

CRIMINAL INVESTIGATION AMENDMENT BILL 2009

Second Reading

Resumed from 14 October.

MS M.M. QUIRK (Girrawheen) [9.15 pm]: It is a well-established and age-old legal principle that the power to search, whether persons or premises, conferred on police is circumscribed and should be used judiciously on all occasions. In the use of these powers, it is the rule rather than the exception that the trigger that authorises such a search is the existence of reasonable grounds to suspect the commission of an offence. In the bill before the house we are asked to abandon these well-established and tested principles and, in their place, to act on trust to a large extent. We are travelling in uncharted waters.

The bill permits police officers to stop and search individuals in prescribed or gazetted entertainment areas without warrant. These searches take place in the absence of the customary reasonable grounds to suspect. The search permitted is a basic search, which is a pat-down frisk search, and I understand the use of metal detectors is permitted. The power to search extends to a motor vehicle of the person searched within the prescribed area. Police can seize anything found that affords evidence of the commission of an offence. Also, somewhat unusually, it permits the seizure of items that an officer reasonably suspects do or may endanger the place or people who enter the place, irrespective of whether there is any nexus to the commission of any offence under the criminal law.

The bill also permits the Commissioner of Police, with the approval of the minister, to declare an area without prescribing it in regulation or gazetting it. The stated rationale for this is that if intelligence is received, it enables police to quickly respond without the attendant delays created by gazettal. However, there are no criteria listed in the bill setting out the circumstances when this can and should occur, nor are any circumstances listed that could constrain when this could occur. The bill also contemplates a statutory review, but only after five years of operation.

I say that the suggested regime is highly unusual, and before going to the specific clauses of the bill, as well as provisions I believe have been omitted from the bill, I want to look at other acts under which police routinely exercise the power to search individuals, and in particular the basis upon which a search is authorised. Under section 33 of the Criminal Investigation Act 2006, officers are authorised in a public open area to search when an officer reasonably suspects that there is a thing relevant to an offence or that a person against whom an offence may have been or may be being committed is in a public open area, then the officer may exercise in the area any of the powers that could be exercised under a search warrant if it were issued in respect of the area for the purposes of searching it for the thing or person. That is under the Criminal Investigation Act 2006. That is search in a public place. Again, it hinges on the notion that there is a “reasonable suspicion”. Similarly, under section 38 of the Criminal Investigation Act 2006, if a police officer reasonably suspects that it is necessary to do one or more of the following: to prevent a vehicle from being used in the commission of an offence, to aid or facilitate the commission of an offence, to provide the means for an offender to leave the place of the commission of an offence and so on, again, “reasonable suspicion” exists.

Under section 39 of the Criminal Investigation Act 2006, an officer, if he reasonably suspects, can search a vehicle and look for things relevant to the commission of an offence; if he reasonably suspects that a vehicle is carrying a person against whom an offence may have been, or may be being, committed, or that an offence is about to be committed, he may stop, enter and search the vehicle. Again, the expression “reasonably suspects” is used. Section 41 of the Criminal Investigation Act 2006 sets out the circumstances in which a police officer can apply for a search warrant. Under section 41(3)(b), the officer must set out certain details in the application for a search warrant. He or she must state the offence that is suspected to have been committed or that is suspected may have been committed in relation to which a search warrant is wanted. He must also state the grounds on which the applicant suspects that the offence has been committed and, furthermore, the grounds on which he suspects he may find certain items or certain evidence in the execution of that warrant.

Section 68 of the Criminal Investigation Act is headed “Searching people for things relevant to offences”. Under section 68(1), if an officer reasonably suspects that a person has in his or her possession anything relevant to an offence, the officer may do a basic search or a strip search of the person or may, subject to section 146, seize anything relevant to an offence. It says under section 68(2) that for the purposes of exercising the powers in subsection (1), the officer may enter any place where the person to be searched is reasonably suspected by the officer to be and search it for the person. It then restricts the entry onto premises without warrant.

Section 69 is interesting in the current context. I understand that the member for Mindarie might be talking about this later. In fact it is analogous in some ways to what is sought, although much narrower than what is sought,

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under proposed section 70B. Under section 69, a police officer may—in a public place, if that place is prescribed; if the place is the subject of a written declaration; and, wait for it, if the officer reasonably suspects that it is necessary to exercise the powers for the purposes of safeguarding the place or people who are in or may enter the place—do certain things subject to him making records. Although it is a broader power, there is still this reference to a “reasonable suspicion”.

Under the Misuse of Drugs Act, the relevant sections are sections 23 and 24. They set out the powers of police officers when things are being suspected of being used in the commission of an offence or that provide evidence of an offence. Under section 23, for a search to occur there needs to be reasonable grounds to suspect that anything whatsoever with respect to an offence which has been or is suspected to have been committed, which has been or is suspected may have been used for the purposes of committing an offence, and so on. Under the Misuse of Drugs Act, the language is “reasonable suspicion”.

In the granting of a search warrant under section 24 of the Misuse of Drugs Act, the justice of the peace to whom the application is made must be satisfied, after the applicant has given the information on oath, that there are reasonable grounds to suspect that there may be, on any vehicle or premises to which the officer wants to search, things that evidence the commission of an offence under that legislation.

Interestingly, under the Road Traffic Act there are certain powers to stop people when it is believed traffic offences have been committed. I will come back to that shortly. Under the Road Traffic (Administration) Act 2008, officers can search vehicles for compliance purposes; that is, compliance on mass, dimension or loading requirements—in other words, heavy vehicles—to determine their compliance with obligations under the act. This is unique of all the sections I have talked about because there is no requirement that there be any “reasonable suspicion” that an offence has been committed.

What can be seen from all these provisions is that the preponderance of these powers, in all these various pieces of legislation, carries the necessary requirement for there to be some suspicion that an offence has been committed.

In 2005, when I was parliamentary secretary to the Premier, I was involved with another piece of legislation that I think is pretty relevant in the present context—that is, the Terrorism (Extraordinary Powers) Act. That act obviously followed the events in New York on September 11, and those in Bali and London. That act was described as wide-reaching and very broad; other people described it as draconian. In fact, it sets out the issue of a warrant by the police commissioner so that a certain area can be declared as being relevant for the purposes of the commission of a terrorist act. Persons the target of those investigations, or vehicles, or things used in the commission of that terrorist act can be sought. Even in that legislation—which was seen as being far-reaching, draconian and unlike anything that we had seen up to that point, and which talks about the commissioner issuing a warrant that authorises police officers to exercise certain powers—the commissioner must not issue such a warrant unless he or she is satisfied about certain things. He must be satisfied that there are reasonable grounds to believe that a terrorist act has been or is being or is about to be committed, and that the exercise of the powers set out in the act would substantially assist in either preventing a terrorist act, minimising the risk to health or safety of the public, finding a person who is the subject of terrorist investigation, finding a vehicle that may be connected with a terrorist act, or carrying out investigations. Even in that context, which, as I said, is generally held to be very unusual and far-reaching legislation, people have to exercise some thought and satisfy themselves that there is a reasonable suspicion that the activity that has been proposed will afford evidence of the commission of an offence.

Section 13 of the Terrorism (Extraordinary Powers) Act 2005 sets out when a person can be searched. Subsection (2) says that if a police officer reasonably suspects that a person is about to enter or is in or has recently left a targeted area, is a target person or is in a target vehicle, the officer may do a basic search or a strip search on the person for the purpose of a thing connected with a terrorist act. If we compare that provision with the Criminal Investigation Amendment Bill 2009 before the house tonight, there is no actual specification of what exactly is being searched for. There has been discussion during the second reading debate about weapons and drugs, but it is by no means clear what will be being searched for under these powers. I make that comment as a general observation. We are conferring very wide powers, but I am not altogether sure what it is that the minister, in the conferring of the authority to exercise these powers, is hoping to find.

I am sorry to have taken up the time of the house canvassing some of these issues, but I think it is very important to realise there is a common theme running through most of the legislation I have referred to, it being that there is some objective basis for the exercise of power, there is some nexus to a contemplated offence, and there is a restriction on what can be seized. They need to be things that are linked either to a suspected offence or another offence. On the periphery, in some cases it is also to prevent the commission of an offence or to preserve public safety.

Extract from Hansard

[ASSEMBLY - Tuesday, 10 November 2009]

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As I have said, even these provisions have some objective criteria in them that can be judged after the event. It is well known that because of the need to respect the integrity of individuals and to respect private property, courts have always interpreted those provisions very strictly. This bill, however, will allow that the mere presence of a person in an area will justify a search. I digress for a moment to say that it is not unknown that even when powers are conferred, police will depart from, or expand on, those powers, even though, as I said, we know that the courts interpret such powers very strictly, not liberally, and they should be, if members like, followed to the letter of the law.

Some of these informal expansions of the power to search, I believe, are incredibly problematical. I will refer to a couple of instances that have been within my direct experience. Some years ago—it was maybe a couple of years after I became a local member—there was an issue with a gang known as the Scorpion Boys. A lot of these kids were of Vietnamese origin, and many cars in my electorate were stopped and searched merely because the drivers were young Vietnamese men. There was absolutely no basis for any suspicion—reasonable or otherwise—to be formed, other than the fact that the drivers of those cars were young Vietnamese men, as were many of the kids in the gang. I had some robust debate with the police superintendent in the area at the time about whether the police were empowered to conduct those searches. I am very pleased to say that those searches desisted, but that is, I think, a very small example of why we need to be very vigilant when we confer such powers.

The second example that I want to talk about is something that has bothered me for many years, and about which I have never been given a satisfactory answer. It is in relation to the very public searches that are usually conducted under full media scrutiny and in the glare of the media, and that is the bikie runs, whereby bikies are routinely stopped and searched. I am not sure that the police have the power to do what they do in those circumstances, because what reasonable suspicion do the police have to permit them to undertake those searches? The fact that those bike riders may be wearing bikie colours does not, of itself, I believe, lead to a reasonable suspicion that a particular offence has been committed. It is my view that there are real problems with those kinds of searches as a matter of law, yet the police are sufficiently confident to actually invite the media and camera crews along to film them doing what I actually think is an unauthorised search. I make that point to highlight that we need to, with this bill and other instances where these powers may be used, be very careful that we go back to first principles and ask whether the powers exercised are authorised to be undertaken. As I said, in those two instances I do not believe the powers existed.

I want to ask a couple of questions about the specific powers conferred under the bill. The minister might be able to answer them by way of interjection. Firstly, I think the search procedures are a little short on detail. There is a definition of a basic search, which is set out in more detail in sections 70 and 71 of the Criminal Investigation Act 2006. As I understand it, that, of course, will apply to these new provisions. Section 70(2) of the Criminal Investigation Act states that during a basic search the searcher must —

- (a) identify himself or herself to the person;
- (b) inform the person of the reason for the search;
- (c) request the person to consent to the search; and
- (d) if the person does not consent to the search or withdraws his or her consent, inform the person that it is an offence to obstruct the searcher doing the search.

And section 70(3) states —

If a basic search or a strip search is done of a person —

- (a) it must be done as quickly as is reasonably practicable;
- (b) it must not be any more intrusive than is reasonably necessary in the circumstances;
- (c) the searcher, if he or she proposes to remove any article that the person is wearing, must tell the person why it is considered necessary to do so;
- (d) the person must be allowed to dress as soon as it is finished;
- (e) the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized ...
- (f) the person must not be questioned while it is being done about any offence that he or she is suspected of having committed.

Section 71(2) of the Criminal Investigation Act sets out additional rules, and is of particular relevance to this bill in that —

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The searcher must, if practicable, be a person of the same gender as the person being searched, unless the searcher is a doctor or a nurse.

Section 153 of the Criminal Investigation Act states that a person has to comply with any orders given by the searcher during the search, and will be liable to a fine of up to \$12 000 or 12 months' imprisonment if he or she does not comply.

There are some issues that I think are not covered by the description of basic search and the protections. If we are talking about how this legislation will operate in areas such as Northbridge and Fremantle—clearly, it will cover areas other than Northbridge—they are particularly multicultural areas, and section 10 of the Criminal Investigation Act has provisions related to non-English-speaking subjects of searches. I am foreshadowing an amendment I will move that in the context of Northbridge, in the context of other multicultural communities, in the context whereby many of the people being searched may be non-English speaking, special provision needs to be made. That is especially important in the situation of these people being searched who are not suspected of committing any criminal offence whatsoever, and who will be genuinely perplexed as to why they are being searched. It is not unreasonable that additional provisions to that which exist in section 10 should be included. For example, it may well be possible to provide to the person being searched a card, pamphlet or document that sets out, in a number of languages, the reason for the search and his or her rights and obligations under the act. Similarly, when we had a briefing on this bill, we were told that it was likely that the names and addresses of all those persons searched would be sought by police. The reason for that was that if there was any issue after the event about the propriety or otherwise of the search from an internal affairs or an integrity perspective, those records would be on hand about when and who conducted the search, and who the person was who subsequently complained.

I believe that puts the search in a different context, because it very much slows it down and it is no longer necessarily routine. People might have legitimate reasons for not giving their name or address which are not related to criminal offending behaviour but which may relate to other privacy issues. Again, although that is not prescribed in the legislation, it is seen as a procedural requirement that may make it easier for the purposes of police record keeping. However, that, to me, adds another layer of intrusion that, given that we are not talking about suspected offenders, may well not be appropriate. I would like to hear from the minister about whether there will be any added protections when children or minors and people with intellectual disabilities are searched.

In other jurisdictions in which similar operations are conducted, there is certainly an issue that ethnic profiling occurs. I would be very keen for the minister to advise us of the measures that will be put in place to ensure that these laws are applied equally and equitably, and that the outcome of the application of the laws will not enshrine systemic racism. It is very important that laws of this kind are not seen to be targeting one particular group or other, especially if they are already marginalised.

Similarly, the enforcement of this legislation will require, from a police perspective, some degree of public relations. I believe that sometimes—I am generalising, I know—the more experienced police officers, those who have seen a bit of life and have a bit of wisdom, may have better PR skills than some of the younger, less experienced officers. I would like some guidance on what the minister contemplates will be the level of seniority of officers undertaking the searches, whether he contemplates that it could be a role for auxiliary police down the track and whether the police will be armed. That is a relevant point. For example, if we are talking about people from other jurisdictions and other countries who are walking down a street in Fremantle, Northbridge, Subiaco or Leederville, or on Bay View Terrace or wherever these laws will apply, having an armed police officer search them for no apparent reason would for many of them be quite disarming and distressing. I believe that is also a matter that we should look at.

I am not sure whether anywhere in the Criminal Investigation Act it is contemplated that passive drug dogs will be used, for example, in the conduct of a search. Again, there are cultural reasons whereby the use of dogs for some groups is somewhat problematic. How will this be resolved?

Mr R.F. Johnson: Drug dogs are used at the moment.

Ms M.M. QUIRK: Passive drug dogs are used, but, as I said, it is a different situation. In that situation, it is for functions such as the Big Day Out where search is permitted as a condition of entry. It is part of the conditions of a contract that when people go to these concerts, they may well be subject to that sort of scrutiny. I am not sure that walking down the street is necessarily in the same category.

What we are talking about is proportionality. What is it that we are asking to be fixed by this legislation? What are we trying to prevent from happening? Are these laws the most effective way and the most proportional way

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of meeting what we see as the threat and the offending that we are trying to prevent? Similarly, I think it is a system under which displacement could occur. For example, if people are aware that this scrutiny may be used in a certain place, they may well move to another area. Then we would effectively end up having to gazette that area. Before we know it, the whole of the metropolitan area would be gazetted.

I will deal with Northbridge. I have seen the Premier's press release and I have seen the grabs on Channel Seven. I have heard the discussion on talkback radio between the various commercial interests and the police and others. I am not sure that we are really thinking holistically about what we need to do in somewhere like Northbridge. Things like designing out crime need to be much more readily deployed. For example, there has been a suggestion about better street lighting and closing off some of the roads at certain times so that people can move about more freely. Business activity could be increased during the day so that people are much more willing to go to Northbridge during the day. It should have a much more diverse business profile so that there is always passing trade, and it is not all of one kind; they are not all people who are there to get drunk, with the attendant problems that follow from that.

When we had the briefing, there was also an issue about the times that would be gazetted for the operation of these powers. We were initially told somewhere between 6.00 pm and midnight. My view is that that is far too broad and would catch people who are not really those whom this legislation is purporting to deter and prevent from carrying weapons. I was provided with some statistics for both Northbridge and Perth on carrying an article with intent to injure, possessing an article with intent to injure, carrying a controlled weapon, carrying a prohibited weapon, possessing a prohibited weapon, possessing a controlled weapon and carrying a controlled weapon. Between July 2008 and September 2009, the grand total for both Perth and Northbridge was 235 offences. In particular, the predominant age group of offenders was 18 to 24 years. In terms of arrests, there were two periods in which the greatest number of arrests occurred, and they were from midnight to 6.00 am, and from one minute past 6.00 pm to one minute before midnight, with Fridays, Saturdays and Sundays having the greatest preponderance of offences. I have a fair few statistics in front of me, but I want to make the point that when the opposition brought in some amendments last year in a private member's bill, we strongly emphasised that the use of such powers needed to be evidence based. I do not think that what has been produced adequately reflects the numbers of those kinds of offences, when they occur and how they occur. I believe that before any gazettal takes place, some more work needs to be done on refining and targeting what are scarce police resources so that they are used effectively. Given this background, we believe that for the legislation to be effective and for the public to have confidence that there is adequate scrutiny for what is the use of very broad powers, there needs to be a number of amendments to the bill. The first amendment, given the controversial nature of these laws, is that the time for statutory review should be reduced from five years to one year. Secondly, as I said, given the nature of the powers to be used and given that they are not founded on reasonable suspicion—I also think of people who come from somewhere other than Perth and who will be caught within the scope of this legislation and will face the prospect of being searched—there needs to be an adequate explanation, a provision for speakers of languages other than English, and an adequate way of communicating what is being done and why. Therefore, we want to enhance the provisions that currently exist in section 10 of the Criminal Investigation Act. I do not believe that we have seen why the so-called commissioner's declaration is warranted. I do not think the minister's second reading speech or the explanation we received in the briefing have adequately satisfied us as to why that is needed. We already have the power that exists in section 69, which we think seeks to do the same kind of thing, so we are yet to be satisfied on this matter and we do not believe there is any necessity for the so-called commissioner's declaration under proposed section 70B. We also seek to move an amendment to provide that the regulations that prescribe a place under the act do not come into effect until after the expiration of the period for parliamentary disallowance. In other words, we think that there should be thorough parliamentary scrutiny of these regulations before they come into force. Not having the regulations come into force until the expiration of the period of parliamentary disallowance means that we will not have a situation whereby they are gazetted and effectively enforced before scrutiny can occur. We will also recommend by way of amendment that we enshrine in regulation the procedures for the conduct of these searches in addition to the requirements already in the act under sections 70 and 71, and we also move to amend the time for which a place can be prescribed from 12 months to six months. All those things, we believe, will give the public greater confidence that these powers will be used responsibly. The amendments will give greater transparency about why a particular area has been selected and greater confidence about how a particular time for the use of these powers can be justified. They will also mean that those who are subjected to a search have a much better idea about why that is occurring.

The opposition understands that the imperative to deter criminal behaviour in entertainment areas is strong. We also understand that weapons can be readily concealed and that it is difficult to form a reasonable suspicion in such circumstances. However, we say that difficult does not mean impossible. We also believe that any powers conferred should be proportionate to the threat posed. We believe that the inconvenience, disruption and

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violation of law-abiding persons is an important consideration and we believe it is of consequence and needs to be taken into account when we consider these laws. We do not believe that the close scrutiny of the proposed laws should be interpreted as condoning criminal conduct and gang violence—quite the reverse. If the laws are a disproportionate incursion on personal freedoms of individuals suspected of having committed no crime, the amendments that we intend to move should not be interpreted as condoning criminal behaviour but rather as ensuring that those in our community who have not broken any laws are not unduly disturbed, troubled and disrupted as they go about their normal lives. We will move these amendments after serious reflection and considerable thought, discussion and debate. I warn the minister that he should not dismiss them out of hand, because he will be saying to members of the community who have some disquiet about these far-reaching intrusive laws that their opinions and their apprehensions are of little or no worth. I have to say, minister, that that would not be good leadership. I trust that the debate that will follow will be mature and that the opposition in raising what I think are very legitimate concerns and issues will not be vilified or accused of aiding and abetting violence and crime on our streets. No-one is a greater supporter of police than I am, but clear rules and laws need to exist for them as well as for us, if for no other reason than to not expose them to baseless accusations of improper conduct.

Leadership is about bringing the community with you. Irrespective of the numbers in this place, I believe that the minister still has much work to do in convincing the public that he is not abandoning centuries of legal precedent, removing well-established checks and balances, and inserting in their place a framework where the potential exists for injustice and the abuse of persons not suspected of committing any criminal offence. In exercising powers, the minister should not shy away from providing appropriate levels of scrutiny for what I think the minister should concede are highly unusual laws. In this regard, as I said, I hope that we have the opportunity when we consider this legislation to have a very thoughtful debate that looks at these powers and really assesses whether they are necessary and effective and whether they will make entertainment areas such as Northbridge a better place and a place that attracts people who want to enjoy themselves in a law-abiding and healthy way.

There has been a lot of hyperbole surrounding this legislation. There have been references to terms like fascism, totalitarianism, and Nazism. I have to say —

Mr R.F. Johnson: They've come from you, not me! You're the ones who —

Ms M.M. QUIRK: Minister, just listen; let me finish! The minister might actually agree with me for a change.

I have to say that I do not regard that as very helpful to this debate. It does not foster what I consider a cogent argument about technical issues and an examination of what I think are legitimate matters and concerns. Therefore, for my part, I hope the minister respects the fact that I have not use terms like that. But having said that, I will refer finally to Nazi Germany, because I want to finish —

Mr R.F. Johnson: Oh, hear we go!

Ms M.M. QUIRK: “Here we go!”

Mr R.F. Johnson: I haven't as yet, but I will do now!

Ms M.M. QUIRK: I want the minister to understand what our role is and I want him not to get up and accuse us of aiding and abetting gangs, violence and thugs. When I was thinking about this debate tonight I was mindful of the words of Pastor Martin Niemöller. He was speaking of events he lived through in Nazi Germany, particularly the genocide of the Jewish population. Martin Niemöller said —

First they came for the communists, and I did not speak out—because I was not a communist;
Then they came for the socialists, and I did not speak out—because I was not a socialist;
Then they came for the trade unionists, and I did not speak out—because I was not a trade unionist;
Then they came for the Jews, and I did not speak out—because I was not a Jew;
Then they came for me—and there was no one left to speak out for me.

In that vein, the opposition has spoken out because it is our duty to speak out constructively and to ensure that the laws passed in this chamber are as effective, balanced and transparent as they possibly can be.

MR E.S. RIPPER (Belmont — Leader of the Opposition) [10.00 pm]: A year ago the opposition identified the problem of people carrying weapons into Northbridge and other entertainment areas. The opposition introduced legislation into this house to deal with that issue, but the government refused to support it. A year has passed and now we have the government's response. We have discussed the response at considerable length, as

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the shadow Minister for Police outlined. We consider the government's bill to be badly drafted and to be disproportionate to the problem that we identified and to which the government has taken a year to respond.

This is what the opposition will do with the Criminal Investigation Amendment Bill 2009. It will support this bill at the second reading stage. In consideration in detail we will move a number of significant amendments. If those amendments are not agreed to by the government, we will then oppose the bill at the third reading. This is consistent with the approach that we took when we introduced the Weapons (Supply to Minors and Enhanced Police Powers) Amendment Bill 2008 a year ago. I will quote from the explanatory memorandum for that legislation as it pertained to clause 5. It states —

Provides for section 13 of the Act to be amended to include subsection 13(1a). Section 13(1a) gives police the power to stop, detain and search any person who is within a prescribed area at a prescribed time to determine whether that person is carrying a weapon or otherwise committing an offence under the Act. Subsection (1a) does not require the police to have a reasonable suspicion that the person being searched is committing an offence.

That was from the explanatory memorandum that Labor introduced to the house a year ago. In arguing for the legislation the second reading speech that we presented provided the following analysis —

As the law exists, under section 13 of the Weapons Act police must have a “reasonable belief” that a person is in possession of a weapon before they can exercise the power to search. “Reasonable belief” is a term that carries its normal legal meaning. The problem is how police can have that belief if weapons such as a machete ... are secreted. This legislation removes the need for police to have that level of suspicion and enables them to search for weapons by way of frisk or metal detector.

We have sought to be circumspect in the application of those extended powers. The vast majority of Western Australians are law abiding, and the problem of the carrying of controlled and prohibited weapons is not ubiquitous. We must balance the public's right to privacy with the need for greater effective powers for the police. We are also mindful that, were we to make the power broader, there would be a community expectation that the police would conduct random searching widely. This is extremely resource intensive and, in my view, largely unproductive.

The bill will allow police to search without warrant in certain areas, such as night entertainment areas, gazetted by regulation at specified times, to ascertain whether persons are carrying weapons. We envisage that the areas to be gazetted would be chosen on the basis of crime statistics and would be evidence based.

That was the argument that Labor put forward a year ago for enhanced police powers to deal with the problem of weapons in entertainment areas. We have seen another year of inactivity by the government. Another year has past without any action being taken on this issue. It was Labor that identified the issue of weapons being taken into entertainment areas.

Those members who have young adults in their family would not in any way condone or support the idea that people would be carrying knives, machetes or other weapons into an entertainment area like Northbridge. Those of us who have young adults in our family and who would be concerned about the prevalence of antisocial and violent behaviour in Northbridge or other entertainment areas would not condone or support the carrying into those areas of drugs, such as ice, that apparently support, encourage or facilitate violent and aggressive behaviour.

We agree—in fact the opposition first identified the problem—that there is a problem with people taking weapons and drugs into entertainment areas. This bill provides very strong powers indeed for the police. A search can be conducted in a prescribed or declared area without the consent of the person being searched and with no requirement for there to be reasonable suspicion of an offence or a matter related to an offence. These are very strong powers indeed as the shadow Minister for Police outlined. We believe that they should only be allowed in defined areas at defined times and that those defined areas and defined times must only be as authorised beforehand by the Parliament. It is very important that we have checks and balances with regard to the exercise of these powers and it is very important that we have transparency and accountability with regard to the exercise of these powers.

This legislation is disproportionate. It goes over the top. It seems to have compensated for the delay with the excessive implementation of new powers. We do not want to see these powers exercised without reference to the Parliament and without the prior approval of Parliament.

Let us think about some of the things that could happen. An Aboriginal community could be an area that is prescribed for the purposes of the use of these powers. A workplace, which is the subject of an industrial dispute,

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could be prescribed for the exercise of these powers. An entire residential suburb could be prescribed for the exercise of these powers. A shopping centre or a political party conference might be prescribed as an area for the exercise of these powers.

It seems to me that the government wants the opposition to agree to the police or government being given *carte blanche* with regard to the areas and times these powers can be used. We do not agree with that. There must be prior parliamentary authority before these powers can be used.

There are two particular matters that I want to go to with regard to the requirement that we believe should be in the legislation for prior parliamentary authority to apply. The first of these is the proposal in proposed section 70B for the Commissioner of Police, perhaps the Deputy Commissioner of Police or perhaps an Assistant Commissioner of Police to declare an area subject only to the minister's approval. That proposal would not have the matter come before a Parliament at all, unless, of course, the opposition asked a question of the minister about what the commissioner or the police had done. In the opposition's view it is not acceptable that for two months an area can be prescribed or declared for the purposes of the exercise of these very strong powers with no accountability other than a tick from the Minister for Police when the commissioner or perhaps an assistant commissioner decides that this is what will happen. We absolutely oppose the presence in the legislation of proposed section 70B.

The other point I wish to draw to members' attention is the possibility that the government could gazette a regulation and the powers could be exercised for a long period before parliamentary disallowance is possible. The day after the spring sittings of Parliament, the government could gazette a regulation declaring the whole suburb of Subiaco to be a prescribed place for the exercise of those strong stop-and-search powers. Those powers could be exercised using the power of that gazetted regulation for months and months before Parliament is able to debate a disallowance motion. The minister should think about it. If he were to gazette such a regulation at the end of November, it might well be March or April before the possibility arose of parliamentary disallowance of the matter. The opposition believes that the regulations should not come into effect while the time for parliamentary disallowance is not available. Those are two of the critical amendments that we will move. We will move other amendments but those are two of the most critical.

The opposition will support the second reading of this legislation. We agree that there is a problem with weapons in entertainment areas. We can see the need for these powers in certain clearly defined circumstances, but we do not agree with the over-the-top disproportionate legislation the government has brought to the house, nor do we agree that these powers should be exercised without explicit prior parliamentary approval.

I think this legislation is an example of what is wrong with the government's approach to law and order and crime. Essentially, I regard the government as lazy and ineffective in dealing with criminal matters. It talks tough but it takes no action. It is all talk; no action. It does not provide the resources the police service requires. The government is replacing 150 of the 500 extra police officers it promised with 150 auxiliary officers, it has withdrawn police cars, it has withdrawn mobile phones and motor cycles, and it has cut the police budget. There is worse to come for the police given the very difficult budgetary situation the government now faces as a result of the spending decisions it has made in pursuit of its deal with the National Party. There have been budget cuts for the police already, and there will be more difficulties for the police as they go about pursuing their budget for the next budget round because of the difficult financial situation that the government has in part created for itself. The government substitutes rhetoric for resources. The fewer resources the government makes available, the more it lays on the rhetoric about law and order. That is what it does and we are determined to expose the government for its laziness on crime, for the resources it is withdrawing from the fight against crime and for its tactic of replacing resources with rhetoric.

We will support the bill at the second reading stage, but I ask the government to look very seriously at the amendments we move. I think out there in the community there is a demand for more transparency and more accountability with the proposed use of these powers. That is what we are detecting in the community and that is what we think our community wants. We are standing on accountability with regard to this legislation and we will not support it unless there is full transparency and full prior parliamentary authority before these powers can be exercised.

MS A.J.G. MacTIERNAN (Armadale) [10.14 pm]: I think this is one of the most troubling pieces of legislation that I have seen come before Parliament in the 16 years I have been a member. This is legislation that will see us confronted with the spectacle of law-abiding citizens being grabbed in full public view by police officers and being stripped of their jackets and shoes and searched in public.

Mr P. Abetz: That happens at the airport.

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Ms A.J.G. MacTIERNAN: It is quite different from what happens at the airport. If the member can imagine, a person might be walking along the street and be singled out, grabbed and pushed up against a wall and have jacket and shoes taken off and a search done in full view of potentially hundreds of people in the streets of Northbridge, Armadale or Fremantle or wherever it may be. We will not know in advance whether we have ventured into an area that has been declared one of these special areas. At any time, the police commissioner, his deputy or his assistant can make a declaration in relation to this without prior warning to the public that this is the case so stay away. Even in areas where there has been a declaration, how much freedom do many people have to avoid those areas? What is their capacity? What choice does someone have who is heading home after working in a coffee shop or a bar in Northbridge? Do they leave their job? Are we saying to people that if they do not want to be subjected to this sort of search, they should not work in Northbridge; they should leave their job? What about people who live in Northbridge? Increasing numbers of people live in Northbridge and may indeed live in any of the other areas we are proposing to declare, and, as I say, without there being any way of people knowing whether they are venturing into an area that has been so declared.

Some people are arguing that, “If you haven’t done anything wrong, what do you have to worry about?” What we have to worry about is the humiliation and the personal violation that will go with such a search. I put it to members that this is a very, very different prospect from what happens at airports, for a number of reasons. First of all, everyone who is going to board an aircraft is subjected to a search. They pass through a metal detector and their bags are scanned. A certain number of people are chosen at random for an additional scan. However, there is no humiliation, no suddenness and no unpreparedness in this. People know fully what to expect; they are not singled out. There is also a question of the proportionality of this. We know that there are genuine terrorist threats around the world and the prospect of being blown up in mid-air is such that people are prepared to subject themselves to this sort of scanning process that everyone is subjected to when they go to travel on an aircraft.

As I say, this legislation will not apply to just Northbridge; it could apply to any area. We may not know whether an area has been declared. People will find themselves going about their normal business and they may be seized and subjected in this way to what will be the humiliation of a search of this order. We know the circumstances that will often prevail: alcohol will be involved, because presumably declarations will apply primarily to entertainment areas. Indeed, on the basis of the experience in England and elsewhere with terrorism legislation, a disproportionate number of people from disadvantaged or marginalised groups will probably be targeted, and their response to this targeting is very likely to be hostile. Of course, that then will escalate into violence, followed by an assault on police, which will then attract the mandatory sentence for an assault on police. When we start thinking about how this legislation might work and what in fact might happen as a result of it, we can foresee great problems with this legislation.

I want to also voice another concern that I have. I bring back the point that has been made about proportionality. There are times when we do have to curtail civil liberties because of the extreme threat that is posed to a community. We all accept that, and we have all accepted the terrorism legislation as a result of that. However, what we are proposing to inflict on the community with this bill is in my view well outside the appropriate and proportional response to the challenges we face. Once again, as the Leader of the Opposition says, we are seeing rhetoric coming in and the hang-em-high, supposedly tough-on-crime stance being taken, when in fact this legislation is very likely to lead to an escalation, rather than a reduction, of conflict and violence.

Building on that, my concern is about the police culture we are developing. We saw one troubling example of this—I think we have mentioned this before—when there was a police rally on mandatory sentencing on the steps of Parliament House. It was said at that police rally, pointing out to members of Parliament, “We know who you are, we know where you are, we know where you live, and if you don’t vote for this legislation we’ll be coming after you.” That was an extraordinary expression by police who are responsible for upholding the rule of law in this state.

Mr R.F. Johnson: Are you saying that they threatened you by saying, “We know where you live”? Is that what you are saying?

Ms A.J.G. MacTIERNAN: Yes. I think —

Mr J.R. Quigley: It was a threat.

Ms A.J.G. MacTIERNAN: It was a threat that we should not go into the Parliament and make a decision on what we believed best represented the interests of the community, and that if we did not pass the legislation they would come after us. That is what was said. It was an extraordinary thing to be said. That gives us some idea of this government that is unable to get the balance right and make intelligent, sensible decisions about how it should fight crime. We have got to fight crime. We have got to set boundaries. We all know that there are profound problems within our community. There are many people who lack any boundaries. We also know that the prevalence of drugs within the community has created a very difficult situation to manage. However, the

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response we get from this government and the response we get from the police minister is an unthinking response. It is one that says that if we add on to police powers uncritically and lengthen sentences, we will get a better result. We can see from the United States that that just simply does not work. No matter how extreme the sentences, no matter how punitive the powers and no matter how civil liberties are eroded, the murder rate continues to go up and up.

My concern is that we will generate a police culture very similar to the culture in Western Australia in the 1970s. This police minister would have been very comfortable with *Life on Mars*. This police minister would be very comfortable with the way in which police conducted themselves in the 1970s.

Mr E.S. Ripper: He is more a *Police Academy* man, I would have thought!

Ms A.J.G. MacTIERNAN: “Carry on Policing”, I think!

Mr R.F. Johnson: Do you support the member for Girrawheen’s private member’s bill, member for Armadale?

Ms A.J.G. MacTIERNAN: I am debating this piece of legislation that is before this house now. I am talking about a sort of police culture. I think our current police minister would be very comfortable in the Queensland regime of Joh Bjelke-Petersen and Russ Hinze. That sort of level of critique is the level of complexity of ideas this police minister has. Does the minister admire Joh Bjelke-Petersen and Russ Hinze and the police culture that they presided over?

Mr R.F. Johnson: No.

Ms A.J.G. MacTIERNAN: The minister does not?

Mr R.F. Johnson: No.

Ms A.J.G. MacTIERNAN: So the minister does recognise that we can potentially have these problems with the police culture?

Mr R.F. Johnson: Does that surprise you?

Ms A.J.G. MacTIERNAN: It does surprise me!

Mr R.F. Johnson: I thought it would!

Ms A.J.G. MacTIERNAN: It does surprise me. But, quite frankly—I do not like to say this—I do not believe the minister.

I am outlining my deep concerns about this legislation that is before us today. What we are doing in this legislation is creating a massive erosion of civil liberties. That erosion of civil liberties will go well beyond the mischief that it is meant to deal with. We are creating a situation in which the more marginalised members of our community will become even more hostile and alienated. We are creating a situation in which many innocent people will be absolutely humiliated by publicly having their jacket and shoes stripped off them and being frisked by the police. Many innocent people will not have any chance of avoiding that situation. The opposition is proposing to move amendments that will certainly go some way towards mitigating the problems with this legislation. However, I urge members—I know there are reasonable members on the other side of the house—to look at this bill and understand that it is not going to solve the problems that it is intended to solve. All it will do is create a deeper level of conflict and hostility and lack of respect within our society. That is the exact opposite of the path that we should be treading. This is one of the most deeply troubling pieces of legislation that has been presented to this place in the 16 years that I have a member of this Parliament.

MR A.J. WADDELL (Forrestfield) [10.27 pm]: I also want to make some comments on the Criminal Investigation Amendment Bill. Thomas Paine said, “It is the duty of the patriot to protect his country from its government.” This is a time when we need to protect our state from its government.

Mr E.S. Ripper: At least until 2013!

Mr R.F. Johnson: So did you support the member for Girrawheen’s private member’s bill?

Mr A.J. WADDELL: I do not believe it ever came to a vote.

Several members interjected.

Mr A.J. WADDELL: I do not tell members opposite what happens in my caucus. Do they want to tell me what happens in their caucus?

This bill will amend the Criminal Investigation Act to remove the necessity for consent for a search. It will also remove the necessity for a reasonable suspicion to be held by the police officer who is conducting the search. This bill will remove the requirement for reasonable suspicion. We will not have reasonable suspicion. In other

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words, a police officer will now be able to pick off any person whomsoever because of the way the person looks or because of the way the person is walking along the street, or simply because the police officer just happened to get out of the wrong side of the bed that particular morning and wants to take it out on someone. The police officer will be able to humiliate that individual and strip that individual of his fundamental civil liberties. If this bill is passed in its existing form, this will be the most fundamental single attack on civil liberties that any Parliament in this country will ever have passed. Think about that. This Parliament will be at the forefront. This Parliament will be that much closer to the sorts of regimes that we regularly criticise.

One thing that really riles me with this bill is the thought of what has been happening in this place in the past few months. It has been quite interesting. We have debated a number of really interesting topics. One of those topics is, of course, very contentious—that is, retail trading hours. The Premier tells us on this side that our view on retail trading hours is so bad that we are going to stop people coming from overseas to visit because people cannot shop after seven o'clock! Are government members going to be running advertisements that tell people overseas they can come to Western Australia, come to our entertainment precincts and expect to be tossed against a wall for looking at a police officer the wrong way? What does that do for our tourism industry? I do not think we are going to get a lot of people coming for that ride, or the kind of people that will come are not going to be that interested. This is a bill that massively exceeds the problem by such an extent that it is just inconceivable that people in a developed democracy would consider such a movement.

The Western Australian public is being sold a bit of a lemon here. People think they are getting something in return for having this right taken away from them. In fact, there is no guarantee of public safety and the streets being safer from these new search laws. This is an erosion of civil liberties. Right now, if a police officer “reasonably suspects”, he or she could search somebody. If that person refused to be searched and there was a problem, the police officer could simply take his pad out, give the person a move-on notice and away that person would go. If that person refused to move on, the police officer would have the ability to arrest.

To suggest that we need this legislation in order to stop weapons entering our entertainment precincts is absurd. Quite clearly, police officers have all the powers necessary now to remove them. Why do we need this? Why do we need to go to such an extreme? I keep coming back to that question because it is just beyond belief that we will do it.

I was doing a lot of research about civil liberties and what people have said over the years. I came across a quote that I would like to read to the house —

Our individual citizen is to have self-discipline, to have duties as well as rights, to exist not as an isolated identity but as a civilised member of a civilised society which, expressing itself through a Parliament which it has freely chosen, makes laws which bind the individual. In that sense they limit his individual freedom and control many of his actions. But in the ultimate sense they guarantee his freedom against arbitrary interference, for discipline and freedom are not enemies but friends, so long as the discipline is, under a truly democratic system of government, socially self-imposed.

We are taking that away. This is not self-discipline. This is about people walking down a street, someone not liking the way they look and their being thrown against a wall and searched for no reason whatsoever.

Mr M.J. Cowper: When did that happen to you last?

Mr A.J. WADDELL: About three months ago. I will come to that.

Mr M.J. Cowper: By a police officer in Northbridge?

Mr A.J. WADDELL: Yes. I will come to that in a minute.

That quote was in fact from Sir Robert Menzies at the inaugural Sir Robert Menzies lecture here in Perth in 1970. I think government members need to ask themselves which party they represent, because I do not believe it is the party of their founder.

As I said, this bill is a fundamental attack on civil liberties. I suppose the question we need to ask is: what are our rights as citizens? As we know, we do not have a bill of rights in Australia. Article 17 of the United Nations International Covenant on Civil and Political Rights states —

No one shall be subjected to arbitrary—

There is that word again —

or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

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I am sorry, but if somebody grabs me, slams me against a wall and searches me, my honour and reputation are being attacked arbitrarily for no reason whatsoever.

Mr R.F. Johnson: Why do you make comments like that? You know that is not the case at all. That is not even the case in the legislation. For goodness sake!

Mr A.J. WADDELL: Let me tell the minister what happened to me about four months ago. I was walking through Northbridge with some friends of mine. A person was waiting with us at the stop lights and decided to cross the road without waiting for the green man to come on. That person walked across and the driver of a car had to suddenly brake. The driver hit the horn. The person who had walked in front of the car—and I do not deny he had done the wrong thing—gave the driver the bird. The next thing we noticed was that everybody in the car piled out, grabbed this guy and slammed him against the wall. It looked fairly certain that he was in for a beating. I did not know what to do. It was one of those ethical moments when I asked myself, “Do I get involved or do I let it happen?” I decided to intervene: “Hang on, guys; this is not necessary. The guy has just had a bit too much to drink. Calm down.” The next thing I knew I was pushed away and people were screaming in my face. It was only after a minute or two that they produced their badges; they were undercover police. When I protested that they had not behaved properly, they issued me with a move-on order, and so I did. We waited a little distance away and I believe that the person who was slammed against the wall was ultimately let go. I think the police may have been worried that one day the incident would be mentioned in this place. I am not necessarily suggesting that they did anything wrong.

Mr R.F. Johnson: Did you make a complaint?

Mr A.J. WADDELL: No, I did not.

Mr R.F. Johnson: Why not?

Mr A.J. WADDELL: I did not because I did not feel it was necessary.

After experiencing an incident like that, I think to myself that it is not hard for tempers to fray; it is not hard for people to abuse power. It is not hard for a person who is slammed against a wall and who does not know that undercover police officers are trying to search him to push back and knock those officers against the wall and then, bang, that person triggers that other wonderful piece of legislation that was passed in this place, the mandatory sentencing legislation. We are giving police unfettered power to basically take ordinary citizens off the street and lock them away. I am not going to suggest what that sounds like, because I think the sort of nation that does that is fairly self-evident.

We can ask ourselves what effect this legislation will have on policy. How will it make the streets of Northbridge or any other designated area safer?

Ms M.M. Quirk: Or Bay View Terrace perhaps?

Mr A.J. WADDELL: Yes, possibly; if we get the right people, we might catch some terrorists.

I will reflect on an event that happened a year or two ago. It was an incident at the Big Day Out. I recall the furore about the police being in attendance and setting up drug bins. One girl decided that, rather than get caught with drugs, she would swallow them, and, ultimately, she died. Do we honestly believe that if we implement this stop-and-search legislation, we will curtail all activities that currently happen in nightclubs in Northbridge, or are we simply going to ensure that people, for their own safety and protection, will imbibe whatever substances they choose to take before they get there? What will happen if we end up with another Big Day Out scenario and a person takes a little too much of a substance because he does not want to be caught with it on his person? We will then have that on our conscience as well.

What will happen to the people who live in designated areas? Will they live in fear every day of being searched? How often is realistic? Let us consider some similar legislation. As I have said, this will be the worst legislation in Australia. But, of course, it will not be the worst legislation in the world. In fact, almost identical legislation exists in the United Kingdom. The UK introduced the Terrorism Act in 2000. The UK was way before its time doing it in 2000! Essentially, that act gave exactly the same powers to the Metropolitan Police Service to stop and search anybody without suspicion; they could stop and search people based on nothing. I had a look at the statistics from the British Ministry of Justice for the 2007-08 period. There was a rise of 322 per cent of black people being searched, a rise of 277 per cent of Asians being searched and an increase of 185 per cent of Caucasians being searched. Of the 8 222 people who were arbitrarily stopped and searched, eight were arrested. That is one in 1 000. Originally, this act was supposed to be used for those suspected of terrorism, but it has now become a regular power that the police use for pretty much everything. The lesson that we can learn from the British experience is that the police will use whatever tools are available to do what they think is the right thing.

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The trouble is that what the police do is not necessarily always in the best interests of the state. I turned on the television this morning and heard the police commissioner in South Africa claim that it was time his officers were given the power to shoot on sight. Are we heading in that direction? Of course, I am not suggesting for a moment that we are about to move to shoot on sight, but it is a step by step by step process I guarantee members that if they had been in this place 30 years ago and somebody had suggested that we would take away these rights from people, that we would take away the ability to walk unimpeded through our streets without the fear of being stopped and searched arbitrarily, they would have laughed. They would have said that no way would this Parliament ever consider such legislation, yet today we are. Members should ask themselves what will be debated in 30 years' time; it is one step at a time.

Mr P. Abetz: Years ago they would have laughed about the airport thing, too, I am sure.

Mr A.J. WADDELL: Quite possibly, and that is the point; we need to have an appropriate response to an appropriate threat. What is the threat? What is the fear that the government is reacting to, to take away such fundamental rights? I do not think the response is proportionate to the fear.

Mr R.F. Johnson: Where've you been for the last few years?

Mr A.J. WADDELL: I know it is the Minister for Police's thing; he is tough on crime! Yes, he is tough on crime; we get that. Everyone gets that! He is tough on crime!

Mr R.F. Johnson: You are weak.

Mr A.J. WADDELL: He will not be happy until he has built a wall around the entire state and thrown everyone in prison! We get that! But there are other important things. The opposition is tough on appropriate crime. We are tough on crime when it is a realistic crime; we are not tough on imaginary crime. I think the government is taking away rights that do not need to be taken away and should never be taken away.

I do not know whether members have heard of Blackstone's formulation, also known as Blackstone's ratio. It is the principle that it is better that 10 guilty persons escape than one innocent suffers. It is a fairly basic principle and it is certainly one I was brought up to believe; that is, it is better that 10 guilty men go free than one innocent be caught. I am sure we would all agree about that if we were talking about executing people.

What will happen with the passage of this legislation? We will start profiling, and we will see classes of people targeted by these laws. I can guarantee that a young Aboriginal youth, on any given night, will be stopped and searched. Members should ask themselves what that will do to that person's psyche. Members should ask themselves how those people will ever respect the rule of law if they are harassed and treated in that way. At its fundamental core, this law will become an entirely racist law. It will attack classes of people and it will attack ethnicities. The minister probably will not be targeted.

Mrs L.M. Harvey: With that tan, maybe!

Mr A.J. WADDELL: Sorry?

Mr R.F. Johnson: I would be very happy to undergo a search at any time if I thought other people would feel safer.

Mr A.J. WADDELL: I am sure the minister would be very happy to undergo a search; he would probably enjoy a strip search!

Mr R.F. Johnson: No, I will not, my friend! Some of your members might, but I certainly would not, but I would be very happy to have the sort of search that we are proposing, because I know that it would make Northbridge a safer place.

Mr A.J. WADDELL: That is right, because the public are being led to believe that only bad people get caught up in this and only bad things happen to bad people. That is not always going to be the case. Just because someone is not a criminal, it does not mean they will not get caught up in this.

Mr R.F. Johnson: The trouble is that bad things happen to good people; it's the good people who get knifed and shot.

Mr A.J. WADDELL: What training will be given to the police who will have this extraordinary power? How are they going to learn to exercise it with appropriate discretion? What resources will the government put into that system? I somehow doubt they will receive the proper training.

Mr R.F. Johnson: They already have profile training, you know.

Mr A.J. WADDELL: That is probably why they got me!

Extract from Hansard

[ASSEMBLY - Tuesday, 10 November 2009]

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Calvin Coolidge stated that it is much more important to kill bad bills than to pass good ones, and I suspect that is almost a corollary of the previous quote. This bill, in its current form, is an extraordinarily bad, bad bill.

Under the United Kingdom's terrorism laws, children under the age of 10 years were being searched. In fact, more than 45 children under the criminal age of responsibility—10 of them young girls—were in fact searched under suspicion of terrorism. Honestly, is that what we are trying to achieve here?

A news item on the guardian.co.uk website dated 18 August 2009 stated —

Scotland Yard said: “Stop and search legislation covers people, not ages, there is no upper age limit and no lower age limit. ... There are a number of scenarios in which a child could be searched under section 44, ie if they were with an adult who is also stopped under this power. We recognise the sensitivity surrounding these powers and are constantly looking to improve our use of the tactic.

I have a seven-year-old daughter. I cannot imagine how horrified I would be if she were stopped and searched in this way. Really, we are giving the police the power to do that. They do not have to justify themselves; no questions are asked; they will be able to do that. What kind of a society do we want to create by letting this type of law through?

I will finish with a quote from Genesis 18:23. I am not usually one to quote the Bible, but this one got me —

And Abraham drew near, and said, Wilt thou also destroy the righteous with the wicked?

...

That be far from thee to do after this manner, to slay the righteous with the wicked: and that the righteous should be as the wicked, that be far from thee: Shall not the Judge of all the earth do right?

And the LORD said, If I find in Sodom fifty righteous within the city, then I will spare all the place for their sakes.

I think there are more than 50 righteous people in Northbridge, and I think we should spare all for their sakes.

MR W.J. JOHNSTON (Cannington) [10.47 pm]: I was impressed by the member for Girrawheen's contribution to the debate because it was very considered and well put together. She also used a quote from Pastor Martin Niemöller, whom I was also intending to quote from, so I will not do that. I will use this famous quote —

All that is necessary for evil to triumph is for good men to do nothing.

That is usually attributed to Edmund Burke, but it is probably a translation from Tolstoy. Having regard to the fact that the quote is often attributed to Burke, I thought I would look up some of his quotes. Modern technology led me to a couple of quotes from Burke that are very apposite to the current debate. One such quote is —

Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.

The Minister for Police needs to think about that. Edmund Burke is considered the father of modern conservatism. He was no bleeding heart socialist. He also said a few other things that are very apposite for tonight's debate. He said, “Bad laws are the worst sort of tyranny.” He also said, “Whenever a separation is made between liberty and justice, neither, in my opinion, is safe.” That is the problem with the legislation that has been presented to the house

I am an avid student of *Yes Minister*. We can see the Minister for Police in the role of Jim Hacker. *Yes Minister* teaches us that public servants come to us with good intentions, but also with their own self-interest. The point I make is that, just because the Commissioner of Police asks for a power on the basis that it makes his job easier, that is no justification for this Parliament to consent. That is a ridiculous argument. Just because the Commissioner of Police will find his work easier, we are as parliamentarians to put aside our judgement, which is the thing we owe our constituents, and simply pass the legislation. The minister goes on the radio and says that the Commissioner of Police wants this, and we can trust the commissioner with these powers, because we have a good Commissioner of Police. Quite frankly, that is wrong. In the same way as the Liberals come to this chamber and say “Don't trust judges with discretion”, they then say that it is okay to give the Commissioner of Police discretion. How can that be? How can the government say that the Parliament must direct the judges—we cannot trust those judges?

The minister does not interject whenever anyone in this chamber makes a proper contribution. He is happy to make personal comments about people's appearance and that sort of thing, but when we scratch the surface and ask the minister to justify this excessive and unnecessary step, he falls silent, because he is incapable of doing so. There is not proper justification.

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Mrs L.M. Harvey: Will you take an interjection?

Mr W.J. JOHNSTON: No.

I will not tolerate this nonsense that people from the other side come into this chamber and say that the problem is that the Labor Party is soft on crime. There was a very good interjection from the member for Southern River. He interjected on the Leader of the Opposition and said, "You might need it for a Labor Party conference." That was about declaring a political party's conference as a place in which to apply the stop-and-search powers. That is the sort of ridiculous comment that comes from the member for Southern River. I am always entertained when he interjects in this place, because it demonstrates the absence of thought inside his head. In a moment I will quote some of the things that the member for Southern River has said in media releases and point out that what he says and what is occurring are separate issues, because they are not the things that this Parliament should do. I am not interested in, and I will not accept, being lectured by the second-raters who inhabit the cabinet of the other side of the chamber.

I make the point, because I get very upset about this, that my father fought and died for the allies. In World War II, he fought for the allies. He did not fight on the other side during the war. He did not support the fascists; he opposed the fascists. Sadly, my father died in 1965, after 20 years of illness, when I was two years old. That was reported in this place in my inaugural speech. He is buried in the war cemetery in Canberra. I will not tolerate an accusation that I am somehow not a patriot and that I am not worthy of the great duty that I have been granted by the people of Cannington. I will not tolerate for one second anyone in this chamber saying that I am soft on crime. That is a disgraceful, immature political statement. It is designed to avoid the proper scrutiny that Edmund Burke directed this chamber to do. It is designed to make it seem as though it is the headline that counts rather than the actual contents of what we are doing.

In response to the member for Forrestfield's contribution to this debate, the Minister for Police was happy to interject and say that good people get knifed and shot. With respect, nothing in this legislation will diminish the amount of crime in this state. This legislation will not have the effect that is advertised by the minister. A number of members have already pointed out that this matter will come back and bite the minister. We know that.

I will make a point now. If the Minister for Police had actually delivered on his promise to deliver 500 extra police officers to this state, rather than only 350, additional police would be on the streets to enforce the laws of the state. The minister says that this legislation is about Northbridge and other entertainment precincts. I will quote from the *Canning Times* of 20 October 2009. It states —

"It would be of great use at big events and at Carousel shopping centre on Thursday nights, where there are groups of youths and individuals that cause problems," Sgt Cox said. "These laws would make it very easy for us to stop and search for weapons ... they would be an excellent deterrent.

The quote goes on —

"I wouldn't say they're prevalent but there is evidence some people are carrying weapons."

Mr Cox said railway stations on the Armadale line, including Cannington, were crime hotspots and would be other possible target areas.

If that is the case, the minister owes us an explanation. He cannot just say, as he does on the radio, that this is about Northbridge, when the police service has made it clear that that is not what it is about. It is about the Westfield Carousel Shopping Centre on a Thursday night. The officer in charge of the Cannington Police Station has let my community know that that is what this legislation is about. That is the very point we make.

Mr M.J. Cowper: Cox is not the officer in charge of Cannington Police Station.

Mr W.J. JOHNSTON: No, that is right; he has just left. But he was at the time he made that statement, and I quite rightly, member, quoted the date—20 October 2009.

Sergeant Cox is a dedicated and hardworking police officer, and that is what he believes this legislation is about. That is his understanding of what is being proposed. If that is not what is being proposed, do not put it in the bill. Do not allow Westfield Carousel Shopping Centre to be declared a spot for stop-and-search powers. When I was an industrial officer of a union, I used to negotiate industrial agreements and my boss, the secretary, used to tell me, "Don't forget, if the employer doesn't want it, they don't need it". The point he was making to me was that often employers would say that they would not use an authority over the workers but that they still wanted it in the agreement anyway. The union's position was that if the employers did not want it, they should not put it in the agreement. An agreement should have in it only what people want to use. That is the point I am making to the Minister for Police and to every member on the other side of the chamber. If members do not want the

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Carousel Shopping Centre to be declared a stop-and-search spot, do not allow it. The amendments that the Labor Party are proposing will prevent that from occurring because they will require the police service to report to us to make sure that the police are acting within the restrictions and capabilities that we are setting. That is a very important issue. The amendments that the Labor Party is proposing are about making rubbish, incompetent and badly drafted legislation to be at least reasonable.

Ms M.M. Quirk interjected.

The SPEAKER: If the member for Girrawheen wants to interject, she will have to move to her rightful seat in this place.

Mr W.J. JOHNSTON: The question must be asked: what is wrong with asking the police to give a reason for stopping and searching someone? I said earlier that I would point out some things that the member for Southern River said in his media release on 15 October. He said about this legislation —

Time and resources are often wasted in court arguing whether the officer can justify the grounds for their suspicion and offenders are getting off on technicalities.

That is not true. There is no occasion when that has occurred—not one. The member for Southern River says that he is a man of honour, and I am not going to doubt that, but why is it that he puts untruths in his media release? Why did he say that when it is not true? There has been no occasion when that was true. He goes on in his media release to state —

The new laws would give police greater powers to stop and search people in particular areas where crime and anti-social behaviour is turning it into an unpleasant area where citizens are avoiding.

Like the Carousel Shopping Centre, which on a Thursday night is jumping so much that it is difficult to get a car park. The biggest complaint my office receives about the Carousel Shopping Centre is that people cannot park there. That is how busy the place is. What did the member for Southern River say about the Carousel Shopping Centre? He said that it is becoming unpleasant and citizens are avoiding it.

It might be said that that was not a specific reference to the Carousel Shopping Centre, but the legislation applies to the Carousel Shopping Centre and Sergeant Cox said that he will use the new powers when in the Carousel Shopping Centre. The member for Southern River has demonstrated his ignorance and his failure to do his duty as Edmund Burke directed us to do, which is to make sure that the laws we pass are proper and appropriate. The member for Southern River also said —

Known problem areas such as Northbridge after midnight will be targeted, as well as people who are carrying weapons, drugs or intending to create trouble.

Unfortunately, that is not what this legislation is about. That is what the Labor Party's 2006 legislation was about. This bill is about random stop-and-search powers; it is not about those who intend to create trouble. That is the entire point of this legislation. It will remove the need to target people who are causing trouble and give the police the right to exercise their powers in an unfettered way. That is not good law. The member also said —

We hear much about the drunken and violent behaviour that is making Northbridge a no-go zone for sensible, law-abiding citizens after about 11.00 pm on Friday and Saturday nights. This legislation will make these areas more attractive to families and also to young women out alone and enable them to enjoy themselves without fearing for their safety," said Peter Abetz.

I make the point as a family man that I am not going to take my family to Northbridge at 11 o'clock at night! That is a ridiculous comment. He goes on —

The new legislation will provide greater flexibility for the State Government and police when making a place a declared area.

That is not true; that is simply wrong. This is about the provision of authority to the Commissioner of Police. Who is the additional protection that we have? We have Jim Hacker to protect us! That is who we get—the Minister for Police.

Ms A.J.G. MacTiernan: WA's answer to Russ Hinze!

Mr W.J. JOHNSTON: I must say —

Point of Order

Mrs L.M. HARVEY: The member referred to the Minister for Police by a name that is unknown in this place.

Ms M.M. Quirk: What standing order?

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The SPEAKER: Members!

Mrs L.M. HARVEY: I do not know. Who is Jim Hacker? It is unparliamentary.
Several members interjected.

The SPEAKER: Members! I am not going to accept the point of order.

Debate Resumed

Mr E.S. Ripper: Given the minister's performance, it's a compliment!

Mr W.J. JOHNSTON: We have heard about what happens in England —

Mr R.F. Johnson: What were you saying about reflections on other members?

Mr W.J. JOHNSTON: I did not make any reflection on the minister other than to say that I do not believe he is competent. In fact, that is my solemn belief, and if that is unparliamentary, I will obviously apologise for the fact that he is —

Several members interjected.

Mr W.J. JOHNSTON: The member for Scarborough says that I cannot call the Minister for Police Jim Hacker. Fair enough, I will say that he fills the role in our chamber that Jim Hacker fills in the comedy series.

Mrs L.M. Harvey: I don't know who that is.

Mr W.J. JOHNSTON: The member is demonstrating her ignorance. How can someone come to this place and not know *Yes Minister*? I suppose that demonstrates the problem we have here.

Anyway, I downloaded a document from the UK's metropolitan police service website—I thank the member for Joondalup for directing me to this—about the stop-and-search powers in London. Under the heading “Why me?” it says a number of things and states, in part —

The police can stop or stop and search you:

- As part of anti-terrorism efforts
- If they think you're carrying a weapon, drugs or stolen property
- If there has been serious violence or disorder in the vicinity
- If they are looking for a suspect who fits your description

The point I make is that although that is a very wide set of criteria, they do not provide an unfettered right. As I have said —

Mr R.F. Johnson: Do you agree with those British stop-and-search powers?

Mr W.J. JOHNSTON: That is the point we keep making. We should direct ourselves to Edmund Burke and say, “Let us do our job; let us set up the proper procedures that we need.” If the minister comes to us, as he has done on radio, and tells us the circumstances in which these powers can be used or will be used, let us put that in the legislation. That is what we have directed ourselves to with the amendments we propose. It may well be that people can look at this legislation, even with the amendments the Labor Party proposes, and say that it is still fundamentally flawed. Indeed, I think that is probably a reasonable position to adopt. Even with Labor's amendments it would still not be good legislation, but at least with the amendments it would have some limits placed on it.

We do not need to provide unfettered powers to the police. There is always a need for accountability. I am not a young person anymore, but I know that when I was a young person, a number of times—fortunately not me—friends of mine had difficulty with the police. Sometimes it was just because of misunderstandings. It is a reality that police officers are human beings and why we have things like the Corruption and Crime Commission, as in most states, to oversight the operation of the police. The Mallard case is clearly the most obvious example of misdirected police activity. The idea that the police get it right 100 per cent of the time is ridiculous. In the same way that judges do not get it right 100 per cent of the time, no-one can suggest that police get it right 100 per cent of the time. The problem—as outlined by the member for Forrestfield—is that sometimes, when things have gone wrong, it is too late to go back. There has to be a set of specific instructions to the police service. We cannot just say to the police commissioner, “You make up your own mind and just talk to Jim Hacker.” There has to be more to it than that. The amendments foreshadowed by the member for Girrawheen go some way towards making this legislation capable of dealing with the issues that the Minister for Police says he wants to deal with, rather than providing unfettered power.

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I will finish by saying that I have two teenage daughters; one is just coming up to 18. It worries me when she goes out, just as it worries any parent. Parents want to make sure that things do not go wrong for their children. We cannot be there with them all the time; they need to grow and develop, and be adults for themselves. However, this law is badly drafted, and it will not make me feel any more comfortable. It will not give me the reassurance that every parent in this state wants.

I am not interested in the minister's dishonest name-calling—"You're soft on crime." I am not going to tolerate that for one second. People can criticise me for things that I say, but they should not allege bad attitudes on my behalf. They should not allege that I am not right for the role that Edmund Burke directed me to. Members should look at this legislation and ask not what the police commissioner wants, not what police officers want, but what is actually needed, and we should pass only the law that is needed.

MS L.L. BAKER (Maylands) [11.07 pm]: I want to make a few comments on the Criminal Investigation Amendment Bill. I was pretty horrified when I read through it and realised its intent. I did some research into the ways in which similar things have played out in other countries. I draw the example of the United Kingdom as the most obvious one, and I will make a few points about the way in which the United Kingdom has progressed with section 44 of its Terrorism Act 2000. Before I talk about that, I remind members that back in the 1960s and 1970s in the United Kingdom, there were widespread riots that culminated in the 1980s with the Brixton riots. The laws that are generally attributed as being behind that civil unrest were what used to be called the "sus laws"—basically, suspicion laws. These laws led to a dreadful breakdown of trust between the police and the community at large, and caused huge problems in Britain. Anyone who has been to Brixton and seen the social issues in that area and in other parts of London will understand that this kind of legislation can only entrench distrust and a lack of confidence in the police, and will work against building strong community relationships. Section 44 of the Terrorism Act allows UK police to stop and search people with no reasonable suspicion. It also allows high-ranking officers to designate specific areas where police can stop and search, without any reasonable suspicion, vehicles, people in vehicles and pedestrians for articles that could be used for terrorism purposes.

I have previously talked about the fact that the misuse of these powers damages the credibility of the police and undermines public confidence. It may even make further requests by the police for more legitimate sources of power much more difficult. It is vital that these sorts of extraordinary measures are used sparingly and only in terrorism-related situations. I want to also mention the disproportionality issue that several speakers have already talked about. Again, I refer to statistics from the UK, and I do so only because the statistics are factual and readily available; anyone who has a mind to can go to the internet and find out the facts and realities of the UK laws. On disproportionality, the analysis I have with me states —

Official statistics suggest that stop and search is used disproportionately, with black people two and a half times more likely to be stopped by the police than white people and seven times more likely to be stopped and searched.

That trend has accelerated rapidly in the past four years. These are not things that the opposition is making up; they are the facts that the United Kingdom has collected. They are evident for everyone to see. The analysis goes on —

... twice as many black people are not given any reason for being stopped and searched, and two out of five (compared with one out of five whites) perceive the reasons given as inadequate.

The analysis of the way in which the stop-and-search legislation is working in the UK goes on —

Following the attacks on the Twin Towers in New York, the number of persons of Asian ethnicity stopped and searched under Section 44 rose by 300 per cent in just one year — nearly three times the increase in the same year for white people. By 2003/04, Asian people were nearly three times more likely than white people ... to be stopped and searched under the ... Act ... In 2006, Asians represented 15 per cent of all people stopped under the Terrorism Act ... though they account for only 5.3 per cent of the total population.

I am drawing out those figures because we have an Aboriginal population who, if this is a racist piece of legislation that the government is trying to put through —

Mr P.T. Miles: What a load of rubbish!

Ms L.L. BAKER: Whether or not members like to admit it in this place, the direct impact of this legislation will be on Aboriginal people and on youth. That is a fact. I challenge members who sit in this place to look at the facts in 12 months if this legislation is passed. They will find that they will be the same as those in the UK and there will be a disproportionate impact.

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Mr M.J. Cowper: Can I ask a question? How do they get these figures? If a police officer sees someone in the street and searches him, is there a recording there that says, “We stopped this person and checked that they were Aboriginal or Asian or whatever”?

Ms L.L. BAKER: As a matter of fact there is.

Mr M.J. Cowper: It doesn’t exist here, so how are you going to record that?

Ms L.L. BAKER: The member did not ask that.

Several members interjected.

The SPEAKER: Thank you, members! The member for Maylands has the call.

Mr M.J. Cowper: I don’t know where you got these figures. You plucked these out of the ether.

Ms L.L. BAKER: On the subject of how the statistics are recorded, the analysis states —

Records of stops and searches can help to provide an ‘audit trail’ of how police officers interact with members of the public. However their effectiveness in terms of preventing specific crimes is less apparent. Stop and search has an overall ‘hit rate’ (ie proportion leading to an arrest) of 12 per cent overall but only half that ... for black people. The hit rate for Section 44s is much lower, with less than 0.1 per cent leading to an arrest in connection with terrorism ...

That is what this is about. The analysis continues —

This underlines the importance of ... relations between the police and the ... communities they serve. Stop and search may add to a sense of victimisation felt by innocent people ...

I am talking about people who come to our city just to walk around and have a good time. The analysis continues —

The Metropolitan Police Authority, in giving evidence to the Parliamentary Home Affairs Committee in 2004, —

That is, in the UK —

reported that the misuse of these powers had worsened racial and ethnic tensions, increased the level of distrust of the police and cut off valuable sources of community information and intelligence.

That is all I want to say about disproportionality. When I looked at how this bill might actually work in the community, I noted in the second reading speech that the Attorney General stated —

Furthermore, only a basic search of a person will be able to be conducted, which includes the use of metal detectors; the removal of a person’s outer clothing, such as hats, jackets and shoes; and a pat-down search of the person.

One aspect that immediately comes to mind is that we live in a community in which there is an increasing number of west African people and people from other countries who are Muslim and who wear face coverings. I would really like to know whether the police intend to remove face coverings and the potential impact on religious significance of this bill.

Mr M.W. Sutherland: They shouldn’t wear face coverings.

Ms A.J.G. MacTiernan: What about head scarves?

Ms L.L. BAKER: I really would have expected a little more from the member for Mount Lawley, but if that is what he wants to say —

Several members interjected.

The SPEAKER: Members!

Mr P.B. Watson interjected.

The SPEAKER: Member for Albany and member for Warnbro!

Several members interjected.

The SPEAKER: Members!

Mr P.B. Watson interjected.

Mr M.W. Sutherland: What? Don’t call me a racist!

The SPEAKER: Member for Mount Lawley and member for Albany, the call is with the member for Maylands.

Ms L.L. BAKER: Thank you, Mr Speaker.

Extract from Hansard

[ASSEMBLY - Tuesday, 10 November 2009]

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I want to refer again to the situation in Britain. The Greater London Authority, which is the governing body that runs the City of London, has been considering the powers that need to be put in place for the UK Police Service when it comes to the removal of face coverings. It has recommended that if a Muslim woman is wearing a face covering, the officer should permit the item to be removed out of public view. Also, where practical, the item should be removed in the presence of an officer of the same sex as the person, and out of sight of any person of the opposite sex. I am not sure what thought the minister has put into this piece of legislation, for want of a better word—this whatever it is that the minister has drafted—but it certainly does not cover those kinds of eventualities. This legislation is already racist. The minister has done nothing except write down a few pages of completely offensive nonsense. If the minister really wanted to do something democratic to help our police officers, he would get behind the police force and put some money into the police force, instead of cutting the police budget and taking resources away from the police. What will happen if there is a breach by a police officer? What will happen if a police office fails to abide by the rules or the standard operating procedures? Will the officer be subject to any disciplinary procedures? How will it work?

Mr M.J. Cowper: There will be a complaints resolution system.

Ms L.L. BAKER: Is that in the legislation? There is nothing in the legislation around that.

Processes need to be put in place, and they need to be well documented and transparent, otherwise this will be just another breach of human rights. It is not okay to write legislation that will be a flagrant abuse of people's rights.

Mr M.J. Cowper: What about the right to go down the street and not get punched?

The SPEAKER: Order, member!

Ms L.L. BAKER: I am sure the member will have his chance if he really wants to speak.

Mr M.J. Cowper: I am getting very frustrated listening to this drive!

Ms L.L. BAKER: Perhaps I will just go slowly and the member can really get frustrated!

Ms A.J.G. MacTiernan: You would really love to go back to *Life on Mars*!

Mr M.J. Cowper: That is where I last saw you!

The SPEAKER: Order, member!

Ms L.L. BAKER: Democracy is not about the law of the majority; it is about the protection of the minority. I remind the member of that. That is an Albert Camus statement that I remember from long ago. This is not a good piece of legislation. It will not do anything for our community. It will not help our police force. All it will do is pull apart children, Aboriginal people and minority groups in our community, and cause more problems for the police. If the minister does not understand that, he needs to get out a bit more and walk around the streets with the police, when they are trying to do their job, and try to work out how he can strengthen their credibility and the respect that the community has for them. The minister cannot do that by introducing this flagrant breach of human rights. This legislation will put the police in a very disadvantaged position. The minister needs to think seriously about this piece of legislation. It is a ridiculous attempt to do something, but it is never going to succeed.

MR C.J. TALLENTIRE (Gosnells) [11.18 pm]: The Criminal Investigation Amendment Bill poses many problems. In many ways, I would love to be able to support a piece of legislation that will rid our streets of dangerous weapons. But this legislation is not going to do that. It is not going to do that in a way that is fair and equitable. It will not achieve that. What it will achieve is serious injustice on our streets. The people of the electorate of Gosnells are absolutely appalled and disgusted by the prevalence of weapons in our entertainment precincts. Yes, they want something to be done about that. But they also want something to be done about the violence that comes from alcohol abuse in our entertainment districts. They are sick of hearing about the Barnett-Johnson crackdowns on violent alcohol-induced behaviour, when what they see are actions that still leave the pubs able to serve alcohol without serious constraint, and that leave patrons who are of a more sensible mindset and of better behaviour vulnerable to the attacks of those who are drunk and disorderly. The idea of having machetes, flick knives and even handguns on our streets is abhorrent. No-one wants that. We would love to rid our entertainment precincts of those things. Likewise in the Gosnells electorate, we would love to feel that events like Gozzy Rock—a wonderful annual event that is enjoyed by many young people in the area—are totally safe events. To achieve total “safeness”, we have to go about it in a way that will not remove the standard of rights of others that we would expect a citizen to enjoy in a modern society.

There is a rationale that says that if one has nothing to hide, there is nothing to fear. It is the sort of feeling that we have when we go through a random breath test. Members of this place would be almost pleased to go through a random breath test. Members would think, “I have nothing to fear; I am happy to be tested.” But there is

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always that nagging doubt in one's mind that maybe the test machine might be out; it might go wrong. We would be dealing with something that would be manageable. One would be able to give a reason for or demand a blood test afterwards, if there were an anomaly in the result.

The fact is that when it comes to stop-and-search procedures, we are vulnerable not to a mechanical anomaly but to failings of other human beings. With our police officers, as wonderful and as committed as they are, there is the potential that someone might be caught in an "off" moment and might go too far and provoke something that could be much more serious. It could also be a matter of choice; that is, that the person who is stopped and searched makes an irrational decision or makes a decision based on a kind of rationality that others have talked about—that might be based more on a racial profile or a sociological profile. Those are the dangers with this legislation.

The opposition will put forward amendments. Adoption of those amendments is the only way this legislation could possibly be made tolerable. I would like to focus on one of those aspects; that is, in relation to provisions that would ensure that someone who did not speak English properly was given a full explanation of his or her rights, which is essential. Indeed, I recall back in the mid-1980s, when I was first living in France, being stopped and searched on the streets of Paris. I had finished work at 3.00 am. At the time, I was employed as a dishwasher, and 3.00 am was my normal finish time, but it was still unusual to see someone walking home along the Boulevard Haussmann at 3.00 am. Therefore, I was stopped and searched. I was quite intimidated by that experience. Indeed, the undercover police officers who pulled me over did not reveal their identities straightaway. They just looked like people who were perhaps about to mug me. Fortunately, reason prevailed and there was not a more sinister altercation. The event was an unpleasant one and has given me reason to believe that such powers have to be constrained in a very strong manner. That is what the amendments to be moved by the opposition are all about.

I note there will be an amendment to ensure that the legislation is reviewed in one year, and not in five years. An amendment will also be moved to delete the so-called commissioner's declaration altogether. The bill contains the idea that the commissioner, with a quick phone call to the police minister, could suddenly declare an area to be designated as one in which stop-and-search provisions will be allowed to come into effect. Yes, we would all like to rid the streets of dangerous weapons, but the important point is how we do it. What are our priorities for antisocial behaviour? Issues such as trading in illicit drugs and, more particularly, the abuse of alcohol in entertainment districts really dominate and cause all the problems of antisocial behaviour in those precincts.

I will quote John Stuart Mill's essay on liberty, which was written in 1854. He asked the question: how much of human life should be assigned to individuality and how much to society? He was wrestling with this very issue. How much individual freedom should be traded away for what might be perceived as a benefit to the whole of society? I note that many members opposite believe in the freedoms that individuals should enjoy; they believe in individual freedom. Indeed, many in the Liberal Party would defend the right of someone to pollute the atmosphere rather than constrain that individual's pollution for the benefit of society, but that is perhaps another matter. I return to John Stuart Mill. Towards the end of his essay on liberty, he pointed out —

... a State which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes—will find that with small men no great thing can really be accomplished; and that the perfection of machinery to which it has sacrificed everything, will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.

Some of the philosophical underpinnings of our modern democracy, our parliamentary system, put emphasis on ensuring that the rights of individuals do not get lost when we try to achieve things at the societal level. We must make sure that we protect individuals, especially the weaker individuals in our society—those who are vulnerable and who are likely to be pulled over on the street and stopped and searched for no reason other than their visual appearance.

This legislation is of grave concern. Should the opposition's amendments be passed, the opposition will be supporting the bill. However, without these amendments, it would be a wholly unsatisfactory piece of legislation. I believe that we have to defend the rights of individuals and make sure that our society is free of dangerous weapons, but we need to find more effective mechanisms than just pulling over individuals. There are far better ways of ridding our streets of dangerous weapons.

MR M. MCGOWAN (Rockingham) [11.27 pm]: Every day is an anniversary of something. Today is 10 November. It is the day between two major anniversaries. Tomorrow, in half an hour, it will be 11 November, the anniversary of the end of the First World War. Yesterday, 9 November, was the twentieth anniversary of the fall of the Berlin Wall, the twentieth anniversary of the fall of communism and the twentieth anniversary of the fall of the police states of Eastern Europe. Interestingly, I have a copy of tomorrow's *The West Australian*.

Extract from Hansard

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Ms Margaret Quirk; Mr Eric Ripper; Ms Alannah MacTiernan; Mr Andrew Waddell; Mr Bill Johnston; Ms Lisa Baker; Mr Chris Tallentire; Mr Mark McGowan; Mr Peter Abetz; Mr Martin Whitely; Mr Colin Barnett

Tomorrow, 11 November 2009, is the ninety-first anniversary of the end of the First World War. Sixty thousand Australian soldiers died and 300 000 Australian soldiers were wounded in that conflict. It was a grievous event—perhaps the most grievous event—in the recent history of this land and what does the front page of tomorrow’s *The West Australian* say? Its headline says, “They fought for our freedom”. There is a range of reasons that those young men fought. I think the principal reason that most of them fought to the end of the First World War, throughout those dark years, and survived that conflict was, in their minds, to support those they were with. It is an unusual philosophy, but I think those men fought in support of those they were with. But if they, being young men, had looked deeper and thought long term about what they were doing there, and if they had thought about how Australia would be 91 years hence, I think they would have thought that freedom was one of the important reasons they were fighting. They were fighting for the freedom to be Australian and the freedom to live a life without arbitrary interference. If the survivors of the thousands who lie in the fields of northern France and Belgium and in the graves of Mesopotamia and Turkey, and those who lie on the bottom of the ocean, had to rationalise why their friends died, I think that they would rationalise that freedom was important.

What was it freedom from? It was freedom from arbitrary government. That is one of the things we must stand for. Throughout history, arbitrary government has killed a lot more people than anything else. It has caused a lot more trouble for societies than anything else in human history. The arbitrary nature of the state and what the state can do to its citizens and to the citizens of other states has caused immense problems throughout human history.

What was the other anniversary this week? Yesterday, 9 November, was the twentieth anniversary of the fall of the Berlin Wall. I remember it happening. On 9 November 1989 I was just about to finish university. Admittedly, I was a little preoccupied with my final-year law exams, but I remember watching the television on that occasion and seeing thousands of East Germans fleeing through the gaps in the wall, climbing the wall, knocking it over, and embracing those on the other side, because they were fleeing a police state. They were fleeing a state in which the police had unfettered powers in what they could do to those people who lived within the state. That is what they were fleeing. That is why they embraced the idea of a western-style liberal democracy. They embraced that because they liked the idea that people could live their lives without the arbitrary intrusion of police and state into their lives. If members look into the history of East Germany from 1945 to 1989, they will see that it was actually quite a logical successor, in a way, to what had gone before, which was, from 1933 to 1945, the Third Reich. East Germany had been through six or so decades of the arbitrary intrusion of the state into people’s lives, and people in that society fled it as soon as they had the opportunity to do so. What took place on 9 November 1989 portended the fall of all those other states that operated in that manner, whereby people were subject to those sorts of restrictions on their individual liberty. The people in Eastern European states and the states that were the former Soviet Union wanted to escape that style of government—the arbitrary intrusion of the state into people’s lives.

I happen to believe in civil liberties. When I was younger I did not realise that the things that we take for granted, such as the individual freedom to live our lives without other people, or other institutions, telling us how we have to live our lives, are important. In that period of history in Europe, in advanced countries made up of highly educated people who enjoyed a lifestyle similar in many ways to our own, it became very easy for laws to be enacted and passed that inflicted manifest injustices on people’s lives, intruding into every avenue of their daily lives. We saw it in Germany in the 1930s, in East Germany from the 1930s to the 1980s, and in Eastern Europe and the Soviet Union from 1917 and 1945 through to 1989 and 1991. One of my favourite books, *The Rise and Fall of the Third Reich*, discusses at length the early days of the sorts of laws that took away people’s individual liberties, and how they just rolled through society.

I am not suggesting that this government is in any way similar to those governments that ruled Europe at those points in time. However, I am suggesting that a law allowing people to be searched without any reason, and under which any area in this state can be declared an area in which people can be stopped and searched by the police, would not have been out of place in those countries at that time. Anyone who reads the history of that period will know that laws allowing the state and the police to intrude on people’s lives were in place in those countries at that time. That is what all those people rushing from East Berlin to West Berlin were fleeing. They were fleeing that style of life, because that was not what they wanted to enjoy. That is not the life that they wanted. I do not want that sort of life. I do not want the kind of life in my city and my state in which the police on the street can arbitrarily stop me, my wife and my children for no reason whatsoever, take off items of our clothing and search us. That is not the type of society that is Australian. That is not the type of society that these young men were fighting for.

The Liberal Party, as a liberal party, should be ashamed that it promotes laws that inhibit and attack the individual liberties of our citizens in this way. The Liberal Party once had a dominant wing that actually believed

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in the liberties of our citizens. That wing of the Liberal Party is now absolutely and completely dead in Western Australia. I do not know whether it survives anywhere else throughout this land, but in this state that wing of the Liberal Party is gone and buried. It is finished. The Liberal Party has no belief in the idea of checks and balances in government. These laws remove the checks and balances that those young men fought for. With these laws, the government is eroding the freedoms that we now enjoy. I find it incredible that the government is so determined to pursue this agenda that it ignores the basic instincts and good sense of the people of Western Australia. Most Western Australians would see that these laws and this Eastern European, East German style of government and law go against everything for which Western Australia and Australia have stood for a long time. In its rush to engage with what it thinks is politically better, so that it can claim it is tough on law and order, the government is ignoring the commonsense values of ordinary Australians. I am not afraid—I am absolutely unafraid—of saying to the people in my electorate, the electorate in which I live, that I do not want areas of my electorate roped off by law, and if people step within that area, they can be arbitrarily searched and have items of their clothing removed by the police for absolutely no reason—for no suspicion whatsoever. I have no qualms about going down to Rockingham Beach, where I live, and saying to the people on the street there, “How would you like it if a police car pulled up right now and you and your friends and family were put against that wall and searched for no reason?”

Another member raised this matter. The mandatory sentencing laws were passed. How does the government think people will respond? I am talking about middle-aged gentlemen like those gentlemen over there on the other side who go out and have a bottle of wine with their spouse on a Friday night and are then subjected to these laws. Does the government exclude the possibility that they might react in a manner that they ordinarily would never have done in their entire lives? They may cause themselves to go to jail because of the fact that an arbitrary, unfair law was put in place that provoked them into taking actions that they would never have taken otherwise. The government is promoting people breaking the law, assaulting a police officer, and therefore going to jail. They fit together.

I acknowledge that the mandatory sentencing laws will apply to a tiny proportion of Western Australians—namely, those who assault a police officer, for whatever reason. However, these laws will apply to everyone. They will apply to members of the Liberal Party branches. They will apply to family members of those opposite. Wherever they may be, they can have that situation enforced upon them; and if they react in a way which is totally out of character, but which is based upon the fact that they may feel oppressed or provoked by a police officer, they, their son or their daughter, or their mother or their father, may find themselves imprisoned. I thought it was a very good point that one of our members raised.

I have a lot of faith in the state’s police; I do. Broadly, I like police officers. I have worn a uniform in my life. It was not the same uniform as that worn by a police officer, but I did wear a uniform. I understand the concept of duty, and I understand the concept of being a member of an organisation that a person is loyal to. I understand that. I was very loyal and I was very proud of the uniform that I wore when I was an officer in the Royal Australian Navy. I was very proud of that, and I am still proud to be a reservist in the Royal Australian Navy. But does that mean that I think that organisation is infallible? No. Do I think that the police are infallible? No. Did we see an example not more than a year or 18 months ago in which 20 or so police officers—on what pretext or for what reason, who knows—took over a newsroom at *The Sunday Times* to secure the notepad of a journalist? Did we see that? Was it in our term of government? Yes. Did we have any knowledge? Did the parliamentary inquiry into that matter determine that we had any knowledge? It said no, we did not, and we did not. It came as a complete surprise to us. However, what does that demonstrate? It demonstrates that sometimes the police make mistakes. That raid showed that gross mistakes can be made without the knowledge of any people in power. What I am saying is that the police —

Mr R.F. Johnson: What was the mistake?

Mr M. McGOWAN: I should not respond. However, the mistake was the invasion of the newsroom at *The Sunday Times* by the police officers. It was a mistake. I thought that they acted in an arbitrary, over-the-top fashion. Can that happen? Yes, it can. There is no doctrine of infallibility surrounding our police. As I said, I have liked virtually all the police officers whom I have met, but do I think they are infallible? No. Do I think they could make a mistake under these laws? Absolutely.

I will conclude on this note. I think the government believes that the politics of this are with the government and that it can win the politics of the public by proclaiming this. However, I think that the ordinary, decent folk of this state who will be subject to this, whether they are working-class people, middle-class people or affluent people who live in the western suburbs, will be quite nervous about this. They will think about what these young men tried to protect. That is what they will think about. If the minister knew anything about the history of this

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country and of the events during the First World War, the Second World War or any of the many conflicts that we have served in since, and of the history of eastern and central Europe and the Soviet Union, he would know that proper checks and balances must be put in place on police or else society is on the slippery slope to something very dangerous. Anyone who describes themselves as a Liberal should understand that. The Liberal Party is not a liberal party; it is a reactionary party. Its members should think about whether they should blindly follow this course of action or start to speak out about whether this is the right thing to do. That is what they should be doing. I know that it is not the right thing to do. I know that these laws are unwarranted and unnecessary and put our state into a position in which it has never been before, and that is a position of mirroring laws that existed in nasty, totalitarian regimes in parts of the world that have no place in modern Western Australia.

MR P. ABETZ (Southern River) [11.47 pm]: I am a little older than the member for Rockingham and I remember very well the very same arguments being trotted out when random breath testing was brought in. It was said that our soldiers had fought for freedom and that we were bringing in a terrible law that would allow the police to stop drivers for no reason whatsoever. It was said that that was an absolute abomination and would be the beginning of a police state and the demise of democracy in this country. The reality is that every one of the arguments that have been trotted out by members opposite was used when random breath testing was brought in. The question is: did those people have good reason for saying that? In a sense, we sacrificed a certain amount of our liberty; that is, that we could drive down the road. The civil libertarians were saying that the police should have the power to breath test only people who were weaving all over the road or driving erratically in some other way. In other words, if the police did not have good grounds for suspecting that a person behind the wheel was under the influence, they should have no right to pull a person over. We have come to accept that as totally acceptable. Why? It is because it saves lives. Ask the family who lost their daughter Fiona in December 2007 when a drunk drove the wrong way on a freeway and killed their daughter. What would members prefer? Would they prefer the freedom of not being pulled over unless they were weaving all over the road, or are they willing to sacrifice a little bit of freedom for the sake of safety? The question that we have to ask is whether sacrificing a little bit of our so-called liberty is worth the benefits that flow from it. If I were a person who wanted to go to Northbridge, given the fact that violence goes on there at times, having to take off my jacket and have somebody quickly run a metal detector over me would be a very, very small price for me to pay for that improved safety. By the same token —

Mr P.B. Watson: And your wife and your daughter and your son!

Mr P. ABETZ: Absolutely, because their safety is more important to me than that.

Several members interjected.

Mr P. ABETZ: The important thing that we need to keep in mind is that ultimately the greatest threat to democracy is anarchy. I was born in Germany and I can still remember when I was a teenager asking my mother, who was a teenager in the time of Hitler —

Several members interjected.

The SPEAKER: Members!

Mr P. ABETZ: I asked my mother, “How come you and so many of the German people got sucked in by Hitler?” My mother said to me, “You know when I was a teenager the streets were not safe. It was anarchy, so Hitler provided security to get people to follow him. People want security more than their liberty.” That is the point. Therefore, it is always the —

Several members interjected.

The SPEAKER: Members! If you want to have conversations in this place and you do not want them to be heard by those in this place who are entitled to speak, and I am directing my comments to those behind me, I suggest that you take them out of this place before I call you.

Mr P. ABETZ: The important thing is that we need to have that balance because if we allow anarchy then people will sacrifice anything for the sake of getting their security back. What is the point of having liberty if we are going to get killed? People in South Africa live with a massive crime problem—20 000 people are murdered every year and that is considered a conservative estimate. People there would be more than willing to give up some of their liberty for the sake of not having their grandparents or whoever murdered, because safety is far more important.

Therefore, it is a balance that we need to get right but let us not go down this road of trotting out those same old arguments that were trotted out at the time of the introduction of random breath testing. Random breath testing

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has been so beneficial in reducing the road toll. Sure, we have lost a bit of freedom but it is well worth it. I put it to the house that the simple aspect of being searched with a metal detector when we go to Northbridge, or an area that from time to time would be declared as one of those special zones, is a small price to pay for the safety and the security of our people. As a pastor I have been with people who have lost loved ones through road deaths and other tragic events and I can tell members that they would do anything to get their loved ones back. They would rather give up a little freedom than to have lost their loved ones. Therefore, let us be a little more balanced in our approach. I fully support the legislation.

MR M.P. WHATELY (Bassendean) [11.54 pm]: I will begin by making a few comments in response to the member for Southern River —

Several members interjected.

The SPEAKER: Members!

Mr M.P. WHATELY: If I can be allowed to!

The argument that the member for Southern River made about random breath testing has superficial appeal but there are some significant differences that I ask the member to consider. It is actually not random. When people are breath tested they drive into a zone where everybody is tested.

Several members interjected.

The SPEAKER: Members!

Mr M.P. WHATELY: There is no capacity to single out individuals because the police do not like the look of somebody. Whenever I have driven through a random breath testing point I have been tested. It is universal. The second thing is that it does not involve the humiliation of actually being dragged out from a crowd and —

Mr A.P. Jacob: Yes it can!

Mr M.P. WHATELY: It does if people blow positive; otherwise they stay in their car!

It does not involve the humiliation of being singled out—as people will be in Northbridge and other designated precincts—partially stripped and patted down. The comparison is quite erroneous. Random breath testing was introduced in response to a real problem, not an imaginary or hyped problem. The Western Australian road toll was enormous because people were driving drunk in considerable numbers. There needs to be a more tempered debate about the safety of places such as Northbridge. We are again seeing something that conservatives have historically done in Western Australia, and it is one of the reasons that I am a member of the Labor Party. For the 50 years I have lived in Western Australia, I have been turned off by the attitude of conservatives who are always trying to scare us; it used to be our backyards that were under threat of land rights during the time of the Court government. Now it is the law and order threat. Frankly, the current Minister for Police is a joke; he is the worst of a very bad bunch. He is a likeable, affable fool, but the best thing he could possibly do as Minister for Police would be to do nothing. Whether he is Minister for Police for four, eight or 10 years, the best thing he could do for this state would be to take the pay, take the driver, get driven around, and open the odd police station with a few nice words. But he should not try to influence public policy, because he is a fool and he is putting this state in a worse position.

Withdrawal of Remark

Mr C.J. BARNETT: We let it go through once, but the member knows that it is unparliamentary to refer to a member as a fool.

Mr M.P. WHATELY: I withdraw, Mr Speaker.

Debate Resumed

Mr M.P. WHATELY: I will begin by talking about the way the police are perceived.

Mr R.F. Johnson interjected.

Mr M.P. WHATELY: The minister is likeable and affable, but I do not think anyone has ever accused him of being intelligent or of making a great contribution to public policy.

The police are held in high regard in Western Australia by all sections of society. I have an 18-year-old son who is just starting to experience nightlife and to get out and about. He and his mates hold the police in high regard. I have to say that that has not always been the case with young people; when I was his age, I did not hold the police in high regard. I will tell members why: it is because they behaved differently then. The member for Armadale made some allusions to the *Life on Mars* mentality, where anything went and the police could use their unchecked powers inappropriately. That was part of police culture in Western Australia in the 1970s and 1980s,

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when I was in my teens and twenties. They are now held in high regard for two reasons: firstly, people appreciate that they have a very difficult job to do, and in many ways it is possibly even more difficult than it was in the 1970s and 1980s; and, secondly, people understand that they do that very difficult job with a sense of restraint and personal responsibility. The police have reasonable powers and they exercise those powers reasonably.

That certainly was not the case when I was in my teens and twenties. The encounters I had with the police in my teens and early twenties did not dispose me to think well of them, because they used their powers unreasonably. I was not the sort of person who should have attracted any attention from the police, because I was a law-abiding teenager. On one occasion, when I was 15, I was waiting at a bus stop near the police station on the Manning side of Canning Bridge. I was waiting on a Saturday afternoon to catch a bus into Perth with one of my 15-year-old mates. We were going to go into a snooker hall to play some snooker. It would have been about two or three o'clock in the afternoon. We were going to play an hour or two of snooker, catch the bus and be home probably about 6.00 or 7.00 pm, but in plenty of time. As I said, it was a Saturday afternoon. Two rotund policemen rolled up, jumped out of their paddy wagon and rushed up to us. We were sitting or standing at the bus stop. They said, "What are you doing here?" I responded, "Waiting for a bus", which I thought was fairly obvious seeing we were waiting at a bus stop. The police said to me, "Don't be smart with me, son." They proceeded to take our names and addresses and they told us to leave the place and go away and stop creating a nuisance. We went home and told one of our fathers, who rang the police and who was informed by the local police sergeant that a car had been stolen across the road from the bus stop a week previously, and we were a couple of likely looking lads because we were 15-year-olds standing at a bus stop. I also had a very close relationship with a young Aboriginal person at the time who was constantly harassed by police on the basis of his race—nothing more than that. He hated police because of his encounters with police in the 1970s and 1980s. He was a young teenager finding his way in a difficult world and he had nothing but unpleasant experiences with the police—much worse than that minor harassment that I endured.

There were good police back then. My cousin is a policeman. He is a long-serving policeman. My cousin, who is about 60 years old now, is a great bloke. He has been a policeman for all his adult working life and he is a great fellow. There were many good police, but there were a lot of them that were sucked into that sort of *Life on Mars* culture at the time.

What changed? It was not that suddenly genetically better people were entering the police force. The change was the checks and balances on their power. The police culture changed because the policies and procedures that governed their actions changed. That is why we have police who are very good at diffusing difficult situations. We have police who go into lots of situations of conflict and diffuse those situations because they have a different mindset and a different culture. That culture is reinforced by policies and practices, and they are policies and practices that have evolved in response to previous abuses. So we are in a good place now and the police are respected. They are respected by the entire cross-section of the community. They are respected, not just by older people who have always tended to have more pleasant experiences with the police, but also by younger people. Younger people understand that they have a difficult job to do and they do it very reasonably. My son's generation supports the police. My son's generation respects the police because, frankly, the police have cleaned up their act.

What will we be doing by allowing this legislation to pass? What will we do to young people's perception of the police by going backwards—in fact, further backwards than we have ever been before—and allowing people, who are doing no harm to anybody, to be frisked and partially stripped simply because police do not like the look of them, or because they are chosen at random?

Mr R.F. Johnson: Did you support the member for Girrawheen's private member's bill?

Mr M.P. Whitely: I am not familiar with what the member for Girrawheen had in a private member's bill; I really am not.

Mr R.F. Johnson: You must have supported it in caucus because it is almost the same as this one.

Mr M.P. Whitely: I am not familiar with the contents of that bill. I only have the police minister's word for it and I really do not value it that highly.

Mr R.F. Johnson: I can give you a copy of the bill and you can have a good look at it then.

Mr M.P. Whitely: We are going backwards by allowing innocent people, who are doing no harm to anybody, to be partially stripped, frisked and patted down by the police. It is not a reasonable power to stop people, without reasonable suspicion, ask them to partially disrobe and to pat them down. It is not a reasonable

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power. It is random. It will be perceived as unfair. Even if the police have a system where they pick every fifth person, the fifth person who is picked will perceive it as unfair. It will breed resentment, and it will destroy the respect that the police currently enjoy.

This legislation is typical of the approach of this government. Last Saturday night, I went to a 10-year anniversary of a small independent school in my electorate. I met some very interesting people there of various ages. They said to me that they are not impressed by this government. They asked why we are not getting the gloves off and getting into this government. They are particularly unimpressed by this Minister for Police. One guy who impressed me particularly was a man in his early thirties by the name of Anton. Anton is very interested in this legislation, because he works in Northridge. He asked me why the government is trying to scare people. Anton has worked and recreated in Northridge for about 14 years, ever since he was 18. He said that he cannot see that the situation in Northridge has become any worse. As I said, there was a very eclectic mix of people at that event. They all had the same concern. Anton was able to give a particularly interesting perspective, because he works as a DJ in one of the nightclubs. He outlined the steps that that nightclub has taken to deal with rowdy behaviour, such as the use of personal recognition technologies, and how nightclubs now have an increased ability to deal with that sort of behaviour. He said it is ridiculous that people are talking down Northridge all the time when it is a vibrant and exciting place to go to.

As I have said, I have two sons. One is 18, and he has just started going to Northridge on weekends. The other is 15, and he is a good three years away from being allowed to do that. I am proud of my sons. They are respectful of others, and they expect others to be respectful of them. I am wondering how my son and his friends would feel if they went to Northridge or the area that will be designated—it could be any area, which is of great concern—and they were chosen at random and asked to partially strip or be padded down for no apparent reason.

Mr M.J. Cowper: Safe!

Mr M.P. WHITELY: No, they would not. They would feel absolutely resentful. They would think: why were we singled out? It will change their attitude to the police. My son is someone who respects the police.

Mr M.J. Cowper: If you were a person who was inclined to buy drugs, where would you go?

Mr M.P. WHITELY: I do not know.

Mr M.J. Cowper: If you were a person who was inclined to buy an unlicensed firearm or contraband, where would you go?

Mr M.P. WHITELY: I do not know. I would not have a clue.

Mr M.J. Cowper: I suspect that Northridge would be the first place you would go. That is the problem. It is all driven by drugs and by the capacity to turn drugs over. That is where it is happening.

Mr M.P. WHITELY: I am not quite sure of the point the member is trying to make.

The DEPUTY SPEAKER: Order, members!

Mr M.P. WHITELY: What worries me just as much is how this arbitrary power is going to change the behaviour of the police. The great strength of the WA Police is that when they go into situations, they negotiate whenever they can. If they have to use force, they are entitled to use force. If they have to use Tasers, or even if in extreme circumstances they have to use firearms, they are entitled to use Tasers and firearms. But most of the time, when they deal with alcohol-fuelled conflict, they try to resolve it through diplomacy and skill and tact. We will put police officers in a situation where they stop people and ask them at random to partially strip. This legislation asks them to choose who they are going to do that to. It necessarily changes the way police officers behave. I think there are some potentially damaging outcomes from this. It relies totally on the trust of police officers. Largely as a result of the nature of the people who enter the police force, but also as a result of the procedures and policies that have been put in place, most police officers are trustworthy, but they are not all trustworthy. Let us not be naïve—not all police officers are trustworthy. Some will abuse this power. If we give them the capacity to single somebody out and give them grief, some will abuse that power. That worries me enormously.

I also worry about what I think is possibly a fairly common scenario—a person who has had a few drinks, who is out and about, not doing anybody any harm, but has a bit of Dutch courage. This person is approached by the police. The police officer says, “Hey you, come here. I want to search you. Take off your jacket, take off your shoes and take off your coat.” The person reacts in an aggressive way. If that person had been left to go about his own business, he would do nothing. But because the police have come to him, he thinks, “You’re infringing my civil liberties. Leave me alone. I am not cooperating.” All of a sudden it is not too far to go and he has assaulted police. Once a person has done that, he or she is in jail. There was absolutely no chance of that occurring

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previously. People could just go about their business. Suddenly people think, “I’m having my civil liberties infringed.” They do not like being patted down, and react in an overly aggressive manner. It is an assault on a public officer if there is bodily harm. Bingo—mandatory sentence. That will be a consequence of this legislation.

Australians value civil liberties. The Liberal Party should value civil liberties. It is a natural reaction that I would have; I would be upset. I would be angry if there was an imposition of an unfair power upon me. If I was selected, I would be angry. I would say, “What did you pick me out for?” I am now 50 years old and would react sensibly and in a restrained manner. But I cannot guarantee that I would have done that at 21 or 22 years of age. I think this is a recipe for a conflict that we do not need. There has not been a demonstrated need for this. It is just all part of the desperate desire of the police minister and this government to do something and to appear tough on crime.

I think the member for Girrawheen in her second reading contribution warned against us using inflammatory language. She warned us against describing this as fascist legislation. I want to ask a simple question: would the capacity to stop and search without reasonable suspicion happen in a fascist state? Of course it would.

Mr C.J. Barnett: It happens at every airport we go through.

Mr M.J. Cowper: It happens at the members’ entrance.

Mr M.P. WHITELEY: Do we expect it to happen when we are walking down our streets in a healthy liberal democracy? No, we do not. I seek an extension, Mr Deputy Speaker.

[Member’s time extended.]

Mr M.P. WHITELEY: The capacity to stop and search without reasonable suspicion is not a characteristic of healthy liberal democracies. It is a characteristic of fascist states. This is a step towards a fascist state. If it is not fascist legislation, it is certainly legislation that we would expect to see in a fascist state. Australia is better than this. We do not need this legislation. The Premier has identified the fact that we do not have late-night shopping as a barrier to tourism. Of course, Northbridge is our premier tourism precinct. What will be our new slogan for Northbridge—“Come to Perth and get searched for no good reason”? That is the reality of what will happen.

Mr R.F. Johnson: That is the most stupid comment you’ve ever made, and you’ve made a few!

Mr M.P. WHITELEY: That is exactly what will happen. People will get searched for no good reason—with no reasonable suspicion. People will come to Northbridge and get searched for no good reason. Frankly, this legislation is a step towards a police state.

The Premier interjected earlier and made a parallel with airports. Airports represent a real risk. People understand that there could be catastrophic consequences for hundreds of people if we do not have adequate security checks at airports. Everybody has to go through metal detectors and everybody has their luggage scanned, so it is not discriminatory. It is a risk that we accept. It is an imposition that we accept because the risk is real.

It is the position of my party to try to amend this fundamentally flawed legislation. Frankly, I think this legislation is so fundamentally flawed that we need to destroy its fundamental premise. We would have to remove the stop-and-search powers without reasonable suspicion to make this worthwhile legislation. I cannot imagine the party that I joined, the Labor Party, or me supporting this legislation at the third reading unless it is basically turned on its head. We have decided to support it at the second reading stage, so I am obliged to support the second reading, but frankly I do not want to.

Mr R.F. Johnson: Well don’t! Be a man.

Mr M.P. WHITELEY: I know this is bad legislation. I was desperately looking for a rationale to support it, apart from the party obligation. There is a term called “cognitive dissonance” that I am dealing with. The member for Cannington explained to me that supporting the second reading of the bill just allows it to proceed to debate. I am happy to use that rationale to support the second reading. However, I cannot imagine that there would be amendments to turn this legislation on its head that could encourage me to support it at the third reading stage. I cannot see that happening. Yes, I will support the second reading of the bill, but, frankly, in trying to amend this legislation, we are trying to fix something that is fundamentally flawed. I believe this legislation stinks. It is no good and it should be flushed away.

Debate adjourned, on motion by **Mr C.J. Barnett (Premier)**.

House adjourned at 12.18 am (Wednesday)

Extract from *Hansard*

[ASSEMBLY - Tuesday, 10 November 2009]

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Ms Margaret Quirk; Mr Eric Ripper; Ms Alannah MacTiernan; Mr Andrew Waddell; Mr Bill Johnston; Ms Lisa Baker; Mr Chris Tallentire; Mr Mark McGowan; Mr Peter Abetz; Mr Martin Whitely; Mr Colin Barnett
