

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

**Supplementary Notice Paper No. 210
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CRIMINAL INVESTIGATION (COVERT POWERS) BILL 2011 [210-2]

When in committee on the *Criminal Investigation (Covert Powers) Bill 2011*:

Clause 25

Attorney General representing the Minister for Police: To move –

84/25 Page 21, line 7 — To insert after “hours” —

(or any longer period that the authorising officer may, in exceptional circumstances, allow)

Committee Recommendation 11 –

10/25 Page 21, line 7 — To insert after “hours” —

(or any longer period that the chief officer may, in exceptional circumstances, allow)

Committee Recommendation 12 –

11/25 Page 21, line 1 to page 22, line 31 — To oppose the clause.

Clause 26

Attorney General representing the Minister for Police: To move –

93/26 Page 23, line 4 — To delete “Parliamentary Commissioner” and insert —

Corruption and Crime Commission

Attorney General representing the Minister for Police: To move –
94/26 Page 23, line 10 — To delete “Parliamentary Commissioner” and insert —
 Corruption and Crime Commission

Attorney General representing the Minister for Police: To move –
96/26 Page 23, line 12 — To delete “Parliamentary Commissioner’s” and insert —
 Corruption and Crime Commission’s

[Question — Clause 30, as amended by the motion of the Attorney General]

Clause 35

Attorney General representing the Minister for Police: To move –
34/35 Page 28, lines 26 and 27 — To delete “an authorised operation” and insert —
 a controlled operation for which an authority is or was in force

Attorney General representing the Minister for Police: To move –
35/35 Page 29, after line 11 — To insert —

- (ca) for the purpose of seeking legal advice; or
- (cb) to a government agency for the purposes of a law enforcement operation conducted by that agency or for intelligence-gathering purposes; or

Committee Recommendation 15 –
12/35 Page 29, after line 12 — To insert —

- (e) for the purpose of seeking legal advice.

Clause 36

Committee Recommendation 16 –
13/36 Page 30, after line 8 — To insert —

- (g) information as to whether —
 - (i) in the course of the operation, any person engaged in conduct of a kind authorised by the authority for the operation (the relevant conduct) when the person was not so authorised; and
 - (ii) any criminal activity other than the relevant conduct was engaged in during the operation; and
 - (iii) any person is, because of section 31, not criminally responsible for ancillary conduct (as defined in that section) related to the relevant conduct; and
 - (iv) any variations were made to an authority for the operation; and

- (v) any of those variations were to extend the period of validity of the authority; and
- (vi) any retrospective authority was granted in respect of the operation; and
- (vii) any urgent authority was granted in respect of the operation, and if so, whether the conduct authorised by that authority should, in the opinion of the principal law enforcement officer, have been authorised by a formal authority instead; and
- (viii) any conditions of an authority for the operation were breached; and
- (ix) any loss of or serious damage to property, or any personal injuries, occurred as an indirect result of the operation.

Attorney General representing the Minister for Police: To move –

36/36 Page 30, after line 8 — To insert —

- (g) details (to the extent known) of any loss of or serious damage to property, or any personal injuries, occurring as an indirect result of the operation;
- (h) information as to whether —
 - (i) in the course of the operation, any participant engaged in unlawful conduct (other than controlled conduct that the participant was authorised to engage in for the purposes of the operation); and
 - (ii) any unlawful conduct (other than controlled conduct) was engaged in during the operation; and
 - (iii) any person is, because of section 31, not criminally responsible for ancillary conduct (as defined in that section); and
 - (iv) any variations were made to an authority for the operation; and
 - (v) any of those variations were to extend the period of validity of the authority; and
 - (vi) any retrospective authority was granted in respect of the operation; and
 - (vii) any urgent authority was granted in respect of the operation; and
 - (viii) any conditions of an authority for the operation were breached.

Clause 37

Attorney General representing the Minister for Police: To move –

99/37 Page 30, line 12 — To delete “Parliamentary Commissioner” and insert —

Corruption and Crime Commission

Attorney General representing the Minister for Police: To move –

106/37 Page 31, line 16 — To delete “Parliamentary Commissioner” and insert —

Corruption and Crime Commission

Clause 38**Attorney General representing the Minister for Police:** To move –**107/38** Page 31, line 31 — To delete “Parliamentary Commissioner” and insert —

Corruption and Crime Commission

Committee Recommendation 17 –**14/38** Page 32, lines 14 to 16 — To delete the lines and insert —

- (3) The Minister must —
 - (a) exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2); and
 - (b) insert a statement to the effect that information has been excluded from the report under paragraph (a).

Attorney General representing the Minister for Police: To move –**37/38** Page 32, lines 14 to 16 — To delete the lines and insert —

- (3) The Minister must —
 - (a) exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2); and
 - (b) insert a statement to the effect that information has been excluded from the report under paragraph (a).

Attorney General representing the Minister for Police: To move –**108/38** Page 32, lines 22 and 23 — To delete “Parliamentary Commissioner” and insert —

Corruption and Crime Commission

*[Question — Clause 39, as amended by the motion of the Attorney General]***Heading to Subdivision 3****Committee Recommendation 18 –****15/41** Page 35, line 18 — To insert after “**Inspections**” —**and investigations****Clause 41****Attorney General representing the Minister for Police:** To move –**110/41** Page 35, line 20 — To delete “Parliamentary Commissioner” and insert —

Corruption and Crime Commission

Attorney General representing the Minister for Police: To move –

111/41 Page 35, lines 25 to 28 — To delete the lines and insert —

- (2) For the purposes of an inspection under this section, the Corruption and Crime Commission —
- (a) after notifying the chief officer of the law enforcement agency, may enter at any reasonable time premises occupied by the agency; and
 - (b) is entitled to have full and free access at all reasonable times to all records of the law enforcement agency that are relevant to the inspection; and
 - (c) may require a person employed or engaged in the law enforcement agency to give the Corruption and Crime Commission any information that the Corruption and Crime Commission considers necessary, being information that is in the person's possession, or to which the person has access, and that is relevant to the inspection.
- (2A) The Corruption and Crime Commission may delegate to an officer of the Commission (as defined in the *Corruption and Crime Commission Act 2003* section 3(1)) a power or duty of the Corruption and Crime Commission under this section and, for that purpose, the *Corruption and Crime Commission Act 2003* section 185(3) to (6) apply as if the delegation were a delegation under section 185.

Attorney General representing the Minister for Police: To move –

112/41 Page 35, lines 30 and 31 — To delete “Parliamentary Commissioner” and insert —

Corruption and Crime Commission

Attorney General representing the Minister for Police: To move –

113/41 Page 35, line 31 — To delete “Parliamentary Commissioner” and insert —

Corruption and Crime Commission

Attorney General representing the Minister for Police: To move –

114/41 Page 36, line 1 — To delete “Parliamentary Commissioner” and insert —

Corruption and Crime Commission

Committee Recommendation 18 –

16/41 Page 36, after line 7 — To insert —

- (5) For the purposes of the *Parliamentary Commissioner Act 1971* section 14(1) the grant, variation or cancellation of, or refusal to grant, vary or cancel, an authority is to be taken —
- (a) to be a decision or recommendation made, or an act done or omitted, that relates to a matter of administration; and
 - (b) to affect a person or body of persons in his, her or its personal capacity.

Clause 43**Attorney General representing the Minister for Police:** To move –

115/43 Page 37, lines 3 to 12 — To delete the lines and insert —

senior officer means —

- (a) in relation to an authorising officer or chief officer who is the Commissioner of Police — a police officer of or above the rank of Commander; or
 - (b) in relation to an authorising officer or chief officer who is the Chief Executive Officer of the Australian Crime Commission —
 - (i) an SES employee as defined in the *Australian Crime Commission Act 2002* (Commonwealth) section 4(1); or
 - (ii) a person holding a prescribed office in the Australian Crime Commission;
- or
- (c) in relation to a chief officer who is the chief executive officer of the fisheries department — a fisheries officer holding a prescribed office in the department.

Committee Recommendation 19 –

17/43 Page 37, line 8 — To delete “Director National Operations;” and insert —

Executive Director;

Attorney General representing the Minister for Police: To move –

116/43 Page 37, line 14 — To delete “of a” and insert —

of an authorising officer or

Attorney General representing the Minister for Police: To move –

117/43 Page 37, line 16 — To delete “chief officer of” and insert —

authorising officer for, or chief officer of,

Attorney General representing the Minister for Police: To move –

118/43 Page 37, lines 17 and 18 — To delete “of the agency any of the chief officer’s” and insert —

any of his or her

Clause 45**Committee Recommendation 21 –**

18/45 Page 40, line 3 — To insert after “Part” —

for 30 years after the commencement of this section

Committee Recommendation 20 –

19/45 Page 40, lines 1 to 6 — To oppose the clause.

[Question — Clause 47, as amended by the motion of the Attorney General]

Clause 48**Committee Recommendation 22 –**

20/48 Page 42, lines 22 to 25 — To delete the lines.

[Question — Clause 48, as amended by the motion of the Attorney General]

Clause 49

Attorney General representing the Minister for Police: To move –

128/49 Page 45, lines 13 to 15 — To delete the lines and insert —

- (7) The authorising officer must, as soon as practicable after granting an urgent authority, make a record in writing of the particulars referred to in subsection (5) relating to the authority.

Clause 51

Attorney General representing the Minister for Police: To move –

157/51 Page 47, lines 12 to 14 — To delete the lines and insert —

- (10) The authorising officer must, as soon as practicable after making an urgent variation of authority, make a record in writing of the particulars referred to in subsection (9) relating to the variation of authority.

Clause 52

Attorney General representing the Minister for Police: To move –

139/52 Page 48, lines 25 to 27 — To delete the lines and insert —

- (9) The authorising officer must, as soon as practicable after making an urgent cancellation of authority, make a record in writing of the particulars referred to in subsection (8) relating to the cancellation of authority.

[Question — Clause 53, as amended by the motion of the Attorney General]

Clause 55

Attorney General representing the Minister for Police: To move –

145/55 Page 50, line 26 — To insert after “officer” —

of the law enforcement agency

Attorney General representing the Minister for Police: To move –
146/55 Page 50, line 29 — To insert after “officer” —

of the law enforcement agency

Clause 58

Attorney General representing the Minister for Police: To move –
147/58 Page 51, lines 23 and 24 — To delete “an authority granted under section 48 authorises” and insert —

the authorising officer for a law enforcement agency grants an authority under section 48 authorising

Attorney General representing the Minister for Police: To move –
148/58 Page 51, line 25 — To delete “who grants the authority” and insert —

of the law enforcement agency

Clause 66

Attorney General representing the Minister for Police: To move –
150/66 Page 55, line 10 — To insert after “officer” —

of the law enforcement agency

Clause 69

Attorney General representing the Minister for Police: To move –
151/69 Page 56, lines 22 and 23 — To delete “an authority granted under section 48 authorises” and insert —

the authorising officer for a law enforcement agency grants an authority under section 48 authorising

Attorney General representing the Minister for Police: To move –
152/69 Page 56, line 24 — To delete “who grants the authority” and insert —

of the law enforcement agency

Clause 76

Committee Recommendation 24 –

21/76 Page 61, line 11 — To delete “both Houses” and insert —

each House

Attorney General representing the Minister for Police: To move –

42/76 Page 61, line 11 — To delete “both Houses” and insert —

each House

Committee Recommendation 23 –

22/76 Page 61, lines 18 to 20 — To delete the lines and insert —

- (3) The Minister must —
 - (a) exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2); and
 - (b) insert a statement to the effect that information has been excluded from the report under paragraph (a).

Attorney General representing the Minister for Police: To move –

43/76 Page 61, lines 18 to 20 — To delete the lines and insert —

- (3) The Minister must —
 - (a) exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2); and
 - (b) insert a statement to the effect that information has been excluded from the report under paragraph (a).

Clause 79

Attorney General representing the Minister for Police: To move –

153/79 Page 63, lines 15 to 22 — To delete the lines and insert —

- (a) in relation to an authorising officer or chief officer who is the Commissioner of Police — a police officer of or above the rank of superintendent; or
 - (b) in relation to an authorising officer or chief officer who is the Chief Executive Officer of the Australian Crime Commission —
 - (i) an SES employee as defined in the *Australian Crime Commission Act 2002* (Commonwealth) section 4(1); or
 - (ii) a person holding a prescribed office in the Australian Crime Commission;
- or
- (c) in relation to a chief officer who is the chief executive officer of the fisheries department — a fisheries officer holding a prescribed office in the department;
- or

Attorney General representing the Minister for Police: To move –

154/79 Page 63, line 28 — To delete “of a” and insert —

of an authorising officer or

Attorney General representing the Minister for Police: To move –

156/79 Page 64, line 2 — To delete “of the agency any of the chief officer’s” and insert —

any of his or her

Clause 80

Committee Recommendation 25 –

23/80 Page 65, lines 22 and 23 — To delete “either or both Houses of Parliament or by”.

Clause 88

Committee Recommendation 26 –

24/88 Page 72, lines 17 to 19 — To delete the lines and insert —

- (a) must hear the proceeding (including any application made under section 86 or 90 or order made under section 88(1)(b) relating to the proceeding), in a closed court; and

Attorney General representing the Minister for Police: To move –

45/88 Page 72, lines 17 to 19 — To delete “(including any applications relating to the proceeding, such as those referred to in sections 86, 88 and 90)” and insert —

(including any application relating to the proceeding, such as an application for an order under paragraph (b) or an application under section 86 or 90)

Clause 100

Attorney General representing the Minister for Police: To move –

46/100 Page 81, line 8 — To delete the line and insert —

- (i) an SES employee as defined in the *Australian Crime Commission Act 2002* (Commonwealth) section 4(1); or

New Clause 101A**Committee Recommendation 27 –**

25/NC101A Page 82, after line 6 — To insert —

101A. Parts 2 and 3 to be reviewed

- (1) The Minister must carry out a review of the operation of Parts 2 and 3 of this Act as soon as practicable after the expiration of 5 years after the date on which the Act commences.
- (2) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared and in any event not more than 18 months after the expiry of the period referred to in subsection (1), cause it to be laid before each House of Parliament.

New Clause 101A**Hon Giz Watson: To move –**

29/NC101A Page 82, after line 6 — To insert —

101A. Review of Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as practicable after the expiry of 3 years from its commencement.
- (2) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared, must cause the report to be laid before each House of Parliament.

Attorney General representing the Minister for Police: To move –

160/NC101A Page 82, after line 6 — To insert —

101A. Review of Parts 2 and 3

- (1) The Minister must carry out a review of the operation and effectiveness of Parts 2 and 3 as soon as is practicable after the end of the period of 5 years beginning on the day on which this Act receives the Royal Assent.
- (2) The Minister must prepare a report based on the review and must cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared and, in any event, not later than 18 months after the end of the period referred to in subsection (1).

Hon Adele Farina: To move –

158/NC101A Page 82, after line 6 — To insert —

101A. Review of Parts 2 and 3

- (1) The Minister must carry out a review of the operation and effectiveness of Parts 2 and 3 of this Act as soon as practicable after the expiration of 5 years after the date on which the Act received Royal Assent.
- (2) The Minister must prepare a report based on the review and must cause the report to be laid before each House of Parliament as soon as practicable after the report is prepared and in any event not more than 18 months after the expiry of the period referred to in subsection (1).

New Part 7A

Committee Recommendation 14 –

26/NP7A Page 84, after line 10 — To insert —

Part 7A — *Criminal Injuries Compensation Act 2003* amended

106A. Act amended

This Part amends the *Criminal Injuries Compensation Act 2003*.

106B. Section 13 amended

In section 13(5) delete “section 27.” and insert:

section 27 or the *Criminal Investigation (Covert Powers) Act 2012* section 27, 31 or 34.

106C. Section 16 amended

In section 16(5) delete “section 27.” and insert:

section 27 or the *Criminal Investigation (Covert Powers) Act 2012* section 27, 31 or 34.

106D. Section 17 amended

In section 17(5) delete “section 27.” and insert:

section 27 or the *Criminal Investigation (Covert Powers) Act 2012* section 27, 31 or 34.

Attorney General representing the Minister for Police: To move –

48/NP7A Page 84, after line 10 — To insert —

Part 7A — *Criminal Injuries Compensation Act 2003* amended

106A. Act amended

This Part amends the *Criminal Injuries Compensation Act 2003*.

106B. Section 13 amended

In section 13(5) delete “section 27.” and insert:

section 27 or the *Criminal Investigation (Covert Powers) Act 2012* section 27, 31 or 34.

106C. Section 16 amended

In section 16(5) delete “section 27.” and insert:

section 27 or the *Criminal Investigation (Covert Powers) Act 2012* section 27, 31 or 34.

106D. Section 17 amended

In section 17(5) delete “section 27.” and insert:

section 27 or the *Criminal Investigation (Covert Powers) Act 2012* section 27, 31 or 34.

Postponed Clause 3

Hon Giz Watson: To move –

27/3 Page 3, line 26 — To delete “or other government agency”.

Postponed Clause 5

Attorney General representing the Minister for Police: To move –

159/5 Page 6, lines 26 and 27 — To delete the lines and insert —

- (b) an offence not covered by paragraph (a) under any of the following Acts —
 - (i) the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*;
 - (ii) *The Criminal Code*;
 - (iii) the *Firearms Act 1973*;

- (iv) the *Fish Resources Management Act 1994*;
- (v) the *Misuse of Drugs Act 1981*;
- (vi) the *Prostitution Act 2000*;
- (vii) the *Weapons Act 1999*;

Attorney General representing the Minister for Police: To move –

161/5 Page 6, lines 26 and 27 — To delete the lines and insert —

- (b) an offence not covered by paragraph (a) that is prescribed for the purposes of this definition, being an offence under any of the following Acts —
 - (i) the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*;
 - (ii) *The Criminal Code*;
 - (iii) the *Firearms Act 1973*;
 - (iv) the *Fish Resources Management Act 1994*;
 - (v) the *Misuse of Drugs Act 1981*;
 - (vi) the *Prostitution Act 2000*;
 - (vii) the *Weapons Act 1999*;

Committee Recommendation 2 –

2/5 Page 6, lines 26 and 27 — To delete the lines.

Committee Recommendation 3 [if 2/5 fails] –

3/5 Page 6, line 27 — To delete “definition;” and insert —

definition if and only if the prescribing of that offence has been recommended by resolution passed by both Houses of Parliament of this State;

Committee Recommendation 4 –

4/5 Page 6, lines 31 and 32 — To delete the lines.

Committee Recommendation 5 [if 4/5 fails] –

5/5 Page 6, line 32 — To delete “definition;” and insert —

definition if and only if the prescribing of that offence has been recommended by resolution passed by both Houses of Parliament of this State;

