

CRIMINAL INVESTIGATION AMENDMENT BILL 2009

Second Reading

Resumed from 10 November.

MR J.R. QUIGLEY (Mindarie) [12.55 pm]: I rise to speak against this bill. In doing so, I realise that I attracted a bit of controversy in the media in the lead-up to this debate by referring to the provisions of this bill as suitable for a fascist regime. After I made that comment—as the Leader of the House has pointed out—it was pointed out to me that I was not the shadow spokesperson for this legislation and that my comments should be reserved for the chamber. I now make those comments.

I realise that my friends in the press gallery and elsewhere will now be wondering whether I am going to use weasel words and weasel out of my earlier comment. I will not use weasel words and I will not walk away from my earlier comment. I will at the end of my speech throw a challenge to my friends in the media, who themselves are pillars of the free press and very important pillars of our democracy. Nor will this debate be carried by a Quigley rhetorical flourish. The matters before the chamber are far too weighty and far too important to be demeaned by a Quigley rhetorical flourish, although my description of them as laws suitable for a fascist regime certainly had the effect of galvanising the debate and concentrating people's minds.

When the media rang me last Friday seeking yet a further comment from me, they said that they had spoken to people in the minister's office who had said that this legislation was not fascism and to just think about what the definition of fascism was—that is, a hierarchical, authoritative system of government that represses opposition. The minister's office said that that was a fair definition of fascism but that this legislation was not fascism because when these areas are prescribed, they will be prescribed by regulation, so that the Parliament will still have a function to perform. I said to the reporter who was interviewing me at the time that I could not comment on the record because I was not the opposition spokesperson, but that I knew what the bill would do.

I take members to proposed section 70B of the bill, which provides that the Commissioner of Police, with the approval of the minister, can declare a prescribed area. That proposed section of the bill provides in proposed subsection (1) —

The Commissioner may, with the approval of the Minister, declare an area to be an area where the powers in section 70A may be exercised by a police officer in public places.

Think about that, Mr Speaker and members. The provisions of proposed section 70A provide for search powers that can be activated without there being a suspicion held by the officer exercising the search power. It is said that this will happen only in limited areas, which will be prescribed by regulation. Any Commissioner of Police—I am not having a go at the incumbent of that office or the current Minister for Police; I am addressing the law and the proposed laws of Western Australia—in the future may in the middle of the night ring up the minister of the day and say, “Because I am fearful of violence in Rokeby Road, Subiaco, I want approval for Rokeby Road, Subiaco to be a declared area.” The minister may ask, “Why?” The commissioner may say, “I have telephone-intercept intelligence that I cannot disclose to you, minister.” The minister is likely to say, “Yes”, and the law will be changed in a heartbeat in the middle of the night without anyone in Western Australia knowing that it has changed. Think about the effect of the law that is being changed. The High Court of Australia has described the power of the police to detain us and to take from us our liberty as the most serious power that the state has over a citizen: the power of detention.

The Criminal Investigation Act 2006 provides that if a person is in a prescribed area, a search of that person can be undertaken. It provides also that a person who is the subject of suspicion can be ordered to leave a prescribed area, and the police can use reasonable force to effect that end. In the investigation of any suspects for offences, or in the investigation of any miscreant behaviour, there needs to be some ultimate sanction of force. The Criminal Investigation Act, which codifies the search powers in Western Australia, contains in part 1, section 3, a definition of “basic search” and “strip search”. The Criminal Investigation Act also outlines where the search powers can be used. Section 65 provides in part —

- (2) In the case of a basic search or a strip search, the searcher may do any or all of the following for the purposes of doing the search —
 - (a) stop and detain the person for a reasonable period;
 - (b) search any thing being carried by or under the immediate control of the person;
 - (c) order the person to remove any thing that might injure the searcher when doing the search from any article that the person is wearing;

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- (d) order the person to do anything reasonable to facilitate the exercise by the searcher of any power in this section, or in section 63 or 64, as the case requires.
- (3) In the case of a basic search, the searcher may also photograph part or all of the search while it is being done.
- ...
- (5) A person who is detained under subsection (2)(a) when he or she is not under arrest is to be taken to be in lawful custody.

The act then goes on in section 66 to deal with how searches must be done.

So, sitting behind the power of a basic search is a provision for the use of force against the citizen. I will not engage the government on its hollow tin-man chant of “law and order”. I do not know what law and order means. It is just a political chant. The member for Southern River has said that he knows what law and order means. He has said that law and order is what we need to impose to stop the slide into fascism, as was the case in Germany during anarchy. My breath was taken away by that comment. I say that because it was the state of Germany that introduced the anarchy; and, having introduced the anarchy, it then brought in laws that were more and more repressive.

Several members interjected.

The SPEAKER: Order, member for Cannington!

Mr J.R. QUIGLEY: I am not surprised that the member for Southern River, being the nephew of a convicted war criminal—Otto Abetz, who was Hitler’s personal envoy to Vichy France—would come into this chamber with a reconstruction of how Nazi Germany ended up as it did. The member for Southern River’s uncle received 14 awards in the eight years between July 1934 and 1942. That included being awarded the position of Honorary Brigadier General in the SS. His final award came at the end of the war, when he was awarded 20 years’ imprisonment for war crimes. The member for Southern River has come into this chamber with a reconstructed view about how we need all these laws to stop us from becoming Nazis. That is absolute poppycock. The real situation is that the effect of these laws will radically change the relationship between the citizen and the state. As I have said, I do not understand what law and order means. It is just a hollow chant. What I do understand, and what I have learnt in law school and in the practise of the law, is something that the government has never mentioned—the rule of law. We in this chamber should be doing our utmost to protect the rule of law. From the rule of law springs the fountain of freedom and democracy. The rule of law is what my father fought for in the Second World War as RQMS of the 2/2nd Anti-Tank Regiment. What my father fought against in that war was totalitarianism.

This legislation provides that the Commissioner of Police of the day can ring the Minister for Police in the middle of the night, without any document being signed, and without any reasons being given, and ask the minister to give him approval to change the law to declare Rokeby Road, Subiaco, a prescribed area, and to give his officers the power to detain people and to carry out basic searches. That is totalitarianism. If we need any further proof of that, we need only go to proposed section 70B. That provides in subsection (4)—the reconstructionist revisionist from Southern River would not have read this far —

The Commissioner must make a written record of such a declaration and —

- (a) the area to which it applies; and
- (b) the date and time on which it was made; and
- (c) the period for which it will be in force, which must be no more than 2 months; and
- (d) the reasons for making it.

This written record does not need to be made contemporaneously with the making of the order. It can be done subsequently. Subsection (5) provides —

The Commissioner must publish the written report of the declaration in the *Gazette* as soon as is practicable after the declaration is made, —

That all seems to be open and accountable. But it is here that we find the protection for totalitarian law. It goes on to say —

but the validity of the declaration is not affected by a failure to comply with this subsection.

Therefore, even if the declaration does not comply with the law, that does not mean that the declaration is invalid. That is woeful.

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The leader of government business in this chamber has said that Labor must change its spokesperson on this legislation. Why did he say that? He said that because he is concerned that the comments that I made earlier, in which I described this law as being fascist, could be perceived by the media as being at odds with what the shadow police spokesperson was saying at the time. Nothing could be further from the truth. The real truth was noted by “Sketch” in last Thursday’s edition of *The West Australian*. The real truth is that this law—which is about civil liberties, and which will change the relationship between the state and its citizens—would ordinarily be the province of the Attorney General of the state of Western Australia. This law was introduced into Western Australia by the previous Attorney General in the Criminal Investigation Act 2006. However, for some mysterious reason, the carriage of this bill in this chamber has been given not to the Attorney General of this state, but to the Minister for Police. All we have heard from the Attorney General on the extreme laws that will be introduced in this bill is silence. The Attorney General has deafened us all with his silence in this chamber. The Attorney General has not come into this chamber and sought to support the draconian provisions in proposed section 70B. Those provisions will allow the Commissioner of Police and the Minister for Police to change the relationship between the citizen and the state, in the dead of night, without one document being signed. Under those provisions, it will not matter if the Commissioner of Police and the Minister for Police have failed to publish the declaration in the *Government Gazette*. It will not matter if they have failed to tell the people. The declaration will be valid anyway, even if the legislation has not been complied with.

The Attorney General has not uttered a breath in support of this law; not a breath. I suggest that the Attorney General for Western Australia does not want to touch this law with a barge pole. That is why Labor was wrong-footed, because, as the government Whip would know, this has all the hallmarks of a Ted “Square” Kilmurray flick pass that was outlawed because it was illegal. The Attorney General flick-passed the legislation across to the Minister for Police because he did not want to sully his reputation by coming into this chamber seeking to justify this extreme, unjustifiable law, which, for the reasons I have already pointed out, amounts to totalitarianism by changing the law in the middle of the night, in a heartbeat, on a nod and a wink—“That’s okay, Commish. You can change the law in Rokeby Road in Subiaco.” Bang—done.

I challenge the Attorney General to come out of his office and come into this chamber to tell the people of Western Australia the legal justification for this. The Attorney General has got too many street smarts for that, because one of his guides and mentors is the former Minister for Police in Sir Charles Court’s government, Mr Hassell. Mr Hassell got roped in to bringing in an extreme law under section 54B of the Police Act to control the population by saying, “If three or more people are caught talking on a street corner, we can arrest them”. That blighted Mr Hassell’s career for the rest of time.

[Member’s time extended.]

Mr J.R. QUIGLEY: Mr Hassell was then the Leader of the Opposition and sought to become Premier. He sought to make valid criticisms of the then Burke government. Who will ever forget it—on the back of a truck in Fremantle with a hat with some corks hanging around it. He said that the Labor Party was being funded by big business to come back into power. Even when he was saying that, the people of Western Australia would not wear him as their Premier because they had seen Mr Hassell as Mr Extreme on section 54B, and he had forever despoiled himself.

I suggest that the Attorney General will not come into this chamber and speak in support of this bill because he does not want to have his dance card marked so early in the game as totalitarianism. We wait to see what the Attorney General says in support of section 70B(1), (2), (3), (4) and (5).

It is true that section 70A involves the Parliament because it involves regulation. Prescribing Rokeby Road under section 70A is not a middle-of-the-night job like the offence of section 70B, but, rather, section 70A requires the tabling of regulations in Parliament. As the government has pointed out, and as the Premier and the Treasurer have pointed out in relation to the shopping hours debate, they can do that and change the law by, on the last day of parliamentary sitting in this current session, coming in and laying a regulation on the table that changes the whole tourist precinct until a motion of disallowance is passed. No-one will have the opportunity to debate that, as the Premier points out, until February or March next year. In relation to changing the law on this very important matter—the liberty of the citizen—it can be done in the same way. I am not saying that the minister is going to do this, but under this law the minister can come in here, lay the regulation on the table and, on the last sitting day of this Parliament, the law changes between the citizen and the state in any street that he chooses to name. He can come in here and name the metropolitan area, on the last day of Parliament, and every citizen in Perth has that law changed without them knowing. Bang—done. That is why this is offensive. Even though it would remain offensive, it would be less offensive, may I suggest, if the government came in and legislated which areas so that we could debate the areas as a chamber. I would still be voting against the law, but it would be less offensive than proclamation by stealth; which, in a democracy, is totally offensive.

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During my speech I have not used weasel words. People in the media, especially the print media, are pillars of our democracy. That was never better exemplified than in the case of Andrew Mallard. The media played a crucial role in that case. I would have gone down. It was seven years ago that I stood in this chamber and said the police were “off” and that Mallard was innocent. It was dogged journalism that saved Andrew Mallard and it may be dogged journalism that saves democracy in Western Australia. It is not by way of rhetorical flourish, it is not by way of me saying this is fascism that will win the day; what is now required is for the Attorney General to justify this bill. I am now exposed because I have made a challenge to the Attorney General to enter this chamber and justify section 70B. As I said, he has deafened us with his silence. The reporters who are reporting my speech will now know that whilst I was not allowed to speak as a spokesperson because I was not the spokesperson before today, as the member for Mindarie I have full, unbridled rein in this chamber to make intellectual and valid criticisms that section 70B is totalitarianism of the most offensive nature.

The second challenge I throw down—it might not be accepted—is that the reporters and the opinion writers, who have heard both sides of the argument as to whether these laws are justified in the form that they are, should now be writing their opinions. Whilst they were waiting with some eagerness to hear what I would say on my feet in the Legislative Assembly today, it is with equal eagerness that I wait to see what their opinions are, knowing that the rationale given for these totalitarian laws were that the laws already in place under part A division 1 of the Criminal Investigation Act 2006, that provided stop-and-search powers upon suspicion, are said by the government never to have failed. The government conceded to journalists that it has got no example of a case having come before the courts where it failed because the initial contact, the police, could not justify their suspicion.

I will tell members about suspicion. My son, Jack, who today is sitting his second-year law exams, has for the past several years, but not now, worked as the door manager of the Library Nightclub—one of the large nightclubs in Northbridge. As the door manager, he was not the muscle who threw people out; he was the person who got to call “this person is not fit to come in”. He said, “Dad, the police know the people who are the suspects in there. I can pick them, and the police can pick them, because they are always in Northbridge, these troublemakers, and the police have their suspicions.” What the police minister is telling us, and what is implicit in this legislation, is an insult to Western Australia Police. There is no other jurisdiction that has these provisions because in every other jurisdiction it is predicated by the word “suspicion”. Those jurisdictions trust that their trained police know whom to suspect and whom to search, and that has never failed in Western Australia. The government is saying in this legislation that it is not confident that the police can pick suspects. I do not buy that. The government is saying in this legislation that we have a bigger problem than is the case anywhere else in Australia; we have a bigger problem than in Fortitude Valley in Brisbane, in Kings Cross and on the streets of Fitzroy. I do not buy that that is Perth. The government’s argument for this legislation is predicated on inducing a state of fear that, without these laws, we are on the slide to anarchy. That is exactly the same argument that the nephew of Otto Abetz, the member for Southern River, argued: that is why Nazi Germany had to have totalitarian laws to stop anarchy. My god, that was all said within 15 metres of the roll of honour —

Several members interjected.

The ACTING SPEAKER: Members! The member for Mindarie has the call.

Mr J.R. QUIGLEY: The member for Southern River, the nephew of Otto Abetz, made these comments —

Point of Order

Mr C.J. BARNETT: It is unparliamentary for the member opposite to use personal accusations like that. We know what he is doing. It is a deliberate attempt. It is unparliamentary. It is probably not against standing orders, but it is clearly unparliamentary.

The ACTING SPEAKER (Ms L.L. Baker): I do not think there is a point of order, Premier. I think we need to return to the debate. I ask the member for Mindarie to please use the member’s correct title.

Debate Resumed

Mr J.R. QUIGLEY: I did; I never mentioned his name. In debate, in support of this —

Mr C.J. Barnett: Are you going to give another personal explanation tomorrow for this effort?

Mr J.R. QUIGLEY: In debate members opposite cited Nazi Germany and what happened in Nazi Germany as an —

Several members interjected.

The ACTING SPEAKER: Members! The member for Mindarie has the call. Will members please let him finish.

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Mr J.R. QUIGLEY: The member for Southern River cited what happened in Nazi Germany as why we now need these laws. Nazi Germany had to have extreme measures because of the anarchy in Germany. What a load of codswallop!

The commentators are the last stand because the government has the numbers. I have not heard from the Attorney General in support of these laws. This is not a challenge to the commentators, but I invite them to look at the provisions of section 70 and then consider the government's argument and give an opinion, either for or against, of the proposition that I am putting that these provisions are totalitarian, have gone too far and provide for extreme circumstances to happen in the middle of the night without citizens ever knowing that their rights have been so greatly changed between the state and the citizen.

The ACTING SPEAKER: Members, if you are going to speak in the chamber, you need to speak from your own seat and call for an interjection, member for Darling Range.

Mr J.R. QUIGLEY: What will happen to the people who come to Perth from other places and walk down the street? Will there be signs warning them that this is a public search area? What will happen when it occurs in the middle of the night? Will there be red flashing lights to indicate that people are now entering a public search area? I know that a lot of people do not care about this issue, but what I extol is that the first and foremost principle that we must protect in this place is the rule of law, which has a separate legislature that makes the laws, a separate police force that enforces the laws and an independent judiciary that judges between the state and the citizen. For those reasons, these laws are offensive and I am totally opposed to them.

MR P. PAPALIA (Warnbro) [1.24 pm]: In rising to oppose these draconian laws, I respond to and acknowledge the comments made by our lead speaker on this legislation last night when she said that it was unhelpful to raise the spectre of fascism and totalitarianism in relation to this legislation. Although I deeply respect and admire our lead speaker, the member for Girrawheen, I beg to differ. It is my opinion that not only is it helpful to raise totalitarianism and fascism in relation to this law, but also it is essential that we appreciate the nature of the laws that those regimes imposed on the people of the countries in which they were enforced and utilised. I acknowledge and admit up-front that this legislation is not the legislation that threw innocent people into Stalin's gulag. This legislation is not the legislation that threw innocent people into Nazi concentration camps. I acknowledge that.

Mrs L.M. Harvey interjected.

Mr P. PAPALIA: I tell the member for Scarborough that this is the legislation that came before that legislation. This legislation started the roll down the hill. This legislation enabled the legislation that subsequently imposed fascism on Germany and Stalinism on Russia. It is essential that we consider totalitarian societies when discussing this legislation. Some of my colleagues during the debate last night talked of Hitler's Germany, and so did the member for Southern River; others talked of Stalin's Russia. I do not intend to draw on those particular examples. Instead, I will talk about a personal experience of living under a totalitarian regime that was every bit as oppressive and evil as either of those two regimes.

Many members may be aware that I served in the Iraq war in 2003. That is recorded on the honour roll, and I am proud of it. But it was not my first operational service in Iraq. I served in Iraq in 1992 with the United Nations in a multinational force using explosives to destroy chemical weapons. This was when Iraq had weapons of mass destruction. It had bombs, missiles and rockets which were filled with chemical munitions, such as mustard and sarin nerve agent, and which had been subjected to strikes from the coalition during the war and were left in the desert in extreme temperatures for more than a year. Subsequently, we were called upon to deal with this ordnance. In the course of doing that task, while living inside Saddam Hussein's Iraq when he was in total control for seven months, I had the opportunity to witness a totalitarian police state in action. I had the opportunity to suffer the extreme behaviour of a police force unfettered by the rule of law.

Mr C.J. Barnett: Unfettered! That is ridiculous. Read the legislation.

Mr P. PAPALIA: I am talking about Saddam Hussein's regime.

Mr C.J. Barnett: The parallels you draw are disrespectful.

Mr P. PAPALIA: In 1992, while the Premier was sitting in this place shining his backside, I was in Iraq, and I can tell him about it. In 1992, Saddam Hussein had total control in Iraq. I served six days a week in a place called Al Muthanna, where all the ordnance was moved to after the Gulf War, and we used explosives to destroy that ordnance. There was a hot line beyond which the area was contaminated. It was downwind of where most people worked.

During the course of the seven months I spent there, I found the Iraqis to be a most honourable and friendly people, and Iraq to be perhaps the most westernised of all the Arab nations I had worked in. I went out of my

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way to engage with some of the young men with whom I was risking my life daily. One of them was a bloke called Sahad. He was an explosive ordnance disposal operator, as was I. It took me months to engage with this guy, even though, every day, we were the only two people who would walk past this hot line, where all the medics, doctors and the defibrillator and emergency evacuation to fly us out to Kuwait if we were contaminated by sarin nerve agent, which could kill us in about 90 seconds if we were exposed to it, were positioned. When I was over the line with him, I tried to engage with him to try to encourage him to loosen up a bit and give me a bit of an insight into how life inside Iraq was at that time under the control of Saddam Hussein. It took me a long, long time, but I eventually elicited from Sahad that prior to the Gulf War he had been training as a fighter pilot in France; this was an intelligent young man. He was very westernised. He was not that great a Muslim because he had enjoyed a drop of red wine whilst he was in France; he loved western women and their company; and he loved Australian television programs.

After many months of conversation, I eventually reached the point whereby I could ask him why it was that a man who had been a trainee fighter pilot prior to the Gulf War and who had returned to his country, and who was intelligent and spoke clearly and articulately in English, was serving as an EOD operator with me in amongst the nerve agent and the mustard agent. The only time he would deign to talk to me about that subject was when we were on the other side of the hot line, dressed in charcoal-impregnated suits, rubber gloves and rubber boots, and wearing gas masks. He knew that the secret police were too afraid to come across that line. It was the only time he knew that was not being surveilled. He told me that the reason he was there was that he was a Shia. He said, "Paul, Saddam Hussein, he is a Sunni." He was so afraid that he spent his entire life watching his back and ensuring that the police, who had unfettered control of that society, did not detect that he may not have been entirely loyal to Saddam Hussein.

I know that government members are all saying to themselves that this is irrelevant to them, and that there is no way that laws such as these could be used in Western Australia to unfairly impinge upon disadvantaged groups or minorities and isolate them and subject them to any negative outcomes. Members opposite will be saying to themselves that there has never been evidence of that, and certainly not in the past 12 months that this government has been in office. Member for Southern River, there is no evidence that this legislation might add to other laws that unfairly impact on the disadvantaged, the minorities or the mentally ill, is there? There is no evidence of that—has the member for Southern River lost his voice? I will fill the member in.

It took six weeks to extract some information from the Attorney General, who has been absent from the chamber during this legislation debate, and who is, I suspect—exactly as the member for Mindarie suggested—intentionally absent from this chamber during this debate because he does not want his fingerprints on this absolute outrage of legislation. He does not want to have himself anywhere near this legislation. But eventually, after six weeks, he tabled, yesterday, a bit of information that the member for Southern River might want to know. I know that the member for Southern River goes out to Warburton and other places in the desert at Christmas time or whatever and hands out gifts to the poor, disadvantaged Aboriginals. I suggest that perhaps if the member for Southern River wants to see disadvantaged Aboriginals, he should visit some of our state prisons.

As I have been trying to convey for months now, there is a new situation in Western Australia. It has changed. It is true that the Liberal-National government inherited the problem of overcrowding in our prison system. I must admit, shamefully, that during the previous government's office the prison population—the muster of our prisons—escalated by a total of 750 individuals over the course of seven and a half years. I am ashamed of that. But I can tell the member for Southern River that, yesterday, the Attorney General conceded that in the past 12 months the muster of prisons in this state has escalated by 825 people. I dispute that; I think it is closer to 900, but I will accept his number. The muster has gone up by 825, which represents 22 per cent growth. It took the former government eight years to achieve 30 per cent; this government has achieved 22 per cent growth in 12 months. We know that we will be told at the midyear financial review that it will cost at least \$100 million just to accommodate them, by putting dongas in the maximum security prisons and paying for the extra accommodation and all that sort of thing, above and beyond the budget that was delivered in May. Is the member concerned yet? He is probably not.

I will tell members a little more of the information that the Attorney General finally revealed yesterday, after six weeks. Let me tell the member that a significant proportion of the growth in prison population suffers from mental illness. How many does the member think that is? What percentage does the member think suffer from mental illness—noting, of course, that the Department of Corrective Services is notoriously inept and incapable of identifying people with mental illness, and that it has been starved of funds to deal with the problem by the Minister for Mental Health? But aside from that, what percentage does the member think that this government—the wonderful defender of the rights of individuals in Western Australia—has thrown into prison the past 12 months? The answer is that 14.5 per cent of the additional people imprisoned in the past 12 months are

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flagged as suffering from a psychiatric illness. Beyond that, in answer to another question I asked, two per cent of those people are mentally disabled.

I asked for some more information. Think about this: I am constantly confronted by an Attorney General who says I am “latte light” on law and order. I am confronted by a Minister for Police who has the absolute gall to say I am soft on crime. He says that he is defending the Western Australian people against dangerous criminals. What percentage of the growth in prison population do members think is just for not paying off fines? Any guesses, backbench of the Liberal Party, defenders of the Liberal tradition of Menzies? Any guesses? I will help them out, because they should have been asking these questions of the ministers but I know that they have not been. Of the growth in prison population, 34.3 per cent is for no other reason than that people are too poor to pay their fines.

Mr C.J. Barnett: Or they refuse to pay their fines.

Mr P. PAPALIA: They are too poor to pay their fines!

Mr C.J. Barnett: Or they refuse.

Mr P. PAPALIA: Government members should think about their Liberal tradition and think about what Menzies would be saying about what is happening now. Let us think a little further.

Dr J.M. Woollard: Maybe you failed to look at home detention! Maybe this government will look at home detention!

Mr P. PAPALIA: The member knows where I am coming from on this, and that we share a lot of similar views on this subject, so she should not interject.

How many people who are part of this unparalleled, unprecedented growth in the prison muster does the member think are in prison for what is the common definition of a minor crime—an offence for which the maximum penalty is two years or less? What percentage, member for Morley? Any ideas, member for Geraldton?

Mr I.C. Blayney: What sort of minor crime would you get two years for?

Mr P. PAPALIA: What percentage do members think are in there for a crime for which the maximum penalty is two years or less? I sourced that definition from a number of learned friends of mine who have had a lot of experience in the courts. They said that if I wanted to capture that sort of crime, I should ask this question. I will tell members the percentage because I know that none of them has provided the oversight that their own electorates deserve in relation to this bogus law and order campaign that is being run by this government. The truth is that 56.6 per cent of the growth in prison population since this government took office is for crimes for which the maximum penalty is two years or less.

If that is not enough for members, the member for Southern River might want to pay attention to this: what percentage of the growth do members think is Aboriginal? Have a guess. I will tell members: the percentage mirrors exactly the outrageously disproportionate percentage of the Aboriginal adult prison population; it is 43 per cent. The national average for Indigenous prisoners is 17 per cent to 19 per cent. In Western Australia Indigenous people comprise 43 per cent of the recent increase. This government, which is the one the member is defending by attacking us for questioning this legislation, has caused an additional 43 per cent of this growth in our prisons. All that should be considered in light of what I said about Iraq. This law adds to other laws that are already impacting in a negative, unfair and disadvantageous manner on the poor, the mentally ill and the Aboriginal people in the state of Western Australia.

Mr F.A. Alban: How many of those are innocent? They are in for two years.

Mr P. PAPALIA: Will the member say that again?

Mr F.A. Alban: How many of these people, whom you want to let out, are in prison incorrectly and are innocent and are there for no reason at all?

Mr P. PAPALIA: The member has suggested that they are all guilty and that they all belong in prison. I suggest that there might be a better, more economic, way of dealing with it, noting that yesterday the independent Inspector of Custodial Services released a report on Wooroloo Prison Farm in which he commented on the entire system. He had a crack at the Labor Party for having grown the size of the prison population by 30 per cent over eight years. Notably, he did not mention anything about the growth rate over the past 12 months under the current government. I do not have a go at him for that, because he must maintain his ability to comment on and maintain a working relationship with the government. That aside, what he said was that the prison system of Western Australia is so gridlocked by overcrowding that prisoners who should be in minimum-security prisons are in high-security prisons. Let me enlighten members. The cost of incarcerating a prisoner in Western Australia

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varies between about \$60 000 and about \$100 000, depending on the classification of the prison in which a prisoner is incarcerated.

[Member's time extended.]

Mr P. PAPALIA: If prisoners are incarcerated in a higher security prison than they should be in because the prison system is gridlocked, it costs us all more. That is terrible. We have seen it upfront. The Minister for Corrective Services blew his budget by 16 per cent in six months, continuing a fine tradition of financial misadventure and malpractice by the ministers of this government.

Several members interjected.

Mr P. PAPALIA: The Premier is the chief culprit.

Several members interjected.

The ACTING SPEAKER (Ms L.L. Baker): Members! Member for Joondalup, please! The member for Warnbro has the call.

Mr P. PAPALIA: Thank you, Madam Acting Speaker. We know that it costs a lot of money, but it also costs in other ways. The Inspector of Custodial Services identified and confirmed what is common knowledge. Members can find the information by googling the consequences of prison overcrowding, which brings up all the stories from the United States, where, strangely enough, there is a lot of experience of overcrowding. One of the consequences of prison overcrowding is that the environment can be dangerous and threatening for prison officers. I stand by prison officers and defend their right to a safe workplace. This government is creating a dangerous workplace for them.

Mr C.J. Barnett: You failed to invest in prisons. You failed to build accommodation of different levels of security.

Mr P. PAPALIA: The Premier will get his turn. The other major consequence is that gridlock results —

Several members interjected.

Point of Order

Mr T.G. STEPHENS: The Premier is constantly interjecting on a member who is not inviting his interjections. The Premier will have the opportunity to reply when he finds the courage to rise in the debate. He should be called to order by you, Madam Acting Speaker, otherwise he is holding you and this house in contempt.

The ACTING SPEAKER (Ms L.L. Baker): Thank you, member. I was just about to intercede and say something very similar. Premier, please let the member for Warnbro continue, unless he accepts your interjection.

Mr P. PAPALIA: Thank you, Madam Acting Speaker, for your defence, but rest assured that I do not feel in need of it.

Debate Resumed

Several members interjected.

Point of Order

Mr P.B. WATSON: Madam Acting Speaker, you just made a ruling. The Premier is sitting over there saying that you were biased and that you were not doing the same as you did with the member for Southern River. I think he should be called to order.

The ACTING SPEAKER (Ms L.L. Baker): Thank you, member for Albany. I did not understand or hear correctly what the Premier said. I trust that he would not be as inappropriate as to say that. I ask the member for Warnbro to please pick up the debate.

Debate Resumed

Mr P. PAPALIA: The other consequence —

Several members interjected.

Withdrawal of Remark

Mr M. McGOWAN: The Premier just accused the member for Albany of being a liar. I ask that he withdraw that allegation.

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Mr C.J. BARNETT: I withdraw. I did not at any stage accuse the Acting Speaker of bias. That was totally incorrect.

Several members interjected.

The ACTING SPEAKER: Thank you, members!

Debate Resumed

Mr P. PAPALIA: The other consequence of prison overcrowding, which will be readily identified and which the independent Inspector of Custodial Services, Professor Morgan, identified yesterday —

Dr M.D. Nahan interjected.

The ACTING SPEAKER: Member for Riverton!

Mr P. PAPALIA: The other consequence, for the benefit of the learned individual the member for Riverton, who can get the report and have a look, is that when a prison system is overcrowded and a gridlock is created, apart from increasing the cost of the system, it restricts the ability of the system to impact positively on people within the system and thereby reduce the rate of recidivism. Therefore, the consequence of this much-trumpeted, tough-on-crime and law-and-order agenda being run by the Premier, and defended by the Minister for Police and even, to his eternal shame, the Attorney General, is that it will cost hundreds of millions of dollars which this government does not have in its budget and which taxpayers will now have to pay. It will also make the situation worse because when those people get out of prison, they will reoffend at a higher rate. Those are the findings of a lot of independent research, including that of our own independent Inspector of Custodial Services.

I will move on from that subject, because it is obviously uncomfortable for the Premier. I want to touch on another subject that the member for Cannington raised last night in a very articulate speech, when he spoke from the heart and referred to his anger at and, I think, a bit of sadness with some of the lines which the government has run, and which have again been run by the Premier here today. He spoke of the willingness of learned individuals, such as the Attorney General and the Premier, and other people, such as the Minister for Police, to engage in name calling, the slinging of taunts and the taking of populist lines, such as those that we on this side are somehow soft on crime.

Mr C.J. Barnett: You are. We all know that.

Mr P. PAPALIA: I am glad the Premier has reaffirmed —

Several members interjected.

The ACTING SPEAKER: Members! The member for Warnbro still has the call.

Mr M.P. Whitely interjected.

The ACTING SPEAKER: Member for Bassendean!

Mr P. PAPALIA: Would the member please just be quiet. I am going to reflect on those taunts, which have again been repeated in the house by the leader of the state and the person who is supposedly the senior statesman of Western Australia. It was a taunt thrown at me and members on my side, suggesting that we are somehow soft on crime; the implication being that we would like to see the breakdown of order in society. He is suggesting that we do not stand for the defence of our constituents from crime. He is suggesting that somehow we do not care about our constituents as much as he does. He is quite willing to engage in that populist and outrageous rhetoric. In reflecting on this taunt, I was mindful that this morning I attended a Remembrance Day service in Fremantle. I am proud to say that I was representing the Leader of the Opposition. I went to Fremantle and stood with my brother veterans, wearing my medals, and laid a wreath at the memorial on Monument Hill. The member for Fremantle was there, together with a couple of senators and many other dignitaries. I was quite comfortable walking up to and shaking hands with my brother veterans from the Korean War, the Vietnam War, Borneo and other conflicts around the world. I stood with them, because I knew what I had done to earn my medals and to have the right to call myself a veteran.

I advise the Premier, the Attorney General and the absent Minister for Police that before they engage in impugning my character and honour and again taunt me by saying that I am somehow soft on crime, do not stand up for the freedoms of Australia and do not support our society and all the good things in it against threat, they should ask themselves what any of them has done to earn the right to do that to me.

DR J.M. WOOLLARD (Alfred Cove) [1.51 pm]: Thank you, Madam Acting Speaker.

Several members interjected.

Mr T.G. Stephens: You are a scumbag, Premier.

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Several members interjected.

The ACTING SPEAKER (Ms L.L. Baker): Members, we have limited time left in this debate. I have given the member for Alfred Cove the call. Please let her take it.

Withdrawal of Remark

Mr R.F. JOHNSON: The member for Pilbara made a very unparliamentary comment in describing the Premier and I ask that he withdraw it and apologise.

The ACTING SPEAKER: I am sorry, I did not hear the member.

Mr R.F. JOHNSON: Madam Acting Speaker, I will tell you what he said. He called the Premier a scumbag. That is totally unparliamentary and he should apologise for it.

The ACTING SPEAKER: Yes. I agree. Member, you need to withdraw.

Mr T.G. STEPHENS: In deference to you, Madam Acting Speaker, I will withdraw.

Debate Resumed

Several members interjected.

The ACTING SPEAKER: Members, we have just been over this territory. Would you please be quiet and let the member for Alfred Cove continue.

Dr J.M. WOOLLARD: Thank you, Madam Acting Speaker. The Minister for Police introduced the Criminal Investigation Amendment Bill 2009 and in his second reading speech he said —

The government is introducing this bill in response to an increasing concern by government, police and the community in relation to the proliferation of weapons and the increasing number of incidences of violence and antisocial behaviour in entertainment precincts.

This bill is not clear because it does not target entertainment precincts only. I hope that the Minister for Police in his reply to the second reading debate will make it clear to the house whether the areas that can be set aside under this bill in which the police will have these increased powers will be one kilometre from a selected area, five kilometres, 50 kilometres or 100 kilometres. At the moment I believe that the whole of Western Australia could be identified.

Mr E.S. Ripper: If you support our amendments, Parliament will have authority over each and every declaration.

Dr J.M. WOOLLARD: I will look at the opposition's amendments and listen to the debate in consideration in detail. However, it is something that the Minister for Police should put on the record.

Mr R.F. Johnson: I will do that.

Dr J.M. WOOLLARD: I thank the minister for arranging the briefing on this bill that was given to members by WA Police and his legislative officers. It was a very comprehensive briefing. As part of the briefing I was shown figures for the past 15 months concerning weapon-related offences, of which there were many. It was interesting to note that they occurred more often at particular times of the day and on certain days of the week. However, in his second reading speech the minister referred to the increasing incidence of violence and antisocial behaviour in entertainment precincts. The statistics I was shown at the briefing were for the past 15 months. It would be useful to go back further —

Dr M.D. Nahan: I have them for 10 years.

Dr J.M. WOOLLARD: The member has the statistics for the past 10 years. I was not given the statistics for the past 10 years. Therefore, I was unable to ascertain to what degree violence and the use of weapons has escalated in that time.

I support government interventions that result in a safer community. However, I have some reservations with aspects of this bill. I know that amendments will be put on the table and many of them will actually improve the bill. The bill needs to be improved in terms of both police protection and accountability and community protection in relation to these new powers.

The ACTING SPEAKER: Members, can you please keep the background noise down?

Dr J.M. WOOLLARD: I am concerned that the bill proposes to remove the requirement of reasonable suspicion. I believe that Western Australia will be the only state in Australia that does not have reasonable suspicion as a requirement. I will come to the issue—probably after question time now—that problems arose because reasonable suspicion was not a provision in the terrorism legislation that was introduced in the United

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Kingdom in 2000. There have been several changes to that legislation because “reasonable suspicion” was not inserted in the original legislation and, as a consequence, the UK experienced problems.

Mr M.P. Murray: Member, do you realise that under this legislation the kids in the public gallery could be pulled up and searched?

Dr J.M. WOOLLARD: Yes, I am concerned that this bill is taking away the requirement of reasonable suspicion.

I will refer to some case law later. I asked the police for examples of cases in which a lack of reasonable suspicion was used by the courts to not proceed with a case. I have not been given those facts, but I have found some cases that were allowed by courts to proceed on the grounds of public policy, even though the police were found not to have had reasonable suspicion. Again, because of the case law that exists there are concerns about the powers that this bill will give to the police and the effect that will have on the community.

In general terms, this bill will allow police officers to stop and search a person or vehicle without having to prove that they have a reasonable suspicion that it is necessary. As I said previously, not having to prove reasonable suspicion reverses a fundamental principle in that no suspicion of wrongdoing is required. We will be the only state in Australia in which the police are able to stop and search people without having to prove reasonable suspicion.

During the debate last night members referred to the Convention on Civil and Political Rights. Article 17 of that convention states —

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence —

Debate interrupted, pursuant to standing orders.

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