

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

Supplementary Notice Paper No. 210
Issue No. 4

TUESDAY, 27 MARCH 2012

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

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

Clause 3

Committee Recommendation –

1/3 Page 3, line 14 — To delete the line.

Hon Giz Watson: To move –

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

Clause 5

Committee Recommendation –

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

Committee Recommendation [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 –

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

Comment [GH1]: Comment
Comment
SNP 210 Issue 1: Committee
Recommendations [1/3 -26/NP8A
SNP 210 Issue 2: amendments by Hon Giz
Watson [27/3-29/NC102A]
SNP 210 Issue 3 [clerical amendments]
SNP 210 Issue 4 amendments by Minister
for Energy representing the Minister for
Police [30/12 – 48/NP7A]

Committee Recommendation *[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;

Clause 9

Committee Recommendation –

6/9 Page 8, line 12 — To insert after “Part” —

for 30 years after the commencement of this section

Committee Recommendation –

7/9 Page 8, lines 10 to 15 — To oppose the clause.

Clause 12

Committee Recommendation –

8/12 Page 10, line 33 — To insert after “have” —

been

Minister for Energy representing the Minister for Police: To move –

30/12 Page 10, line 33 — To insert after “have” —

been

Clause 14

Hon Giz Watson: To move –

28/14 Page 12, after line 18 — To insert —

- (c) that the relevant offence is an offence against the law of this jurisdiction punishable by imprisonment for 7 years or more; and
- (d) that intelligence gathering is not the sole purpose of the operation.

Clause 15

Committee Recommendation –

9/15 Page 14, line 28 — To delete “must ensure that written notes are” and insert —

must, as soon as practicable after the authority is granted, ensure that a record in writing is

Minister for Energy representing the Minister for Police: To move –

31/15 Page 14, line 28 — To delete “must ensure that written notes are” and insert —

must, as soon as practicable after the authority is granted, ensure that a record in writing is

Clause 21

Minister for Energy representing the Minister for Police: To move –

32/21 Page 19, line 16 — To delete “must ensure that written notes are” and insert —

must, as soon as practicable after the variation of authority is granted, ensure that a record in writing is

Clause 25

Committee Recommendation –

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

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

Minister for Energy representing the Minister for Police: To move –

33/25 Page 21, line 7 — To insert after “hours” —

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

Committee Recommendation –

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

Clause 35

Minister for Energy 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

Minister for Energy 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 –

12/35 Page 29, after line 12 — To insert —

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

Clause 36**Committee Recommendation –**

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.

Minister for Energy 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 38

Committee Recommendation –

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).

Minister for Energy 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).

Heading to Subdivision 3

Committee Recommendation –

15/41 Page 35, line 18 — To insert after “**Inspections**” —

and investigations

Clause 41**Committee Recommendation –**

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**Committee Recommendation –**

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

Executive Director;

Minister for Energy representing the Minister for Police: To move –

38/43 Page 37, 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);

Clause 45**Committee Recommendation –**

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

for 30 years after the commencement of this section

Committee Recommendation –

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

Clause 48**Committee Recommendation –**

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

Clause 49

Minister for Energy representing the Minister for Police: To move –

39/49 Page 45, line 13 — To delete “must ensure that written notes are” and insert —

must, as soon as practicable after the authority is granted, ensure that a record in writing is

Clause 51**Minister for Energy representing the Minister for Police:** To move –

40/51 Page 47, line 12 — To delete “must ensure that written notes are” and insert —

must, as soon as practicable after the variation of authority is granted, ensure that a record in writing is

Clause 52**Minister for Energy representing the Minister for Police:** To move –

41/52 Page 48, line 25 — To delete “must ensure that written notes are” and insert —

must, as soon as practicable after the cancellation of authority is made, ensure that a record in writing is

Clause 76**Committee Recommendation –**

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

each House

Minister for Energy representing the Minister for Police: To move –

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

each House

Committee Recommendation –

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).

Minister for Energy 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

Minister for Energy representing the Minister for Police: To move –

44/79 Page 63, line 18 — To delete the line and insert —

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

Clause 80

Committee Recommendation –

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

Clause 88

Committee Recommendation –

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

Minister for Energy 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

Minister for Energy 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 –**

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.

Minister for Energy representing the Minister for Police: To move –

47/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 section comes into operation.
- (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).

New Part 7A

Committee Recommendation –

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.

Minister for Energy 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.

