Hansard* of 24 March, it may apply to informal meetings of delegates outside of CHOGM. When the minister was asked on 22 March whether it would apply to a karaoke bar that the delegates might attend, he said no. But on 24 March he said —

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.

That is a direct quote from *Hansard* of 24 March. If the delegates of CHOGM have some informal get-together, according to the words that the minister used on 24 March, the provisions of clause 62 will apply. But clause 62 will not apply to the business forum, the youth forum or the people’s forum.

Dr A.D. BUTI: Clause 62(b) states —

interfere with the reasonable enjoyment, by another person, of a CHOGM event.

I cannot understand how this provision managed to make its way into the legislation in its current form. One can of course work out what “interfere” means. What do we mean by “reasonable enjoyment”? The greatest problem I have is with the words “another person”. I presume that “another person” would not have to be in the security area; that person could be anywhere. Should it perhaps refer to another person within the security area? It could be someone who is outside the area. A person inside a security area might do something that prevents their enjoyment when they are outside the security area. What does that mean?

Debate adjourned, on motion by **Mr R.F. Johnson (Minister for Police)**.