

Commonwealth Heads of Government Meeting (Special Powers) Bill 2011

EXPLANATORY MEMORANDUM

The purpose of this Bill is to give police and authorised officers the powers needed to promote the safety and security of people attending the Commonwealth Heads of Government Meeting in Perth in 2011 including associated events, functions and activities.

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

Part 1 - Preliminary

Clause 1. Short title

Clause 1 cites the short title of the proposed Act as the *Commonwealth Heads of Government Meeting (Special Powers) Act 2010*

Clause 2. Commencement

Clause 2 provides for the proposed Act to be enacted in three parts. Sections 1 and 2 are to come into operation on the day the Act receives Royal Assent. Section 3 to 5, section 78 and Parts 8 to 10 come into operation on the day following Royal Assent. The remainder of the Act comes into operation on a day fixed by proclamation, different days may be fixed for different provisions.

Clause 3. Terms Used

Clause 3 defines certain words and expressions used in the proposed Act.

The definitions of **CHOGM event**, **CHOGM period**, **CHOGM (Perth)**, **CHOGM security area** and **CHOGM period** are particularly significant in that they relate to where, when and by whom powers provided in this Bill can be used.

The definition of **prohibited item** details those items that are prohibited from being taken into or possessed within CHOGM security areas without special justification. These items include those that may be used to cause disruption to events, harm people attending an event, police, authorised persons or the public, or be used to damage property or interfere with the security of a meeting or event.

Clause 4. Purpose

Clause 4 sets out the purpose of the proposed Act.

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The purpose of the Act extends to promoting the safety and security of people attending CHOGM in Perth in 2011 including at venues and facilities used for the meeting, associated events, functions and activities and the accommodation of people attending the meeting or those events, functions or activities.

Clause 5. Act binds Crown

Clause 5 binds the Crown not only in right of Western Australia but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Part 2 – CHOGM security areas

Clause 6. Core security areas

Clause 6 provides that regulations may declare areas within the State to be core security areas for the purposes of the proposed Act.

An area can be declared to be a core security area for the CHOGM period or only for one or more periods within the CHOGM period specified in the regulations and at all times or only at times specified in the regulations.

If the regulations do not specify the period an area is a core security area, the area is a core security area for the entire or remaining CHOGM period.

If the regulations do not specify the times during a period where an area is a core security area, the area is a core security area at all times during that period.

Regulations declaring an area to be a core security area can be made before or during the CHOGM period.

Clause 7. Other matters may be stated in regulations declaring core security area

Clause 7 provides that regulations declaring an area may specify:

- in relation to authorised persons:
 - which special powers may be exercised in the area;
 - where in the area particular special powers may be exercised;
 - when special powers or particular special powers may be exercised;
- any restrictions that apply to access to the core security area or part of the area; and
- any conditions applying to entry to the core security area or part of the area.

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Clause 8. Additional security areas

Clause 8 provides that additional security areas may be created by declaration published in the Government Gazette if it is considered to do so would substantially assist in promoting security and safety of a CHOGM event, people attending the event or the public or in preventing or controlling a public disorder. A declaration may be made by the Commissioner of Police, with the approval of the Minister for Police. It should be noted here that declarations made under this clause are not limited to the physical location of CHOGM events but can also be made to promote the security and safety of the public or for the purposes of preventing or controlling a public disorder.

Clause 9. Urgent order declaring additional security area.

Clause 9 provides that the Commissioner of Police may make an order under clause 8 without the approval of the Minister for Police and without publishing the order in the Government Gazette if the Commissioner is satisfied:

- that it is necessary to declare the area as a matter of urgency; and
- that the delay in obtaining the approval of the Minister and to publish the order in the Gazette would significantly compromise the security or safety of a CHOGM event, people attending the event or the public.

An order made under these circumstances has effect when the Commissioner signs the order.

As soon as practicable after the order is made the Commissioner must:

- inform the Minister of the making of the order and its terms; and
- ensure the order is published in the Gazette unless clause 10 applies to the order.

A failure to comply with these requirements do not affect the validity of the order.

Clause 10. Gazetting of an order can be dispensed with.

Clause 10 provides that when the Commissioner of Police makes an order pursuant to clause 8 or 9, the Commissioner does not have to publish the order, as required by these clauses, if he is satisfied that the publication of the order would be likely to significantly compromise the security or safety of a CHOGM event, people attending the event or the public.

Clause 11. Other matters may be stated in order declaring additional security area

Clause 11 provides that an order declaring an additional security area under clause 8 may also specify:

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- in relation to authorised persons:
 - which special powers may be exercised in the area;
 - where in the area particular special powers may be exercised;
 - when special powers or particular special powers may be exercised;
- any restrictions that apply to access to the additional security area or part of the area; and
- any conditions applying to entry to the additional security area or part of the area.

Clause 12. Restricted areas

Clause 12 provides the ability for the Commissioner of Police to designate an area within a CHOGM security area to be a restricted area. Additional powers provided for in Part 4 of the Bill apply to restricted areas including:

- the power to enter and search non-residential premises (Cl. 44);
- additional power to obtain disclosure of identity (Cl. 45); and
- additional power to exclude persons from restricted areas (Cl. 46).

Before declaring an area to be a restricted area the Commissioner must be satisfied that:

- the area is being or will be used directly for or in relation to a CHOGM event or the administration of a CHOGM event; and
- the exercise of special powers in relation to restricted areas is necessary to promote the security or safety of the venues or facilities for a CHOGM event or people attending the event.

An area is a restricted area for either the period specified in the order or, if no period is specified, the CHOGM period or the remainder of the CHOGM period.

An order under this section may be made before or during the CHOGM period.

Clause 13. Public notification of restricted area

Clause 13 provides that the Commissioner of Police must take reasonable steps to notify the public and relevant public agencies that an area has been designated as a restricted area under clause 12. This can be done via:

- the publication of the terms of the 1 order (or a description of the restricted area concerned) in the Gazette;
- the publication of the terms of the order (or a description of the restricted area concerned) in a newspaper circulating generally throughout the State;
- or

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- the erection of signs or barriers (or both) around the whole or part of the perimeter of the restricted area concerned.

The Commissioner does not have to notify the public or relevant public agencies under this section if the Commissioner considers that to do so would significantly compromise security arrangements for a CHOGM event. The failure to comply with this clause does not affect the validity of an order under section 12.

Clause 14. Application of *Interpretation Act 1984* to orders

Clause 14 provides that an order made under clause 8 or 12 is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Despite not being subsidiary legislation, orders made under clause 8 or 12 are subject to the *Interpretation Act 1984*; section 43 (other than subsection (6)), section 44 and Part VIII. These apply as if the orders were subsidiary legislation.

These provisions of the Interpretation Act provide as follows:

- Section 43 details the general rules, assumptions and deeming provisions that apply to the making of subsidiary legislation.
- Section 44 details the meaning of words and expressions used in subsidiary legislation.
- Part VIII deals with matters such as the computation of time and the measuring of distance.

Clause 15. Orders not open to challenge

This clause prevents the validity of an order made or purportedly made under clause 8 or 12 from being challenged in any legal proceedings, including an investigation into police or other conduct under any Act (other than the *Corruption and Crime Commission Act 2003*).

PART 3 – Special Powers in relation to CHOGM security areas

Clause 16. Special powers only available during CHOGM period

Clause 16 provides that the powers in Part 3 may only be exercised during the CHOGM period in, or in relation to, a CHOGM security area, with the exception of the power to close a relevant road for the purposes detailed clause 31, such as conveying dignitaries and delegates to events, accommodation etc..

Clause 17. Restrictions on exercise of special powers

Clause 17 provides that the powers conferred by Part 3 are subject to any regulations or orders made pursuant to clauses 6, 8 or 9, which limit:

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- who may exercise special powers in, or in relation to, a CHOGM security area or a part of a CHOGM security area;
- which special powers may be exercised in, or in relation to, a CHOGM security area or a part of a CHOGM security area;
- where in a CHOGM security area or a part of a CHOGM security area special powers may be exercised;
- when special powers may be exercised in, or in relation to, a CHOGM security area or a part of a CHOGM security area.

Clause 18. Check points, cordons and roadblocks

Clause 18 provides that a police officer or an authorised officer may establish check points; cordons around an area or roadblocks on any road that leads into or out of, or that is located in, an area for the purpose of stopping and searching persons or vehicles under Part 3 of the Bill or for preventing persons entering or leaving a CHOGM security area without the permission of a police officer or authorised person.

A police officer or authorised person exercising a power conferred by this section must not refuse permission for a person to leave a CHOGM security area unless it is reasonable necessary to do so to avoid a risk to public safety or to the person's own safety.

The checkpoint, cordon or roadblock may consist of any appropriate form of physical barrier or obstruction preventing or limiting the passage of persons, vehicles or vessels.

Clause 19. Power to require disclosure of identity

Clause 19 provides that a police officer or authorised person may stop a person seeking to enter a CHOGM security area and require, as a condition of entry, that the person disclose their personal details. The person must be warned that if they refuse they will be refused entry into the area.

A person who is in a CHOGM security area may be stopped by a police officer or an authorised person and required to disclose their personal details. The person must be warned that if they do not comply they may be removed from the area.

In addition to requiring the personal details of a person, a police officer or an authorised person may also require proof of those personal details.

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Clause 20. Power to require reasons for entry to, or presence in, CHOGM security area

Clause 20 provides that a police officer or authorised person may stop a person seeking to enter a CHOGM security area and require, as a condition of entry, that the person state their reason for wanting to enter. The person must be warned that if they fail to provide a good and lawful reason to enter they may be refused entry into the area.

Additionally, a person who is in a CHOGM security area may be stopped by a police officer or an authorised person and required to state their reason for being there. The person must be warned that if they fail to provide a good and lawful reason they may be removed from the area.

Clause 21. Power to search persons

Clause 21 makes it a condition of entry to a CHOGM security area for a person to submit to a search if requested. Persons who do not agree to a search on entry to the area can be refused entry. The person must be warned that if they fail to submit to the search they may be refused entry to the area.

In relation to a person who is in a CHOGM security area, a police officer or an authorised person can stop and search that person without warrant. This is an unconditional power and no suspicion or consent is required. A person who refuses to be searched may be searched using force as provided for in clause 72. It is a requirement on the police officer or authorised person conducting the search that they warn the person that they may be removed from the area if they fail to comply with the search. This provides a clear warning of the special powers to remove people from CHOGM security areas if they do not comply with lawful directions and requirements as provided by clause 40.

The police officer or authorised person authorised by this section may do a basic search of the person as provided for in clause 22 with the exception that an authorised person may not do a frisk search.

Clause 22. Basic searches and frisk searches

Clause 22 details what may be done as part a basic search authorised under clause 21.

A person who is authorised to do a basic search may:

- scan the other person with an electronic or mechanical device, whether hand held or not, to detect any thing;
- remove the person's headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not his or her inner clothing or underwear;
- if the searcher is a police officer, frisk search the other person;

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- search any article removed from the person.

A frisk search involves quickly and methodically running hands over the outside of the other persons clothing.

The police officer conducting a frisk search must, if practicable, be a person of the same gender as the person being searched.

A basic search must be done as quickly as is reasonably practicable and must not be any more intrusive than is reasonably necessary in the circumstances.

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

Clause 23. Ancillary powers for searches

Clause 23 provides that a person conducting a search authorised by clause 21 may:

- detain the other person for as long as is reasonably necessary to conduct the search;
- search any thing being carried by or under the immediate control of the other person;
- order the person to remove, from any article that the person is wearing, any thing that might injure the searcher when doing the search;
- order the other person to do anything reasonable to facilitate the exercise by the searcher of any power in this clause or in clause 22.

A person who is detained under this clause for the purpose of conducting a search is to be taken to be in lawful custody.

Clause 24. Use of electronic screening devices

Clause 24 facilitates the use of electronic screening devices by police officers and authorised persons including:

- walk through detectors;
- x-ray machines;
- hand held scanners.

A police officer or authorised person may require a person who is seeking to enter or who is in a CHOGM security area to:

- walk through a walk through detector;
- pass belongings through an x-ray machine;
- allow a police officer or authorised officer to pass a hand held scanner in close proximity to the person or their belongings.

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A police officer or authorised person must warn a person so required that they may be refused entry or removed from the CHOGM security area if they do not comply.

Clause 25. Power to stop and search vehicles or vessels

Clause 25 provides the power for a police officer or an authorised person to stop a vehicle or vessel seeking to enter or that is in a CHOGM security area and require the person in charge to submit to a search of the vessel or vehicle.

The person must be warned that the vehicle or vessel may be refused entry or removed from the CHOGM security area if they do not comply.

A person authorised by this clause may, for the purposes of doing the search, detain the vehicle or vessel, move, or require the person in charge of the vehicle or vessel to move the vehicle or vessel to a place suitable to conduct the search and may search anything in or on the vehicle or vessel.

Clause 26. Power to require surrender of, or to seize and detain, prohibited items

Clause 26 provides powers for police officers and authorised persons to require the surrender of and the seizure and detention of prohibited items. Prohibited items are defined in clause 3 and include spray paint cans, smoke devices, noxious or flammable liquids or substances prohibited items and weapons.

A police officer or authorised person conducting a search under Part 3, may require a person reasonably suspected of possessing or having control of a prohibited item without special justification (as defined in clause 3 and 69) to surrender the item as a condition of entry into a CHOGM security area. A police officer or authorised person may also seize and detain, in a CHOGM security area, a thing that is suspected to be a prohibited item that is in the possession or control of a person without special justification.

The power to seize and detain a thing includes a power to remove a thing from the place where it is found and a power to guard the thing in or on the place where it is found.

A police officer or authorised person must, if practicable, before or at the time of exercising the power, inform the person who is in possession or control of the thing that is being surrendered or seized that the thing may not be returned. A failure to do this does not affect the validity of the exercise of the power.

An offence is created under clause 63 for taking a prohibited item, without reasonable excuse, into a CHOGM security area.

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Clause 27. Disposal of prohibited items surrendered, seized or detained

Clause 27 provides for the disposal of things surrendered or seized under clause 26.

A police officer or authorised person does not need to return the item to the person who surrendered the item or from whom the item was seized.

A thing that has been surrendered or seized and not returned to the person who surrendered the item or from whom the item was seized within a period of 24 hours, the item is forfeited to the Crown and no compensation is payable.

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

It should be noted that pursuant to clause 29 of the Bill, the *Criminal and Found Property Disposal Act 2006* applies to any thing forfeited to the Crown.

Clause 28. Power to seize things relevant to offence

Clause 28 provides that, whilst doing a search under Part 3 of the Bill, a police officer who finds a thing that is not a prohibited item, but is a thing relevant to an offence, may seize it if one or more of the grounds provided in section 146 of the *Criminal Investigation Act 2006* exist.

Additionally, several ancillary powers provided by the *Criminal Investigation Act 2006* in relation to the seizing of things, apply to such a seizure.

Clause 29 applies the *Criminal and Found Property Disposal Act 2006* to anything seized under this clause.

Clause 29. Application of Criminal and Found Property Disposal Act 2006

Clause 29 applies the *Criminal and Found Property Disposal Act 2006* to anything that is forfeited to the Crown under clause 27 and any thing that is seized under clause 28. This reflects section 152 of the *Criminal Investigation Act 2006* and provides a legislative mechanism for holding and disposing of seized property.

Clause 30. Power to give directions

Clause 30 provides a power for a police officer or authorised person to give a direction to any person or any group of persons assembled in a CHOGM security area. The direction must be reasonable and for the purpose of substantially assisting in promoting the security or safety of a CHOGM event, people attending the event or the public or controlling a public disorder.

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A person who, without lawful excuse, fails to comply with a reasonable direction under this clause becomes an excludable person as provided for in clause 30 and may be excluded from any CHOGM security area.

Clause 31. Power to close roads

Clause 31 provides a power for a police officer or an authorised person, at the direction of the Commissioner of Police, to close any relevant road for the purpose of a CHOGM event or controlling or regulating vehicles and pedestrians in or around a CHOGM event, facilitating the conveyance of dignitaries and delegates, ensuring the safety of persons or protecting property from damage.

A road may be closed by means of an appropriate physical barrier or obstruction or whatever other means the police officer or authorised person considers appropriate.

It is not necessary to give public notice of such a road closure and any police officer or authorised person closing a road under this clause has the duty to ensure that the road is not closed for any longer than necessary to serve the purpose for which it was closed.

Clause 32. Effect of road closure

Clause 32 details the effect of a road closure. A person or vehicle may not use a road closed under Division 5 unless the person is a police officer or authorised person or a designated person or the vehicle is a police vehicle or a designated vehicle.

A person or vehicle is a designated person or vehicle if the person or vehicle is authorised to use the road by a police officer or the Commissioner of police. The authorisation can be given orally or in writing and can be for a class of person or vehicle.

An offence is created under clause 66 for using a road closed under Division 5.

A road does not cease to be a road for the purposes of the *Road Traffic Act 1974* or any other written law because it is closed or its use or access to it is restricted under Division 5 or any other Act.

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

Clause 33 provides that a police officer or an authorised person may remove or cause to be removed any vehicle, vessel or thing from a CHOGM security area if they are of the opinion that it is necessary to do so.

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Clause 34. Removal of unauthorised vehicles or things from closed road

Clause 34 provides that if a police officer or authorised person is of the opinion that it is necessary to do so, may remove or cause to be removed any vehicle or thing from a road that is closed under Division 5.

Clause 35. Further provisions relating to removal of vehicles etc.

Clause 35 provides additional powers to facilitate the removal of vehicles, vessels or things under clause 33 or 34.

Pursuant to this provision:

- A police officer or authorised person may be assisted by any persons they consider necessary.
- The vehicle or thing may be removed to a police station or any other place where it may be conveniently detained.
- A police officer, authorised person or any person assisting under this section may drive, tow or otherwise convey a vehicle or vessel to the place where it is to be stored and at the place where it is stored providing the further ability to move a stored vehicle or vessel.

Clause 36. Additional powers in relation to removing vehicles and vessels

Clause 36 provides that where a vehicle or vessel is removed under clause 33 or 34, a police officer or an authorised person, and any person assisting may take reasonable or necessary action to facilitate the towing of the vehicle or vessel in a manner that does the least damage to the vehicle or vessel.

A police officer or an authorised person, and any person assisting under this clause are not liable for damage they cause to the vehicle or vessel.

Clause 37. Notification of removal

Clause 37 provides that the police officer or authorised officer who removed a vehicle, vessel or thing is to give to the owner notice of the removal and stating the place where the vehicle, vessel or thing is kept. This does not apply where the police officer or authorised person does not know who owns the vehicle vessel or thing.

Clause 38. Application of *Criminal and Found Property Disposal Act 2006*

Clause 38 provides that the *Criminal and Found Property Disposal Act 2006* applies to a vehicle, vessel or thing removed under clause 33 or 34 as if it were found property in the possession of the Commissioner under the Act.

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This provides a legislative mechanism to facilitate the disposal of vehicles, vessels or thins so removed.

Clause 39. Excluded persons list

The Commissioner may cause an excluded persons list to be published by whatever means the Commissioner considers appropriate including:

- in the Government Gazette;
- in any newspaper published in the State; or
- on an internet website.

In the lead up to CHOGM 2011, police and other agencies will be conducting investigations and seeking intelligence on persons who pose a threat to the safety of persons attending the event or event facilities. To assist in providing security for the event, the Commissioner of police may compile one or more lists of persons that he is satisfied would pose serious threats to the safety of persons or property in a CHOGM security area during the CHOGM period. This list is known as an excluded persons list.

Not publishing the list does not affect the validity of the list or limit any powers in this Bill in relation to the persons named on the list.

Clause 40. Exclusion of persons from CHOGM security areas

Clause 40 details the circumstance under which a person may become an excludable person for the purpose of the Bill.

In general, persons become excludable for failing to comply with the various requirements, conditions of entry and prohibitions relating to CHOGM security areas and closed roads or that the person is on an excluded persons list compiled under clause 39.

The clause provides that a police officer or an authorised person may, during the CHOGM period, prevent an excludable person from entering, or remove that person from, a CHOGM security area and require that person to disclose their personal details (including proof of those details). Clause 64 creates an offence for not providing personal details, proof of those details or providing false details pursuant to a requirement under this clause.

PART 4 – Additional special powers in relation to restricted areas

Clause 41. Relationship of this Part with Part 3

Clause 41 provides that any power conferred by Part 4 in relation to a restricted area is in addition to any power conferred in relation to the area by Part 3.

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Clause 42. Powers only available during the CHOGM period

Clause 42 provides that the powers in Part 4 may only be exercised during the CHOGM period in, or in relation to, a restricted area.

Clause 43. Restrictions on exercise of special powers

Clause 43 provides that the powers conferred by Part 4, Division 2 may be limited by regulations made pursuant to clause 8 declaring an area to be a core security area including:

- who may exercise special powers in, or in relation to, a CHOGM security area or a part of a CHOGM security area;
- which special powers may be exercised in, or in relation to, a CHOGM security area or a part of a CHOGM security area;
- where in a CHOGM security area or a part of a CHOGM security area special powers may be exercised;
- when special powers may be exercised in, or in relation to, a CHOGM security area or a part of a CHOGM security area.

This clause mirrors clause 17 which has application to Part 3 powers.

Clause 44. Power to enter and search premises

Clause 44 provides that a police officer may enter and search any premises in a restricted area. This excludes parts of premises used for residential purposes unless it is done with the consent of the occupier or under another warrant or authority.

The entry and search must do as little damage as possible.

Clause 45. Power to obtain disclosure of identity

Clause 45 provides that a police officer or authorised person may require a person whose identity is unknown to disclose his or her personal details if the person is seeking to enter or is in a restricted area. The person may also be required to provide proof of the personal details.

A person being required to provide personal details or proof of the details must be warned that failing to comply with the requirement may result in the person being refused entry to or removed from the restricted area.

Clause 46. Exclusion of persons from restricted areas

Clause 46 provides that a police officer or an authorised person may prevent a person from entering the area if they fail to comply with the requirement under clause 45 to provide their personal details or proof thereof.

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The clause also provides the power to remove a person from a restricted area if the person:

- is in possession or control of a prohibited item without special justification. (Clause 69 prescribes the circumstances that constitute a special justification.);
- is in the area without special justification; or
- fails, without lawful excuse, to comply with a requirement, under clause 45, to provide their personal details or proof thereof.

Part 5 – Recognition of law enforcement officers and authorised persons

Clause 47. Recognition of law enforcement officers of other jurisdictions

Clause 47 provides that the Commissioner of Police may appoint, for the purpose of the Act, as recognised law enforcement officers:

- members of the Australian Federal Police;
- members of the police force of another State or Territory; or
- employees of the New Zealand Police holding the office of constable.

The appointment must be in writing and provide for the items required in this clause and may be subject to any condition the Commissioner thinks fit and must be signed by the Commissioner.

The duration of the appointment must not end after the expiry of the CHOGM period.

Two or more appointments under this clause may be in one instrument of appointment.

Clause 48. Cancellation, expiry and re-appointment

Clause 48 provides that the Commissioner may cancel the appointment of a recognised law enforcement officer at any time and provides for when an appointment ceases.

An appointment under clause 47 cannot be extended, but the Commissioner may make a further appointment under the clause that takes effect upon a previous appointment ceasing.

Clause 49. Functions of recognised law enforcement officers

Clause 49 provides that, subject to any conditions in their instrument of appointment, a recognised law enforcement officer has and may perform any function that a police officer has under the Act, other than Part 8, and in

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performing such function has and may perform any function that a police officer has under any other written law or the common law.

A recognised law enforcement officer performing a function, or purporting to perform a function under this Act, is provided civil protection by clauses 74 and 75.

Clause 50. Command and control of recognised law enforcement officers

Clause 50 provides that recognised law enforcement officers remain under the command and control of their own police force whilst appointed as a recognised police officer. This clarifies that, despite their appointment under this Bill, they remain as police officers of their respective jurisdictions and remain subject to their own command and control, including disciplinary mechanisms.

Clause 51. Identity card

This clause requires the Commissioner of Police to issue each recognised law enforcement officer with an identity card. The identity card must:

- contain a recent photograph or image of the officer;
- be signed by the officer;
- identify the officer as a recognised law enforcement officer;
- include an expiry date; and
- state a unique identifying number.

A person who ceases to be a recognised law enforcement officer must return the identity card to the Commissioner as soon as practicable (but within 21 days) after ceasing as a recognised law enforcement officer.

Clause 52. Production or display of identity card

Clause 52 requires that, where practicable, a recognised law enforcement officer should either produce his or her identity card or have their identity card displayed so it is visible to the other person when they are exercising a power in relation to that person.

If it was not practicable to do the above before exercising the power, the officer must produce the identity card for inspection by the person as soon as practicable after exercising the power.

Clause 53. Appointment of authorised persons

Clause 53 provides that the Commissioner of Police may appoint a person to be an authorised person for the purposes of this Bill if the Commissioner

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believes the person has the necessary expertise or experience to be an authorised person.

The appointment must be in writing and provide for the items required in this clause, including a statement of powers pursuant to clause 55, and may be subject to any condition the Commissioner thinks fit and must be signed by the Commissioner.

The duration of the appointment must not end after the expiry of the CHOGM period.

An authorised person performing a function, or purporting to perform a function under this Act, is provided civil protection by clauses 74 and 75.

Clause 54. Cancellation and expiry

Clause 54 provides that the Commissioner may cancel the appointment of a authorised person at any time and details that an appointment under the Act terminates:

- at the date and time stated in the instrument of appointment; or
- upon its cancellation under this clause; or
- at the expiry of the CHOGM period.

Clause 55. Statement of powers

Clause 55 requires that the instrument of appointment of an authorised person must state:

- the powers of an authorised person that the appointee may exercise under this Bill;
- the time or times when those powers may be exercised;
- the place or places those powers may be exercised.

If the appointee can perform all of the powers of an authorised person, the instrument of appointment must state this fact and, alternatively, if the person can only perform some of the powers then those powers must be stated.

Clause 56. Identity card

Clause 56 requires the Commissioner of Police to issue each authorised person with an identity card. The identity card must:

- contain a recent photograph or image of the person;
- be signed by the person;
- identify the person as an authorised person;

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- include an expiry date; and
- state a unique identifying number.

A person who ceases to be an authorised person must return the identity card to the Commissioner as soon as practicable (but within 21 days) after ceasing as a recognised law enforcement officer. A person that fails to return an identity card without reasonable excuse commits an offence under clause 67.

Clause 57. Production or display of identity card

Clause 57 requires that, where practicable, an authorised officer must either produce his or her identity card or have their identity card displayed so it is visible to the other person when they are exercising a power in relation to that person.

If it was not practicable to do the above before exercising the power, the authorised person must produce the identity card for inspection by the person as soon as practicable after exercising the power.

Clause 58. Appointment does not make appointee public servant

Clause 58 provides that the appointment of a person as a recognised law enforcement officer or an authorised person does not make Part 3 of the *Public Sector Management Act 1994* or any Act applying to persons employed in the public service applicable to the person.

If however the person appointed as an authorised person is employed in the public service, the appointment of the person as an authorised person does not affect their status as a public service officer.

Clause 59. Appointees are public officers

Clause 59 provides that recognised law enforcement officers and authorised persons are to be taken to be public officers for the purposes of *The Criminal Code*. This means that offences against public officers in the Criminal Code such as obstructing a public and assaulting a public officer will apply to offences against law enforcement officers and authorised persons appointed under this Act.

Part 6 - Offences

Clause 60. Unauthorised entry to CHOGM

Clause 60 makes it an offence for a person to enter or remain in a CHOGM security area unless the person has the consent of the organiser of the CHOGM event being held or to be held in the area or has a special justification as provided for in clause 69 or is otherwise authorised to be in the area.

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Penalty: imprisonment for 12 months.

Clause 61. Unauthorised entry to restricted area

Clause 61 makes it an offence for a person to enter or remain in a restricted area without a reasonable excuse.

Penalty: imprisonment for 12 months.

This clause provides that a reasonable excuse includes if a person established that, at the time of the alleged offence, no steps had been taken under clause 13(1)(a) to notify the public that the area had been designated as a restricted area; and the person did not know that the area was a restricted area.

A special justification, as provided for in clause 69 may also constitute a reasonable excuse.

Clause 70 places the onus of proof of reasonable excuse on the person accused of the offence.

Clause 62. Interference with a CHOGM event

Clause 62 makes it an offence for a person, in a CHOGM security area to:

- disrupt, interfere with, delay or obstruct the conduct of a CHOGM event; or
- interfere with the reasonable enjoyment by another person of a CHOGM event.

Penalty: imprisonment for 12 months.

Clause 63. Prohibited items

Clause 63 creates an offence for taking a prohibited item into, or possessing such an item within a CHOGM security area, without a reasonable excuse.

Penalty: a fine of \$6000.

A special justification, as provided for in clause 69 may constitute a reasonable excuse.

“Prohibited item” is defined in Clause 3. Clause 70 places the onus of proof of reasonable excuse on the person accused of the offence.

Clause 64. Failure to disclose personal details or provide proof of personal details

Clause 64 makes it an offence to, without reasonable excuse:

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- fail comply with a requirement made of the person under clause 40(2)(c) to disclose his or her personal details or proof of those details; or
- when so requested, provide false personal details or produce false evidence.

Penalty: imprisonment for 12 months.

Clause 70 places the onus of proof of reasonable excuse on the person accused of the offence.

Clause 65. Re-entering CHOGM security area after being removed

Clause 65 creates an offence for a person who has been removed from a CHOGM security area under clause 40(2) by a police officer or an authorised person and who re-enters or attempts to re-enter that or any other CHOGM security area during the remainder of the CHOGM period without written authorisation from the Commissioner of Police.

Penalty: imprisonment for 12 months.

Clause 66. Unauthorised use of closed road

Clause 66 creates an offence for a person who uses a road while it is closed under Part 3, Division 5 without reasonable excuse.

To use a road is defined in clause 32(1) and includes use as a pedestrian and for driving, leaving, parking, standing or stopping a vehicle on the road.

Clause 70 places the onus of proof of reasonable excuse on the person accused of the offence.

Penalty: a fine of \$1000.

Clause 67. Failure to return identity card

Clause 67 creates an offence for an authorised person, without reasonable excuse, failing to return their identity card issued pursuant to clause 56 as soon as practicable, but within 21 days, after ceasing to be an authorised person.

Penalty: a fine of \$2000.

Clause 70 places the onus of proof of reasonable excuse on the person accused of the offence.

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Clause 68. Offence relating to unauthorised entry into restricted airspace

Clause 68 makes to an indictable offence to cause an aircraft to enter, or to operate an aircraft within, restricted airspace without air traffic clearance by or on behalf of Airservices Australia under the *Airspace Act 2007* (Commonwealth) during the CHOGM period and in the course of State air navigation.

Penalty: a fine of \$250 000.

The clause applies this offence to the existing Commonwealth mechanism contained in the *Airspace Act 2007* (Commonwealth) whereby an area can be declared to be restricted airspace. This offence relates to such an area declared in relation to CHOGM (Perth).

Part 7 - Miscellaneous

Clause 69. Special justification

Clause 69 prescribes the circumstances that constitute a special justification for a person to be in an area or be in possession of a thing for the purposes of this Bill.

The term 'special justification' is used in clauses 26, 40, 46 and 60 and may also constitute a 'reasonable excuse' for the offences in clauses 61 and 63.

Clause 26 provides that a police officer or an authorised officer may require a person to surrender a prohibited item as a condition of entry in the possession or under the control of the person without 'special justification' and who is seeking to enter a CHOGM security area.

Clause 26 further provides that a police officer or an authorised person may seize and detain in a CHOGM security area, a thing that is suspected to be a prohibited item that is in the possession or control of a person without 'special justification'.

Clause 40 provides for when a person may be an 'excludable person'. A person can be an 'excludable person' for failing to surrender a 'prohibited item' as a condition of entry to or for possessing or controlling such an item in a CHOGM security area without 'special justification'.

Clause 46 provides that a person may be removed from that area if they are there without 'special justification'.

Clause 60 creates an offence for unauthorised entry to a CHOGM security area. One defence to this offence is that the person has a 'special justification' to be in the area.

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Clause 70. Onus of proof of lawful excuse or special justification

Clause 70 provides that the onus of proof of lawful excuse, reasonable excuse or special justification lies on a person accused of an offence or claims to have the excuse or justification. This applies in respect of an offence against Part 6 or in relation to the exercise of powers conferred by this Bill, other than Part 8.

Clause 71. Proof of unpublished orders and of appointments

Clause 71 provides evidentiary averments for prosecutions under this Bill or any other Act. Averments in a prosecution notice or indictment that are covered by this clause are sufficient evidence of the facts averred unless the contrary is shown. The averments cover unpublished additional security areas and restricted areas as well as the appointment of a person as a recognised law enforcement officer or as an authorised person.

Clause 72. Use of force by police officers and authorised persons

Clause 72 provides for the use of force by a police officer or an authorised officer, or anyone helping the police officer or authorised person when exercising a special power provided by this Bill in relation to a person or a thing. The level of force is whatever force is reasonably necessary to exercise the power.

Clause 73. Provision relating to powers

Clause 73 provides that any power that may be exercised in relation to a person, vehicle or vessel that is in an area is also exercisable in relation to a person, vehicle or vessel that has recently left the area.

Clause 74. Relationship with other laws

Clause 74 provides the relationship between this Bill and other law, including written law and the Common law. It provides that the powers, and the exercise of those powers, in respect of police officers and authorised persons in this Bill are not limited by other law and that nothing in this Bill limits any powers, or the exercise of powers, a police officer has under any other law

Clause 75. No liability in nuisance

Clause 75 provides that anything done or omitted to be done by any person in the performance or purported performance of a function under this Act, including done or omitted to be done by a person in assisting such a person constitutes a public or private nuisance.

This provision is intended to limit the risk of persons launching frivolous legal actions aimed at disrupting the event

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Clause 76. Protection from liability for wrongdoing

Clause 76 provides for protection from liability for a person and any person assisting that person, and the Crown for anything done (or omitted to be done) in good faith in the performance or purported performance of a function under the Act.

This clause overrides section 137 of the *Police Act 1892*. (Section 137 provides civil protection for members of the Police Force and certain other appointees under that Act).

Clause 77. Power of delegation

Clause 77 provides that the Commissioner of Police may delegate, in writing, any power or duty under this Bill, other than Part 8, to a Deputy Commissioner or an Assistant Commissioner.

It further provides that the power to close roads under clause 31 may be delegated to a Superintendent.

Clause 78. Corruption and Crime Commission may provide assistance

Clause 78 allows for the Corruption and Crime Commission to provide assistance to the Commissioner of Police for the purposes of the Act and to achieve this provides that the Commissioner of Police may, by arrangement with the Commissioner of the Corruption and Crime Commission make use of the services of any officer and of any facilities or resources of the Commission.

For the purposes of this Act, an officer of the Commission who is an authorised officer (as defined in section 184(1) of the *Corruption and Crime Commission Act 2003*), while performing functions under such an arrangement, has relevant powers provided for in that section.

Clause 79. Regulations

Clause 79 provides a standard regulation making ability.

Clause 80. Review of Act

Clause 80 provides that the Commissioner of Police must carry out and complete a review of the operation and effectiveness of the Act not later than 3 months after the CHOGM period ends. Within one month after completing the review, the Commissioner must prepare a report based on the review and give it to the Minister. As soon as practicable after receiving the report the Minister must cause the report to be laid before each house of parliament.

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Part 8 – Examinations before Corruption and Crime Commission

Clause 81. Part to be read with Corruption and Crime Commission Act 2003

Clause 81 provides that Part 8 of this Bill is to be read in conjunction with, and as supplementary to the *Corruption and Crime Commission Act 2003*. Part 8 of this Bill prevails in any inconsistency.

Clause 82. Terms used

Clause 82 defines several terms used in Part 8 of this Bill.

The term ‘relevant offence’ is used in clause 82 as a ground on which the Commission may decide to hold an examination. The scope of included offences relate to harm caused to people attending a CHOGM event, damaging a venue or facility for a CHOGM event or disrupting a CHOGM event directly or indirectly.

Clause 83. Purpose of this Part

Clause 83 prescribes that the purpose of Part 8 of the Bill is to facilitate the investigation of serious offences where the offence is intended or likely to:

- harm people attending; or
- damage a venue or facility for; or
- disrupt;

a CHOGM event.

The power to investigate includes the power to investigate a suspicion that the offence has been, is being or will be committed.

Clause 84. Commissioner of police may ask Commission to hold examination

Clause 84 provides that the Commissioner of Police may request the Corruption and Crime Commission to conduct an examination under Part 8 of this Act.

To grant the request the Commission must be satisfied that:

- there are reasonable grounds for suspecting that a relevant offence has been is being or will be committed; and
- 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; and

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- there are reasonable grounds for believing that conducting an examination would be in the public interest.

If the finding of the Commission is that the three grounds exist, the finding is to be reduced to writing and a copy is to be given to the Commissioner of Police.

It should be noted that contrary to the like provision in the *Corruption and Crime Commission Act 2003* there is no restriction on the examination of juveniles. This is considered necessary because some of the extremist groups that potentially could target CHOGM are known to recruit juveniles.

Clause 85. Commission, on application of police, may summons witness

Clause 85 provides that the Commission may, on application by the Commissioner of Police issue a summons under section 96 of the *Corruption and Crime Commission Act 2003* and cause it to be served.

Sections 97, 98 and 99 of the Act dealing with the obligation to attend, powers in relation to things produced and restriction on the disclosure of also apply to the CHOGM summons and to any person served with a CHOGM summons.

Clause 86. Examination of witnesses by Commissioner of Police

Clause 86 mirrors the like provision at section 49 of the *Corruption and Crime Commission Act 2003* and provides that the Commissioner of Police, in participating in an examination of a person summonsed under a CHOGM summons is to be represented by a legal practitioner instructed for that purpose. The legal practitioner may be assisted by others who are not legal practitioners but who are under direct supervision of a legal practitioner.

Clause 87. Examination of witness about offence with which witness is charged

Clause 87 provides that a person may not be examined about matters he or she stands charged but does not operate to prevent any other person being examined about those matters.

The clause defines when a person stands charged with an offence as whichever occurs first:

- the person is informed by the person investigating the offence that he or she will be charged with the offence.
- The persons investigating the offence ought to have formed the view that the person should be charged with the offence.
- A prosecution notice in respect of the offence is made or sworn.

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Clause 88. Application of provisions of CCC Act

Clause 88 provides that the *Corruption and Crime Commission Act 2003*, Part 6 Division 5, Parts 7 to 11 and section 185 apply to:

- the performance of the Commission's functions under this Act;
- examinations conducted by the Commission under this Act as if they were organised crime examinations; and
- a CHOGM summons as if it were a summons issued pursuant to an application under section 48 of the *Corruption and Crime Commission Act 2003*.

Clause 89. Delegation by the Commissioner of Police

Clause 89 provides that the Commissioner of Police may delegate any power or duty he has under this Part of the Act to a police officer who is, or acting as a Deputy Commissioner or an Assistant Commissioner.

Clause 90. Judicial review excluded

Clause 90 provides that, prior to the completion of the investigation that a function under Part 8 of the Act was seeking to facilitate and except with the consent of the Parliamentary Inspector, a prerogative writ cannot be issued and an injunction or a declaratory judgement cannot be given in respect of the performance of that function. Additionally, proceedings cannot be brought seeking a writ, injunction or judgement of that kind.

Part 9 – *Corruption and Crime Commission Act 2003* amended

Clause 91. Act Amended

Clause 91 provides that Part 9 of the Act amends the *Corruption and Crime Commission Act 2003*.

Clause 92. Section 91 amended

Clause 92 amends section 91 of the *Corruption and Crime Commission Act 2003* by inserting provision that the Corruption and Crime Commission must include in the report required by section 91 of that Act, the number of findings made under clause 84(2) of this Bill in the year to which the report relates. This requirement expires at the end of 31 December 2012.

Clause 93. Expiry of Act

Clause 93 provides that Parts 2 to 6, 7 (other than Divisions 2 and 7) and 8 will expire at the end of 5 November 2011. The rest of the Act expires on a day fixed by proclamation. This proclamation can not be made until the Commissioner of Police has given the Minister a certificate signed by the

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Commissioner stating that the operation of the Act is no longer required. The purpose of this certificate is to ensure that the review process provided by clause 80 and the evidentiary averments provided by clause 71 remain in operation until the review is complete and all prosecutions that may rely on the averments have concluded, including any appeals.