



PUBLIC

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Hon Michael Mischin MLC
Chairman
Legislative Council Standing Committee on Legislation
Parliament House
PERTH WA 6000

Dear Chairman

INQUIRY INTO THE *CRIMINAL INVESTIGATION AMENDMENT BILL 2009*

I refer to the draft questions that you provided to Mr Malcolm Penn in relation to your Committee's inquiry into the *Criminal Investigation Amendment Bill 2009*. I also refer to the evidence given by Mr Penn and Superintendent Gary Budge on 2 February 2010.

Please find attached, responses to the Committee's questions.

Yours sincerely

C J DAWSON APM
ACTING COMMISSIONER

19 February 2010

Attach x 1

Question 1 - Was the Bill modelled on any existing legislation? If so, please provide the details of the model.

Response

No. The proposed amendments to the *Criminal Investigation Act 2006*, contained in the *Criminal Investigation Amendment Bill 2009*, are not modelled on any existing legislation.

Question 2 - What consultation did the Government conduct before introducing the Bill?

Response

Consultation took place within WA Police during the development of the *Criminal Investigation Amendment Bill 2009*. In addition, consultation took place with the Office of the Attorney General and the Premier's Office, through the Office of the Minister for Police.

Question 3 - [If relevant] What was the result of that consultation?

Response

The result of the consultation is the *Criminal Investigation Amendment Bill 2009* that is currently before Parliament.

Question 4 - How effective are the current stop and search powers in detecting offenders, preventing crime, deterring criminal behaviour, maintaining order and contributing to intelligence? If possible, please provide any statistics to indicate how effective they are.

Response

The current stop and search laws contained in the *Criminal Investigation Act 2006* are certainly effective in detecting offenders etc, but these existing laws do have some limitations. In the context of weapons and drug offences, WA Police are aware that the numbers of weapons and drugs seized under the provisions of the *Criminal Investigation Act 2006* and other laws, are not the full sum of all such weapons and drugs that are being carried on our streets. WA Police believe though that the measures contained in the *Criminal Investigation Amendment Bill 2009* will provide an additional valuable mechanism for reducing the carriage of these items.

Question 5 - How effective is the stop and search power under section 69 of the Act when compared with other stop and search powers?

Response

See response to Question 6.

Question 6 - (a) Given that the police must obtain a person's consent before they conduct a section 69 search on the person and/or their vehicle, is there a concern that people who are carrying weapons can simply avoid a search by not consenting to the search and taking the weapons and drugs elsewhere? (b) If so, could the proposed additional stop and search powers produce the same result of displacing criminal activity to areas outside of the designated public places?

Response

Section 69 of the *Criminal Investigation Act 2006* does contain limitations in relation to searching people in that they must consent to being searched. If they don't consent then all police officers can do is either refuse them entry to the relevant place or remove them from it. This could result in people leaving an area still carrying weapons/drugs etc. The mere refusal to consent to being searched wouldn't be grounds enough for police officers to then use "reasonable suspicion" to search the person.

On the displacement issue, there could be displacement into other areas that haven't been prescribed or declared under proposed sections 70A or 70B. Research in the United Kingdom on the issue of crime displacement, has shown that displacement needs to be considered in any crime reduction measures and even when it can be shown to occur, it is often not complete displacement and so gives important net reductions in crime. Furthermore, section 69 is limited in the sense that the application of this power is confined to a period of 48 hours duration in each instance. Persons may adjust their unlawful conduct on the basis of a known limitation to the powers.

Question 7 - What evidence is there that the proposed additional stop and search powers are needed in certain areas such as Northbridge? For example, has there been a recent surge in the number of violent crimes in Northbridge and other areas which are intended to be designated?

Response

As pointed out in the evidence given by Superintendent Budge to the Committee on 2 February 2010, in regard to assaults, they are at the same level as last year. Police have not recorded a significant drop or change in the report of assault statistics or the antisocial behaviour in Northbridge. While Police are having an impact in regard to volume crime, we are not at this particular time having a lot of sustained success in regard to reducing the violence and antisocial behaviour on the street.

Question 8 - Is there any legislation and are there any case examples which point to the need for the proposed additional stop and search powers? If so, please provide the cases.

Response

No.

Question 9 - There is a concern that the use of the proposed additional stop and search powers:

- will result in a transgression of people's personal liberties;
- may have a disproportionate effect on minority ethnic groups;
- may result in an increased public distrust of the police; and
- may aggravate otherwise peaceful situations.

How does the Western Australia Police plan to minimise these possibilities?

Response

WA Police does not believe that these alleged concerns are well founded. If the provisions of the *Criminal Investigation Amendment Bill 2009* are enacted, police officers will be conducting searches in accordance with the rules currently laid out in the *Criminal Investigation Act 2006*. Further, the Commissioner of Police undertakes to provide enhanced training of Police Officers in these proposed powers and clarity in the operational application of the law through amending the Police manual guidelines.

Question 10 - Prior to the preparation of the Bill, did the Government consider alternative ways to address the perceived crime problems in Northbridge and other intended designated areas? For example, having a greater police presence, educating and working with troubled families and youth, redesigning entertainment areas to discourage criminal activity (for example, installing more street lights).

Response

WA Police are not in a position to comment upon what measures the Government might have been considering prior to the preparation of the *Criminal Investigation Amendment 2006*. This is matter the Committee should take up with the Minister for Police.

From a WA Police perspective, we have put in place a range of initiatives to deal with the crime and antisocial behaviour aspects in the Northbridge entertainment precinct, including an improved service on the street and more police on the street; a review of the young people in Northbridge policy, which is commonly referred to as the curfew; looking at specific licensed premises that were the subject of large volumes of antisocial behaviour and violence in and about their premises; taking a no-tolerance policy to violence and antisocial behaviour in the street; and a range of other initiatives.

Question 11 - (a) Will police auxiliary officers be able to exercise the proposed additional stop and search powers? (b) What sort of training will these officers receive and how will it differ from the training received by police officers?

Response

No.

Question 12 - (a) Given the definition of 'public place' in the Act, could the proposed additional stop and search powers be exercised in, for example, a homeless shelter if it is located within a prescribed/declared area? (b) What about nightclubs, restaurants and bars?

Response

As pointed out in the evidence given by Mr Penn to the Committee on 2 February 2010, the *Criminal Investigation Act 2006* has a broad definition of what is a "public place". As to whether a homeless shelter would fit within that definition, it would depend on how the homeless shelter was managed, and who actually had access to that place and under what conditions.

Nightclubs, restaurants and bars would fall within the existing definition of "public place" under the *Criminal Investigation Act 2006*. So police officers would be able to exercise the proposed powers contained the *Criminal Investigation Amendment Bill 2009* in such venues if they were within the prescribed or declared area.

Question 13 - Will the proposed additional powers be used to stop and search people who are involved in demonstrations, protests, processions or organised assemblies?

Response

The provisions contained in the *Criminal Investigation Amendment Bill 2009* are about prescribing or declaring places, not groups of people. Anyone who was in a prescribed or declared area at the relevant time would be liable to be searched. The exercise of the proposed powers will be dependant on what risks and unlawful behaviour has been experienced in the particular precinct. Police routinely have to operate in high density areas and should any demonstrations or processions involve large numbers of persons, judgement would have to be exercised as to the merits of applying the proposed powers if it would inhibit a lawful and peaceful assembly.

Question 14 - Clause 4 - Clause 4 proposes to delete section 69(1)(a) of the Act. However, it appears that section 69 has already been deleted by regulation 23 of the *Cross-border Justice Regulations 2009*. Please explain why clause 4 is still necessary.

Response

Regulation 23 of the *Cross-border Justice Regulations 2009* repeals section 69 of the *Criminal Investigation Act 2006* as it applies in a cross-border region under the *Cross-border Justice Act 2008*. So in the cross-border region of Western Australia, South Australia and the Northern Territory that has been prescribed under Regulation 3 of the *Cross-border Justice Regulations 2009*, section 69 of the *Criminal Investigation Act 2006* does not apply. The *Cross-border Justice Act 2008* and *Cross-border Justice Regulations 2009* do not affect the operation of section 69 of the *Criminal Investigation Act 2006* elsewhere in Western Australia.

Question 15 - Clause 4 - Clause 4 proposes to delete one of the three ways in which police officers are authorised to undertake searches in a public place pursuant to section 69 of the Act. Why is it necessary to remove the ability to prescribe in regulations a public place where section 69 powers may be used, while the other two means of authorising section 69 stops and searches remain unamended?

Response

As provided in evidence to the Committee on 2 February 2010, the provisions under section 69(1)(a) of the *Criminal Investigation Act 2006* for an area to be prescribed in regulations are proposed to be repealed by the *Criminal Investigation Amendment Bill 2009*. WA Police are of the view that if proposed new sections 70A and 70B contained in the *Criminal Investigation Amendment Bill 2009* were to be enacted, there would be no need for WA Police to seek to have regulations prescribed under section 69(1)(a) of the *Criminal Investigation Act 2006*. That is the reason why section 69(1)(a) of the *Criminal Investigation Act 2006* is proposed to be repealed.

Question 16 - Clause 5 - Proposed Section 70A(1) - Which areas in the State are intended to be areas prescribed/declared for the use of the proposed additional stop and search powers?

Response

No areas have been specifically identified at this point in time. Refer also to Response to Question 17.

Question 17 - Clause 5 - Proposed Section 70A(1)(a) - prescribed areas. How will these areas be chosen? Why isn't there more legislative instruction about how or why an area would be chosen to be prescribed in regulations?

Response

A range of factors might be taken into account in determining how an area might be chosen to be prescribed in Regulations. These may include:

- the nature of activities that take place in the area;
- whether or not alcohol or drugs are frequently consumed in the area;
- whether or not there is a propensity for a person to carry weapons in the area;
- whether there is a propensity for violence in the area; and
- the risk to the general public or a person carrying a weapon or dangerous article in the area.

It is not considered that there is a need to prescribe these factors as they can be fluid and other factors may come into play at various times.

Question 18 - Clause 5 - Proposed Section 70A(1)(a) - prescribed areas. How will people be alerted to the fact that they are entering a prescribed area?

Response

Notification can take many forms. Aside from the publication of the Regulations in the Government Gazette, WA Police could also place information on its website, place information in local newspapers or distribute information in and around the relevant area. Further, WA Police may negotiate with other relevant stakeholders (Local Government or on State Government buildings) to place signage at some of the entry points to the area to alert the public to the new laws.

Question 19 - Clause 5 - Proposed Section 70A(1)(a) - prescribed areas
Why doesn't the provision require the prescribed public place to be of an area or size that is not larger than is reasonably necessary?

Response

The restriction on the size of the area ties in with the reasons for determining the area in the first place. Under proposed section 70B the Commissioner makes the declaration with the approval of the Minister. It is proposed that the individual person making the declaration should state their reasons and particularise the size of the area.

Under proposed section 70A the Regulations are made by the Governor but there is no actual submission put to him for which he as an individual makes a decision on. For that reason the Bill doesn't talk in terms of restricting the size of an area in Regulations.

Question 20 - Clause 5 - Proposed Section 70A(2) - prescribed areas. Why was a maximum duration of 12 months chosen for prescribed public places?

Response

There is no particular reason for setting the time period at 12 months. It is simply a case of providing some end-point in time which the Regulations would cease to operate.

Question 21 - Clause 5 - Proposed Section 70A(2) - prescribed areas. What are your views on the proposition that the prescription of public places should only commence operation after the Parliament's disallowance process is complete?

Response

This could be problematic if there is a need to enact Regulations and Parliament is not sitting at the relevant time.

Question 22 - Clause 5 - Proposed Section 70A(3) - prescribed areas. Why is the verb 'specified' used instead of 'prescribed'? Is it intended to mean the same thing?

Response

The term "specified" refers to being specified in the Regulations so there is no need to use the term "prescribed".

Question 23 - Clause 5 - Proposed Section 70A(3) - prescribed areas. What times are likely to be specified?

Response

This will depend upon the area in question and the particular relevant factors. In setting the days and/or times in Regulations regard will be had to the time of day when offences have been committed and other relevant factors.

Question 24 - Clause 5 - Proposed Section 70A(4). Why doesn't the proposed section prescribe what the police officer may search for?

Response

If the *Criminal Investigation Amendment Bill 2009* was drafted in such a way as to try to itemise what police officers can search for this could raise questions about the conduct of searches. For that reason, the Bill is silent on what police officers are searching for. However, there are protections in place within the Bill in that police officers can only seize certain items that they find when conducting a search. Under proposed section 70A(4) police officers can only seize things that "may endanger the place or people who are in or may enter it" or that are "relevant to an offence".

Question 25 - Clause 5 - Proposed Section 70A(4). The phrase "*any thing that the officer finds that the officer reasonably suspects does or may endanger the place or people who are in or may enter it*" appears to be very broad. (a) What does it cover? (b) Would it cover, for example, pamphlets published by a political lobby group or calling for mass demonstrations in the area?

Response

This description is intentionally broad to give some flexibility to police officers having regard to time, place and circumstance. However, under proposed section 70A(6), any such seized things "must be made available to be collected by the person when or as soon as practicable after he or she leaves the place, unless it may be lawfully seized and retained under another provision of this Act [*Criminal Investigation Act 2006*] or another written law".

Unless the distribution of pamphlets by a particular lobby group contravene statute law (e.g. contained racial vilification or discriminatory messages) these powers could not be exercised to prevent or frustrate lawful protests.

Question 26 - Clause 5 - Proposed Section 70B - declared areas. The term 'Commissioner' is not defined in either the Bill or the Act. Why is this term used instead of the phrase 'Commissioner of Police'?

Response

WA Police will seek advice on this matter from Parliamentary Counsel.

Question 27 - Clause 5 - Proposed Section 70B(1) - declared areas. How will these areas be chosen? Why isn't there more legislative instruction about how or why an area would be chosen to be declared?

Response

A range of factors might be taken into account in determining how an area might be chosen to be declared. These may include:

- the nature of activities that take place in the area;
- whether or not alcohol or drugs are frequently consumed in the area;
- whether or not there is a propensity for a person to carry weapons in the area;
- whether there is a propensity for violence in the area; and
- the risk to the general public or a person carrying a weapon or dangerous article in the area.

It was not felt that there was a need to legislate for these factors as they can be fluid and other factors may come into play at various times.

Question 28 - Clause 5 - Proposed Section 70B(1) - declared areas. What was the rationale behind requiring the Minister to approve the declaration of an area? Why was the Minister, rather than a person independent of the Government, chosen?

Response

This is a matter that the Committee will need to take up with the Minister for Police.

Question 29 - Clause 5 - Proposed Section 70B(2) - declared areas. What times are likely to be specified?

Response

This will depend upon the area in question. In setting the days and/or times in the Declaration regard will be had to the time of day when offences have been committed and other relevant factors.

Question 30 - Clause 5 - Proposed Section 70B(4) - declared areas. Why was a maximum duration of two months chosen for declared public places?

Response

There was no particular reason for setting the time period at 2 months. It was simply a case of provide some end-point time in which the Declaration would cease to operate.

Question 31 - Clause 5 - Proposed Section 70B(5) - declared areas. (a) Why is the validity of the Commissioner of Police's declaration not affected by a failure to satisfy the gazettal requirement? (b) How will people be alerted to the fact that they are entering a declared area?

Response

The bringing into effect of the declaration under proposed section 70B isn't contingent upon publication in the Gazette. The requirement to publish the declaration in the Gazette is to provide some avenue for public notification. But if for some reason that publication doesn't happen, the declaration won't be invalid.

Notification can take many forms. Aside from publication of the Declaration in the Government Gazette, WA Police could also place information on its website, place information in local newspapers or distribute information in and around to the relevant area. Further, WA Police may negotiate with other relevant stakeholders (Local Government or on State Government buildings) to place signage at some of the entry points to the area to alert the public to the new laws.

Question 32 - Clause 5 - Proposed Section 70B(6) - declared areas. Why is it considered necessary for the Commissioner of Police to be able to delegate his or her power to declare a public place to the Deputy Commissioner or an Assistant Commissioner?

Response

There may be times when the Commissioner is absent or away from work. For that reason a delegation power has been provided so that other senior officers in WAPOL can make the relevant Declaration.

Question 33 - Clause 6(1) - Section 157 amended. Why does the Bill require the Minister, rather than a person independent of the Government, to conduct a review of the operation and effectiveness of proposed sections 70A and 70B?

Response

Normal statutory review provisions are directed at the relevant Minister to cause the review to be undertaken. The Minister can in doing so, get an independent person to conduct the review.

Question 34 - Clause 6(1) - Section 157 amended. Why was five years chosen as the period after which proposed sections 70A and 70B will be reviewed?

Response

This is a matter that the Committee will need to take up with the Minister for Police.

Question 35 - Clause 6(2) - Section 157 amended. Section 157 of the Act currently requires the Minister to prepare a report on the five-year review of the Act and to table that report in the Parliament. After the proposed amendment to section 157(2), it appears that the section will give the Minister a choice as to whether a report for the Parliament will be based on the five-year review of the Act or the five-year review of proposed sections 70A and 70B. (a) What is your view of this interpretation? (b) Do you think that the proposed amendment should be amended to clarify that reports need to be prepared and tabled for each of the reviews?

Response

The proposed amendment inserts an additional statutory review provision into the *Criminal Investigation Act 2006*. So the Minister will have to have a full review of the Act carried out some time in 2012; and then around 2015 a further review only of the provisions contained in section 70A and 70B. Both reviews are required to be carried out and reports of both reviews will have to be tabled in Parliament.

Question 36 - Why doesn't the Bill prescribe more procedures on how the proposed additional stop and search powers must be exercised?

Response

Part 8 of the *Criminal Investigation Act 2006* already contains detailed procedures and rules for the conducting of searches on people. Further, the Commissioner of Police undertakes to provide enhanced training of Police Officers in these proposed powers and clarity in the operational application of the law through amending the Police manual guidelines.

Question 37 - Why doesn't the Bill require police officers, when conducting a stop and search under the proposed additional powers, to give the person being searched, or whose vehicle is being searched, a notice which advises the person of certain facts; for example, the fact that they have entered a prescribed/declared public place, the police officer's powers of stop and search and the person's rights and obligations during the stop and search?

Response

WA Police weren't directed to include any such provisions in the *Criminal Investigation Amendment Bill 2009*. Depending upon the size of the area that is prescribed or declared, and the number of people that might be in such an area at the relevant time, it might not be practicable to provide each person with such a notice. It should be noted though, that police officers are required under section 70 of the *Criminal Investigation Act 2006* to inform a person about why they are being searched.

Question 38 - Why doesn't the Bill require the searching police officer to make a written record of the stop and search and to give the person being searched, or whose vehicle is being searched, that written record of the stop and search?

Response

WA Police weren't directed to include any such provisions in the *Criminal Investigation Amendment Bill 2009*. Depending upon the size of the area that is prescribed or declared, and the number of people that might be in such an area at the relevant time, it might not be practicable to provide each person with such a record. Writing up individual records could hold up people from going about their business. Police officers would in any event make some general notes in their note book about searches they had conducted.

Question 39 - Why is there no protection or provision in the Bill for people who cannot understand spoken English? For example, people who are hearing-impaired.

Response

Section 10 of the *Criminal Investigation Act 2006* provides that where a police officer is required to inform a person of any matter and the person is unable to understand or communicate in English, then the police officer must use an interpreter or other qualified person or some other means to inform the person, if it is practicable to do so. Furthermore, under section 70(2)(b) of the Act a police officer has to inform a person of the reason why they are conducting a search. In the context of the provisions contained in the *Criminal Investigation Amendment Bill 2009*, if those provisions were to be enacted, police officers would still have to comply with sections 10 and 70 of the *Criminal Investigation Act 2006* when conducting a search.

Question 40 - Why is there no protection or provision in the Bill for children?

Response

WA Police weren't directed to include any specific provisions in the *Criminal Investigation Amendment Bill 2009* in relation to searching children beyond those already provided under the *Criminal Investigation Act 2006*.

Question 41 - Why is there no protection or provision in the Bill for people with disabilities?

Response

WA Police weren't directed to include any specific provisions in the *Criminal Investigation Amendment Bill 2009* in relation to searching people with disabilities.

Question 42 - Why is there no protection or provision in the Bill for people with certain dress requirements?

Response

WA Police weren't directed to include any specific provisions in the *Criminal Investigation Amendment Bill 2009* in relation to searching people with certain dress requirements.

From an operational perspective though, if there was a need to remove certain dress requirements police officers would move the person to an area where they were afforded some privacy before that happened.

Question 43 - Why isn't there a requirement in the Bill for the Minister or the Commissioner of Police to report to Parliament regarding the use of the proposed additional stop and search powers?

Response

WA Police weren't directed to include such a provision in the Bill. This does not prevent the Minister from making a report to Parliament if he wishes to do so.

Question 44 - Why doesn't the Bill provide for the Minister, or a person independent of the Government, to revoke or cancel the prescription/declaration of a public place for the purposes of the proposed additional powers?

Response

WA Police weren't directed to include such a provision in the Bill.

Question 45 - Does any other Australian jurisdiction have similar stop and search powers? If so, please provide details of the relevant legislation.

Response

On 16 December 2009 new laws came into effect in Victoria. Amendments were made to their *Control of Weapons Act 1990*, through the *Summary Offences and Control of Weapons Acts Amendment Act 2009*. These new laws allow for areas to be designated and for police officers to then search persons in such areas without the need for a warrant and without the need for reasonable suspicion or for the person's consent.

Question 46 - Are there any proposed amendments to the Bill?

Response

No.