

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

Supplementary Notice Paper No. 210
Issue No. 12

FRIDAY, 28 SEPTEMBER 2012

CRIMINAL INVESTIGATION (COVERT POWERS) BILL 2011 [210-2]

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

Postponed Clause 80

Attorney General representing the Minister for Police: To move –

162/80 Page 65, lines 22 and 23 — To delete “or by either or both Houses of Parliament”.

Committee Recommendation 25 –

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

Attorney General representing the Minister for Police: To move –

163/80 Page 65, after line 27 — To insert —

court proceeding means any criminal, civil or other proceeding before, or inquiry, reference or examination by, a court, and includes an arbitration;

Attorney General representing the Minister for Police: To move –

164/80 Page 66, after line 8 — To insert —

parliamentary committee means a committee or other body established by either or both Houses of Parliament to inquire into any matter;

parliamentary proceeding means any proceeding before, or inquiry, reference or examination by, a parliamentary committee;

Attorney General representing the Minister for Police: To move –

165/80 Page 66, lines 16 to 18 — To delete the lines and insert —

proceeding means a court proceeding or a parliamentary proceeding;

[If motion to recommit for the purposes of reconsidering: new clause 4A, clause 82, new clause 84A, clause 85, new clauses 93A-E, clauses 94, 96, 121, 122 and 123 is agreed to]

New Clause 4A

Hon Giz Watson: To move –

182/NC4 Page 4, after line 30 — To insert —

4A. Parliamentary privilege not affected

Nothing in this Act abrogates, limits or in any manner affects any privileges, immunities and powers under the *Parliamentary Privileges Act 1891*.

Clause 82

Attorney General representing the Minister for Police: To move –

166/82 Page 67, lines 12 to 18 — To oppose the clause.

New Clause 84A

Attorney General representing the Minister for Police: To move –

167/NC84 Page 70, after line 14 — To insert —

Division 2A — Provisions applicable to court proceeding

84A. Application of Division

- (1) This Division applies in relation to a court proceeding in which an operative is, or may be, required to give evidence obtained as an operative.
- (2) To remove any doubt, this Division does not affect the operation of the common law in relation to the protection of the identity of a person who is not an operative who gives or intends to give evidence in a court proceeding.

Clause 85

Attorney General representing the Minister for Police: To move –

168/85 Page 70, line 17 — To insert after “to a” —

court

New Part 4 Division 2B and Part 4 Division 2C heading (New Clauses 93A-E)

Attorney General representing the Minister for Police: To move –

169/NP4D2B Page 77, after line 8 — To insert —

Division 2B — Provisions applicable to parliamentary proceeding

93A. Application of Division

This Division applies in relation to a parliamentary proceeding in which an operative is, or may be, required to give evidence obtained as an operative.

93B. Witness identity protection certificate to be given to Parliament

- (1) A witness identity protection certificate for an operative in relation to a parliamentary proceeding must be given —
 - (a) to the Clerk of the House of Parliament that established the parliamentary committee concerned; or
 - (b) if the parliamentary committee concerned was established by both Houses of Parliament, to the Clerk of each House of Parliament,

before the operative gives evidence in the proceeding.
- (2) The certificate must be given at least 14 days before the day on which the operative is to give evidence, unless in the circumstances it is not reasonably practicable to do so.
- (3) The person who gives the certificate must give a copy of it to the operative before the day on which the operative is to give evidence.

93C. Effect of witness identity protection certificate

- (1) This section applies if a witness identity protection certificate for an operative is given in accordance with section 93B in relation to a parliamentary proceeding.
- (2) If this section applies —
 - (a) the operative may give evidence in the proceeding under the assumed name, or court name, stated in the certificate; and
 - (b) subject to any resolution passed under section 93D(4) —
 - (i) a question must not be asked of a witness, including the operative, that may lead to the disclosure of the operative's true identity or where the operative lives; and
 - (ii) a witness, including the operative, cannot be required to (and must not) answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives; and
 - (iii) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives.
- (3) For the purposes of subsection (2)(b)(iii), a person involved in a proceeding includes —
 - (a) a member of the parliamentary committee; and
 - (b) a party to the proceeding; and
 - (c) a person given leave to be heard or make submissions in the proceeding; and

- (d) a lawyer representing a person referred to in paragraph (b) or (c) or a lawyer assisting the parliamentary committee in the proceeding; and
 - (e) any other person assisting the parliamentary committee in the proceeding; and
 - (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.
- (4) If this section applies, any evidence given by the operative in the proceeding must be given in private.

93D. Disclosure of operative’s true identity or location despite certificate

- (1) In this section —
relevant House, in relation to a parliamentary committee, means —
- (a) if the parliamentary committee was established by a House of Parliament — that House; or
 - (b) if the parliamentary committee was established by both Houses of Parliament — each House.
- (2) This section applies if a witness identity protection certificate for an operative is given in accordance with section 93B in relation to a parliamentary proceeding.
- (3) The parliamentary committee may seek the authorisation of the relevant House —
- (a) to ask a question of a witness, including the operative, that may lead to the disclosure of the operative’s true identity or where the operative lives; or
 - (b) to require a witness, including the operative, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative’s true identity or where the operative lives; or
 - (c) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the operative’s true identity or where the operative lives.
- (4) The relevant House may pass a resolution authorising the doing of anything mentioned in subsection (3)(a), (b) or (c).
- (5) However, the relevant House must not pass a resolution unless satisfied about each of the following —
- (a) there is evidence that, if accepted, would substantially call into question the operative’s credibility;
 - (b) it would be impracticable to test properly the credibility of the operative without allowing the risk of disclosure of, or disclosing, the operative’s true identity or where the operative lives.

93E. Restrictions on content of reports to Parliament

If a witness identity protection certificate for an operative is given in accordance with section 93B in relation to a parliamentary proceeding, the parliamentary committee must not disclose in a report to a House of Parliament —

- (a) the operative’s true identity or where the operative lives; or
- (b) information that may lead to the disclosure of the operative’s identity or where the operative lives.

Division 2C — Other matters

Clause 94**Attorney General representing the Minister for Police:** To move –

170/94 Page 77, lines 17 to 21 — To delete the lines and insert —

- (3) If the chief officer cancels the certificate —
- (a) after it has been filed in a court and before the matter has been finalised by the court, the chief officer must immediately give written notice to the court and each party to the proceeding that the certificate has been cancelled; or
 - (b) after it has been given to the Clerk of a House of Parliament and before the matter has been finalised by the parliamentary committee concerned, the chief officer must immediately give written notice to the Clerk that the certificate has been cancelled.

Clause 96**Attorney General representing the Minister for Police:** To move –

171/96 Page 78, after line 18 — To insert —

- (iia) authorised under section 93D; or

Clause 121**Attorney General representing the Minister for Police:** To move –

172/121 Page 89, line 16 — To delete “34D.” and insert —

34D or 34K.

Clause 122**Attorney General representing the Minister for Police:** To move –

173/122 Page 89, after line 21 — To insert —

Subdivision 1 — Terms used**Clause 123****Attorney General representing the Minister for Police:** To move –

174/123 Page 90, after line 13 — To insert —

court includes —

- (a) a tribunal or other body established or continued under a written law and having a power to obtain evidence or information;
- (b) a Royal Commission established under the *Royal Commissions Act 1968*;
- (c) a commission, board, committee or other body established by the Governor or by the Government of the State to inquire into any matter;

court proceedings means any proceedings in a court;

Attorney General representing the Minister for Police: To move –

175/123 Page 90, after line 17 — To insert —

parliamentary committee means a committee or other body established by either or both Houses of Parliament to inquire into any matter;

parliamentary proceedings means any proceedings before a parliamentary committee;

Attorney General representing the Minister for Police: To move –

176/123 Page 90, after line 25 — To insert —

proceedings means court proceedings or parliamentary proceedings;

Attorney General representing the Minister for Police: To move –

177/123 Page 91, after line 17 — To insert —

Subdivision 2 — Non-disclosure certificates for protected persons

Attorney General representing the Minister for Police: To move –

178/123 Page 91, line 23 — To delete “court,” and insert —

court or in parliamentary proceedings,

Attorney General representing the Minister for Police: To move –

179/123 Page 91, lines 27 to 29 — To delete the lines and insert —

- (3) The Commissioner may give a certificate for the protected person in relation to the proceedings and —
 - (a) file a copy with the court; or
 - (b) give a copy to the Clerk of the House of Parliament that established the parliamentary committee concerned or, if the parliamentary committee concerned was established by both Houses of Parliament, to the Clerk of each House of Parliament,

as the case requires.

Attorney General representing the Minister for Police: To move –

180/123 Page 92, after line 17 — To insert —

Subdivision 3 — Provisions applicable to court proceedings

34CA. Application of Subdivision

This Subdivision applies in relation to court proceedings in which a protected person is, or may be, required to give evidence.

Attorney General representing the Minister for Police: To move –

181/123 Page 98, after line 6 — To insert —

Subdivision 4 — Provisions applicable to parliamentary proceedings

34I. Application of Subdivision

This Subdivision applies in relation to parliamentary proceedings in which a protected person is, or may be, required to give evidence.

34J. Effect of non-disclosure certificate

- (1) In this section —

person involved, in proceedings, includes —

 - (a) a member of the parliamentary committee; and
 - (b) a party to the proceedings; and
 - (c) a person given leave to be heard or make submissions in the proceedings; and
 - (d) a lawyer representing a person referred to in paragraph (b) or (c) or a lawyer assisting the parliamentary committee in the proceedings; and
 - (e) any other person assisting the parliamentary committee in the proceedings; and
 - (f) a person acting in the execution of any process or the enforcement of any order in the proceedings.
- (2) This section applies if a non-disclosure certificate for a protected person is given under section 34A(3)(b) in relation to parliamentary proceedings.
- (3) If this section applies, in the proceedings —
 - (a) a question must not be asked of a witness, including the protected person, that may lead to the disclosure of the protected person's protected identity or protected address or both; and
 - (b) a witness, including the protected person, cannot be required to (and must not) answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the protected person's protected identity or protected address or both; and
 - (c) a person involved in the proceedings must not make a statement that discloses, or may lead to the disclosure of, the protected person's protected identity or protected address or both.

- (4) The parliamentary committee may disclose to each party to the proceedings —
 - (a) that a non-disclosure certificate for a person who may be required to give evidence in the proceedings has been given; and
 - (b) what the certificate states.
- (5) If the parliamentary committee makes a disclosure about the non-disclosure certificate under subsection (4), the committee must also inform the parties of the effect of the certificate.
- (6) This section applies despite any other Act, but subject to section 34K.

34K. Disclosure of protected person's identity despite certificate

- (1) In this section —

relevant House, in relation to a parliamentary committee, means —

 - (a) if the parliamentary committee was established by a House of Parliament — that House; or
 - (b) if the parliamentary committee was established by both Houses of Parliament — each House.
- (2) This section applies if a non-disclosure certificate for a protected person is given under section 34A(3)(b) in relation to parliamentary proceedings.
- (3) The parliamentary committee may seek the authorisation of the relevant House —
 - (a) to ask a question of a witness, including the protected person, that may lead to the disclosure of the protected person's protected identity or protected address or both; or
 - (b) to require a witness, including the protected person, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the protected person's protected identity or protected address or both; or
 - (c) for a person involved in the proceedings to make a statement that discloses, or may lead to the disclosure of, the protected person's protected identity or protected address or both.
- (4) The relevant House may pass a resolution authorising the doing of anything mentioned in subsection (3)(a), (b) or (c).
- (5) However, the relevant House must not pass a resolution unless satisfied about each of the following —
 - (a) there is evidence that, if accepted, would substantially call into question the protected person's credibility;
 - (b) it would be impracticable to test properly the credibility of the protected person without allowing the risk of disclosure of, or disclosing, the protected person's protected identity or protected address or both.

34L. Restrictions on content of reports to Parliament

If a non-disclosure certificate for a protected person is given under section 34A(3)(b) in relation to parliamentary proceedings, the parliamentary committee must not disclose in a report to a House of Parliament —

- (a) the protected person's protected identity or protected address; or
- (b) information that may lead to the disclosure of the protected person's protected identity or protected address.

