REPORT 16
STANDING COMMITTEE ON LEGISLATION
CRIMINAL INVESTIGATION AMENDMENT BILL 2009

Presented by Hon Michael Mischin MLC (Chair)

October 2010
STANDING COMMITTEE ON LEGISLATION

Date first appointed:
17 August 2005

Terms of Reference:
The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“4. Legislation Committee
4.1 A Legislation Committee is established.
4.2 The Committee consists of 5 members.
4.3 The functions of the Committee are to consider and report on any Bill referred by the House or under SO 125A.
4.4 Unless otherwise ordered any amendment recommended by the Committee must be consistent with the policy of a Bill.”

Members as at the time of this inquiry:

Hon Michael Mischin MLC (Chair) Hon Alison Xamon MLC
Hon Dr Sally Talbot MLC (Deputy Chair) Hon Kate Doust MLC (participating Member of the Legislative Council on 9 February 2010)
Hon Mia Davies MLC Hon Jock Ferguson MLC (participating Member of the Legislative Council on 2 February 2010)
Hon Helen Morton MLC

Staff as at the time of this inquiry:

Denise Wong, Advisory Officer (Legal) David Driscoll, Committee Clerk
Renae Jewell, Committee Clerk Mark Warner, Committee Clerk
Jan Paniperis, Administration Officer (Committees)

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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government’s response within 4 months.

The four-month period commences on the date of tabling.
**LIST OF ABBREVIATIONS AND DEFINED TERMS**

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<td>reasonably suspects/reasonable suspicion/reasonable grounds for suspicion</td>
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EXECUTIVE SUMMARY, FINDINGS AND RECOMMENDATIONS

EXECUTIVE SUMMARY

1 On 26 November 2009, the Legislative Council referred the Criminal Investigation Amendment Bill 2009 (Bill) and the policy of the Bill to the Standing Committee on Legislation (Committee) for inquiry and report by 25 March 2010. Given the controversial nature of the Bill and the large volume of evidence which had been, and was still being, received by the Committee, it was necessary for the Committee to seek two extensions of the reporting deadline, resulting in an ultimate reporting deadline of 21 October 2010.

2 This inquiry presented the Committee with difficult issues to deliberate. In fulfilling its duties to the Legislative Council, the Committee first considered:

- how the Bill will change the law in relation to police stop and search powers (refer to Chapter 2 in this Report); and

- the policy of the Bill and the justifications for it, drawing from, among other things, the experience of the United Kingdom and, to a lesser extent, Victoria, with similar police stop and search powers (refer to Chapter 3 in this Report).

3 After considering these issues, a majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLcs) could find no justification for the Bill. A minority of the Committee was of the view that there may be circumstances in which the Bill could be justified.

4 The Committee was of the view that the Bill ought not to proceed in its current form.

5 Despite the fact that a majority of the Committee was opposed to the Bill and would not support the passing of the Bill in any form, the Committee resolved to address the Bill and discuss and recommend how the Bill could be improved in the event that it proceeds (refer to Chapters 4, 5 and 6 in this Report). This process proved arduous, requiring some Members to put aside their overall opposition to the Bill to focus on its detail. The tension between maintaining personal liberties and expanding police powers to improve public safety is a matter of public importance and interest. The Committee’s comprehensive inquiry into the Bill reflects the significance it assigned to this issue. The Committee hoped that these discussions and recommendations will assist the Legislative Council in its debate of the Bill.
Findings and Recommendations are grouped as they appear in the text at the page number indicated:

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**Finding 1:** The Committee finds that in Western Australia, there is existing legislation which allows police officers and other public officers to search vehicles without consent, without arrest, without a search warrant and without having formed a reasonable suspicion. However, this sort of power is rare.

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**Finding 2:** The Committee finds that in Western Australia, no current legislation authorises police officers or other public officers to stop and search people in public places without consent, without arrest, without a search warrant and without having formed a reasonable suspicion.

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**Finding 3:** The Committee finds that in Western Australia, the Criminal Investigation Amendment Bill 2009 is not unique in proposing to allow police officers to search vehicles without consent, without arrest, without a search warrant and without having formed a reasonable suspicion. However, this sort of power is rare.

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**Finding 4:** The Committee finds that in Western Australia, the Criminal Investigation Amendment Bill 2009 is unique in proposing to authorise police officers to stop and search people in public places without consent, without arrest, without a search warrant and without having formed a reasonable suspicion.

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**Finding 5:** The Committee finds that, subject to their individual appointing documents, police auxiliary officers will be able to exercise the stop and search powers proposed by the Criminal Investigation Amendment Bill 2009.

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**Finding 6:** The Committee finds that, in an Australian and international context, the Criminal Investigation Amendment Bill 2009 is not unique in proposing to allow police officers to stop and search people and vehicles without consent, arrest, a search warrant or reasonable suspicion. However, this sort of statutory power appears to be rare among common law jurisdictions.
Finding 7: The Committee finds that the concept of reasonable suspicion, which is a prerequisite for almost all police stop and search powers, is readily understood and not difficult to apply.

Finding 8: The Committee finds that proving the reasonableness of the suspicions held by a police officer when exercising police stop and search powers has not been an impediment to a successful prosecution.

Finding 9: The Committee was divided as to whether the Criminal Investigation Amendment Bill 2009 ought to proceed. A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCs) believes that the bill ought not to proceed because there is no justification for the proposed powers. However, a minority of the Committee finds that the proposed powers would be justified to address certain policing objectives.

Finding 10: The Committee finds that, based on the evidence of the experience of other jurisdictions available to the Committee, there is a legitimate concern that the purported benefits of such wide-ranging powers as those proposed by the Criminal Investigation Amendment Bill 2009 could be outweighed by the disadvantages of such powers. A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCs) believes that the evidence suggests giving police the power to stop and search without either consent or reasonable suspicion (and in the absence of a requirement for a search warrant or arrest) inevitably results in negative effects on personal liberties.

Finding 11: The Committee finds that the evidence did not conclusively establish that the Criminal Investigation Amendment Bill 2009 would reduce the incidence of the carriage and use of weapons in entertainment areas, which is the policy objective articulated in the Second Reading Speech.

Finding 12: A minority of the Committee finds that the powers contemplated by the Criminal Investigation Amendment Bill 2009 would address circumstances where current police powers may not meet some legitimate security and public safety objectives, as identified by the evidence of the Western Australia Police. However, a majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCs) found that, if there were objectives other than those relating to the reduction of violence and anti-social behaviour in entertainment areas, they were not articulated in the Second Reading Speech.
Recommendation 1: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be opposed.

Recommendation 2: The Committee recommends that, if the Criminal Investigation Amendment Bill 2009 is to proceed, the bill be amended to:

(a) limit the circumstances in which the proposed stop and search powers could be used; and

(b) monitor and control the police use of those powers and guard against their misuse and abuse.

Recommendation 3: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that when an area is prescribed under proposed section 70A(1)(a) of the Criminal Investigation Act 2006, the responsible Minister must reasonably believe that it is necessary to exercise the proposed stop and search powers for the purposes of safeguarding the area or people who are in or may enter the area that is to be prescribed.

Recommendation 4: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that when declaring an area under proposed section 70B(1) of the Criminal Investigation Act 2006, the Commissioner of Police must reasonably believe that it is necessary to exercise the proposed stop and search powers for the purposes of safeguarding the area or people who are in or may enter the area that is to be declared.

Recommendation 5: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended so that the proposed stop and search powers should be available only when all other existing police stop and search powers are insufficient to safeguard the area to be designated or the people who are in or may enter the area to be designated. The question of whether the other powers are sufficient is to be decided by the Minister, in the case of the prescription of an area, or the Commissioner of Police, in the case of the declaration of an area.
Minority Recommendation A: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended to prohibit the designation of areas affecting lawful events, protests, rallies or industrial action.

Recommendation 6: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended to exempt homeless shelters, refuges and crisis centres from the application of the proposed stop and search powers.

Recommendation 7: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended to restrict the prescription of an area under proposed section 70A(1)(a) of the Criminal Investigation Act 2006 to an area that is not larger than is reasonably necessary, having regard to the reasons for making the prescription.
Recommendation 8: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require notification that an area has been prescribed under proposed section 70A(1)(a) of the *Criminal Investigation Act 2006* to be published in:

(a) a daily newspaper circulating generally in Western Australia;

(b) if the prescribed area is outside of the metropolitan area, in the most regular newspaper circulating generally within that area, if such a newspaper exists; and

(c) other media which may be accessed by children and young people,

either on the same day as the prescription is gazetted or as soon as is practicable after that.

The notification is to contain sufficient detail in relation to the prescription relevant to the form of media utilised, ensuring that the public is able to access at least the following details from one central information point:

(d) A description of the prescribed area.

(e) A map of the prescribed area.

(f) The stop and search powers which police officers are authorised to exercise in the prescribed area while the prescription is in force.

(g) The period of operation of the prescription.

Notices should be couched in a form, and disseminated in a manner, which makes the information accessible to children and young people.

Recommendation 9: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require reasonable steps to be taken by the Western Australia Police to inform the public and residents in a declared area of the declaration, and its ramifications, as soon as is practicable after the area is declared under proposed section 70B of the *Criminal Investigation Act 2006*. The steps chosen to inform the public and residents in a declared area should be couched in a form, and disseminated in a manner, which makes the information accessible to children and young people.
Recommendation 10: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that a prescription of an area under proposed section 70A(1)(a) of the *Criminal Investigation Act 2006* takes effect seven days after the publication of the regulations effecting the prescription in the *Western Australian Government Gazette*.

Recommendation 11: A majority of the Committee (including Hon Mia Davies MLC) recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70A(2) of the *Criminal Investigation Act 2006* authorises the regulations prescribing an area to be in force in relation to that area for a non-renewable maximum period of one month.

Minority Recommendation B: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70A(2) of the *Criminal Investigation Act 2006* authorises the regulations prescribing an area to be in force in relation to that area for a non-renewable maximum period of 12 hours.

Recommendation 12: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that regulations prescribing an area under proposed section 70A(1)(a) of the *Criminal Investigation Act 2006* cannot be gazetted for at least ten days after a previous prescription of the area has ended.

Recommendation 13: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that the word ‘specified’ in proposed section 70A(3) of the *Criminal Investigation Act 2006* is replaced by the word ‘prescribed’.
Recommendation 14: A majority of the Committee (including Hon Mia Davies MLC) recommends that the Criminal Investigation Amendment Bill 2009 be amended so that a search of a person pursuant to the proposed stop and search powers is restricted to:

(a) scanning with electronic or mechanical devices, as provided for in section 63(1)(a) of the Criminal Investigation Act 2006; and

(b) a more intrusive level of basic search, as defined in sections 63(1)(b), (c) and (d) of the Criminal Investigation Act 2006, only if some object consistent with being a weapon, and for which no satisfactory explanation is provided, is detected upon the person.

Minority Recommendation C: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended so that any searches of people conducted pursuant to the proposed stop and search powers are limited to the use of metal detector arches and wands and that any subsequent searches be undertaken only with reasonable suspicion under section 68 of the Criminal Investigation Act 2006.

Recommendation 15: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70A(4) of the Criminal Investigation Act 2006 specifies that the searching police officer may search for any thing that the officer reasonably suspects does or may endanger the place or people who are in or may enter it.

Minority Recommendation D: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that, if Minority Recommendation C is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended so that it inserts some restrictions and/or precise definitions of:

(a) what items might be considered ‘relevant to an offence’; and

(b) what things ‘may endanger a public place or people who are in or may enter it’, into the Criminal Investigation Act 2006 for the purposes of proposed section 70A of that Act.
Recommendation 16: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to clarify the meaning of the words ‘Commissioner’, ‘Deputy Commissioner’ and ‘Assistant Commissioner’ and to ensure that the use of terminology is consistent throughout the Criminal Investigation Act 2006.

Recommendation 17: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended to delete proposed section 70B of the Criminal Investigation Act 2006.

Recommendation 18: The Committee recommends that, if Recommendation 17 is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended to require the responsible Minister to table in both Houses of Parliament any declarations made pursuant to proposed section 70B(1) of the Criminal Investigation Act 2006 as soon as is practicable after the declarations are made.

Recommendation 19: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) recommends that, if Recommendation 17 is not adopted by the Government, clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70B(4) of the Criminal Investigation Act 2006 authorises the declaration of an area to be in force in relation to that area for a non-renewable maximum period of 48 hours.

Minority Recommendation E: A minority of the Committee recommends that, if Recommendation 17 is not adopted by the Government, clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70B(4) of the Criminal Investigation Act 2006 authorises the declaration of an area to be in force in relation to that area for a non-renewable maximum period of two weeks.

Recommendation 20: The Committee recommends that, if Recommendation 17 is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended to include restrictions which would prevent the cyclical declaration of areas under proposed section 70B of the Criminal Investigation Act 2006.
Recommendation 21: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLC) recommends that, if Recommendation 17 is not adopted by the Government, clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that the following words are deleted from proposed section 70B(5) of the Criminal Investigation Act 2006:

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

Recommendation 22: The Committee recommends that, if Recommendation 17 is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended to require the Commissioner of Police to publish a written record of the declaration and those matters specified in proposed sections 70B(4)(a), (b) and (c) of the Criminal Investigation Act 2006 in a public notice and other reasonable forms of advertising as soon as is practicable after the declaration is made. The public notice and types of advertising chosen should be couched in a form, and disseminated in a manner, which makes the information accessible to children and young people.

Recommendation 23: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed sections 70B(6) and (7) of the Criminal Investigation Act 2006 are deleted.

Minority Recommendation F: A minority of the Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70B(6) authorises the Commissioner of Police to delegate his or her power to make a declaration to a Deputy Commissioner of Police.

Recommendation 24: The Committee recommends that clause 6(1) of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 157(2A) of the Criminal Investigation Act 2006 requires a regular review of the operation and effectiveness of the amendments proposed by clause 5 of the bill at least every one or two years after the commencement of the clause.

Recommendation 25: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to insert a sunset clause.
Recommendation 26: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCS) recommends that the powers proposed by the Criminal Investigation Amendment Bill 2009 expire after two years.

Minority Recommendation G: A minority of the Committee recommends that the powers proposed by the Criminal Investigation Amendment Bill 2009 expire after five years.

Recommendation 27: The Committee recommends that clause 6 of the Criminal Investigation Amendment Bill 2009 be amended so that the reviews of the operation and effectiveness of the amendments proposed by clause 5 of the bill must be conducted by a person independent of the Government with the following procedures in place:

(a) The responsible Minister must report the appointment and identity of the reviewer to the Parliament upon the appointment being made.

(b) The reviewer must report his or her findings to the responsible Minister, who must then table the reviewer’s report in both Houses of Parliament within three months after receiving the report.

(c) The responsible Minister may table the Government’s response to the reviewer’s report in Parliament.

Recommendation 28: The Committee recommends that, if Recommendation 27 is not adopted by the Government, clause 6(2) of the Criminal Investigation Amendment Bill 2009 be amended so that it will amend section 157(2) of the Criminal Investigation Act 2006 to read as follows:

The Minister must prepare a report based on each of the reviews under subsections (1) and (2A) and, as soon as is practicable after the each report is prepared, must cause the report to be laid before each House of Parliament.
Recommendation 29: The Committee recommends that an objectives clause specifying the purposes to which the powers proposed by the Criminal Investigation Amendment Bill 2009 are to be put and the range and focus of the police activities to be conducted under the auspices of the bill be inserted into the bill.

Recommendation 30: The Committee recommends that this objectives clause form the basis of the terms of reference of any and all reviews of the operation and effectiveness of the amendments proposed by clause 5 of the Criminal Investigation Amendment Bill 2009.

Recommendation 31: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended so that the reviews of the operation and effectiveness of the amendments proposed by clause 5 of the bill must address the following matters:

(a) The objectives of the bill.

(b) The effectiveness of the proposed stop and search powers in achieving policing objectives.

(c) The impact of the use of the proposed stop and search powers on communities in locations which have been the subject of designation.

(d) Public perceptions of how the proposed stop and search powers have been used by the police.

(e) The effect of the use of the proposed stop and search powers on police-community relations.

(f) A cost/benefit analysis of the proposed stop and search powers.

Recommendation 32: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to expressly state that the proposed stop and search powers cannot be exercised by police auxiliary officers.
Recommendation 33: The Committee recommends that, wherever practicable, the Criminal Investigation Amendment Bill 2009 be amended to prescribe or adopt, or authorise subsidiary legislation to prescribe or adopt, the rules governing the exercise of the proposed stop and search powers.

Recommendation 34: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require a police officer who stops a person for the purposes of searching him or her under the proposed stop and search powers to issue the person with a search notice.

Recommendation 35: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to prescribe, or authorise subsidiary legislation to prescribe, the form of the search notice. The search notice must:

(a) be written in an appropriate range of languages;

(b) be presented in a culturally appropriate way; and

(c) contain the following information:

(i) The fact that the person has entered a public place in a prescribed or declared area.

(ii) The fact that a prescription or declaration is in force.

(iii) The police officer’s powers of stop and search without arrest, a search warrant, reasonable suspicion or consent.

(iv) The person’s rights (for example, to complain about inappropriate behaviour or procedure) and obligations (including that it is an offence to hinder or obstruct a stop and search) during the stop and search.

(v) The person’s entitlement to obtain a written record of the search.

(vi) A point of contact for complaints.

(vii) That the search is being supervised by a senior police officer.
Recommendation 36: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended so that it does not apply to people under the age of 18 years.

Recommendation 37: The Committee recommends that, if the Criminal Investigation Amendment Bill 2009 remains applicable to children and young people, it be amended to insert a minimum level of protection for children and young people who are subjected to a stop and search under the proposed powers.

Recommendation 38: The Committee recommends that the Government ensure that instructions to police officers relating to stop and search procedures should reflect the particular sensitivities of children and young people to physical searches.

Recommendation 39: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to provide protection for mentally disabled people.

Minority Recommendation H: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended to provide protection for people with cultural dress requirements.
Recommendation 40: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require police officers to record the following information in writing when exercising the proposed stop and search powers:

(a) For the scanning of people with electronic or mechanical devices: the date, time, place, registered number and identity of the police officers involved.

(b) For more intrusive searches of people: the date, time, place, registered number and identity of the police officers involved, the person’s apparent gender, ethnicity and age, the basis for selecting the person searched, the reason for the search, if any, the result of the search and what, if anything, was found.

(c) For vehicle searches: the date, time, place, registered number and identity of the police officers involved.

Recommendation 41: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require a police officer exercising the proposed stop and search powers, by conducting a search of a person that is more intrusive than a scan with an electronic or mechanical device, to provide, in writing, his or her name and registered number, the date, time and place of the search, and other relevant information.

Recommendation 42: The Committee recommends that the Western Australia Police establish an adequate record keeping regime before the stop and search powers proposed by the Criminal Investigation Amendment Bill 2009 are used.

Recommendation 43: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require a senior police officer, as it is defined in the Criminal Investigation Act 2006, to supervise any use of the proposed stop and search powers.
Recommendation 44: The Committee recommends that, before the Criminal Investigation Amendment Bill 2009 is passed, the Government:

(a) undertake a cost/benefit analysis of the implementation of the Bill and its prospective operation over a two-year period; and

(b) table the results of this analysis in Parliament.

Recommendation 45: The Committee recommends that, if Recommendation 24 is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended to require the Commissioner of Police to reveal, in the Western Australia Police’s annual reports, the data collected in the course of any use of the proposed stop and search powers over the 12 months preceding each report.

Recommendation 46: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to empower the responsible Minister to revoke the designation of an area, whether the designation occurred by way of regulation or declaration, by publishing a notice of revocation in the *Western Australian Government Gazette*. The notice is to take effect on and from the date of publication.
CHAPTER 1
REFERENCE AND PROCEDURE

1.1 On 26 November 2009, the Legislative Council referred the Criminal Investigation Amendment Bill 2009 (Bill) and the policy of the Bill to the Standing Committee on Legislation (Committee) for inquiry and report by 25 March 2010.

1.2 An advertisement was lodged by the Committee in The West Australian newspaper on 5 December 2009 advising the public of the inquiry and seeking public submissions in respect of the Bill and its underlying policy.

1.3 The Committee invited various members of the public who may have had views on the subject matter of the inquiry to provide a submission by writing to them individually. These people and organisations are listed in Appendix 1.¹

1.4 The Committee received 26 submissions (these are listed in Appendix 2), all of which were accepted as public evidence.

1.5 The Committee held seven public hearings on the following dates: 2 February 2010, 9 February 2010, 10 March 2010, 5 May 2010 and 19 May 2010 (a list of all of the witnesses who appeared before the Committee is attached as Appendix 3). Valuable information was also obtained by the Committee through written correspondence. In addition, the Committee conducted its own research.

1.6 Given the controversial nature of the Bill and the large volume of evidence which had been, and was still being, received by the Committee, it was necessary to extend the reporting deadline for the inquiry to give the Committee further time to obtain and adequately consider the evidence. On 23 March 2010, the Committee sought from the Legislative Council and was granted an extension of the reporting deadline to 17 June 2010. On 15 June 2010, the Committee was granted another extension of the reporting deadline to 21 October 2010.

1.7 The Committee extends its appreciation to the people who, and the organisations which, provided evidence and information in the course of the inquiry.

¹ The Committee had also intended to consult the Community Legal Centres Association. However, after several unsuccessful attempts to contact the association by various means, the Committee received an email from the association advising that it would not be making a submission but that it would be posting information about the inquiry on its members’ internet site.
CHAPTER 2
INTRODUCTION TO THE BILL

THE CURRENT LAW

2.1 A person may be stopped in public and searched by a police officer only if:

- the person consents to it;
- the person has been lawfully arrested;
- the police officer is authorised by a search warrant to do so; or
- there is legislation which specifically empowers the police officer to do so.

2.2 The general legislative powers available to police relating to stop and search are contained in the *Criminal Investigation Act 2006 (the Act)*. For the purposes of this inquiry, the Committee focused on the general legislative powers for the police to stop and search people.

General Legislative Police Powers to Stop and Search People (Part 8, Division 2 of the Act)

2.3 Part 8 (Searching people), Division 2 (General powers to search people) of the Act contains the general powers of the police to stop and search people without a search warrant. These powers are mainly exercisable in public places. Currently, Part 8, Division 2, consists of three sections, sections 67, 68 and 69, which are attached to this Report in Appendix 4.

2.4 Section 67 provides that the stop and search powers under sections 68 and 69 may be exercised without a warrant.

2.5 Section 68 authorises a police officer to stop and search a person whom he or she *reasonably suspects* has a ‘thing relevant to an offence’, which includes a thing

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2 A police officer may include a police auxiliary officer. Refer to paragraphs 2.43 to 2.48 in this Report for a discussion about police auxiliary officers’ use of the proposed stop and search powers.

3 Definition of ‘search and seizure’ and ‘stop and search’: Encyclopaedic Australian Legal Dictionary, On-line, Lexis-Nexis.

4 Section 67 of the *Criminal Investigation Act 2006*.

5 And/or a public officer, which is defined as “a person, other than a police officer, appointed under a written law to an office that is prescribed under section 9(1)”: section 3(1) of the *Criminal Investigation Act 2006*. Currently, no offices have been prescribed in the *Criminal Investigation Regulations 2007* for the purposes of the definition of public officer. However, offices may be prescribed by other Acts for this purpose: section 9(1) of the *Criminal Investigation Act 2006*. 

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which has been, is being, or is intended to be used for the purpose of committing an offence. The meaning of ‘reasonably suspects’ is defined in the Act as follows:

*For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.*

2.6 For the purposes of this Report, the term ‘reasonably suspects’ (reasonably suspects) has the meaning as defined in the Act above. The terms ‘reasonable suspicion’ (reasonable suspicion) and ‘reasonable grounds for suspicion’ (reasonable grounds for suspicion) have a corresponding meaning.

2.7 Section 69 authorises police officers in certain ‘public places’ in certain circumstances to stop and search people and/or any vehicles under their charge while those people and vehicles are in, or about to enter, the relevant public place in the relevant circumstances. Unlike under section 68, the search may be undertaken for any or no reason. In particular, the officer does not need to have a reasonable suspicion that a person has a thing relevant to an offence. However, the person who is being searched, or whose vehicle is being searched, must first consent to the search. Where the person does not consent to the search, he or she may either be refused entry to the relevant public place or be ordered to leave the public place.

2.8 The section 69 powers may be exercised in the following three scenarios, where:

- the relevant public place is prescribed in regulations pursuant to section 69(1)(a),
- the relevant public place is the subject of a written declaration made under section 69(2) by a ‘senior public officer’, that is, a “police officer who is, or is

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6 This phrase is defined in section 5 of the *Criminal Investigation Act 2006*. See paragraph 4.88 in this Report, where the definition is reproduced.

7 Section 4 of the *Criminal Investigation Act 2006*.

8 This includes “(a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or not; (b) a place to which the public has access with the express or implied approval of, or without interference from, the occupier of the place; and (c) a school, university or other place of education, other than a part of it to which neither students nor the public usually has access”: section 3(1) of the *Criminal Investigation Act 2006*.

9 Section 69(4) of the *Criminal Investigation Act 2006*.

10 Such regulations have never been made: Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p11.
acting as, an inspector or an officer of a rank more senior than an inspector$^{11}$; and

- pursuant to section 69(1)(c), the police officer wishing to conduct the search 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.$^{12}$

2.9 The purpose of the search is to find “any thing that the officer reasonably suspects does or may endanger the place or people who are in or may enter it”.$^{13}$

2.10 Section 69 does not require the searching police officer, before conducting the search, to have reasonable suspicion. However, the section still affords the affected person the opportunity to refuse the search and either leave the public place or refrain from entering the public place. A person who does not consent to being searched under section 69 may nevertheless be searched under section 68 or some other statutory search power requiring reasonable suspicion, if the police officer has formed a reasonable suspicion.$^{14}$

Committee Comment

2.11 Section 69 purports to empower a police officer to search a person and a vehicle in that person’s charge.$^{15}$ However, the Committee noted that subsection (6), which specifically authorises the search once consent for the search is given, appears to authorise the search of a person only. This is because of the reference in section 69(6) to a ‘basic search’ which, by definition, can only be conducted on a person (there is no reference to a vehicle in the definition of a basic search in section 63 of the Act). The Committee draws the Government’s attention to this apparent anomaly.

How a Basic Search under the Act is Conducted

2.12 Section 68 authorises a police officer to conduct either a basic search or a strip search of a person while section 69 authorises a police officer to conduct a basic search of a person. A ‘basic search’ of a person is defined in the Act as follows:

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$^{11}$ Section 3(1) of the Criminal Investigation Act 2006.

$^{12}$ The Western Australia Police was not aware of any use of this power to date: Mr Christopher Dawson, Deputy Commissioner, Western Australia Police, Transcript of Evidence, 10 March 2010, p10.

$^{13}$ Section 69(6) of the Criminal Investigation Act 2006.

$^{14}$ Refer to paragraphs 2.1 to 2.31 in this Report.

$^{15}$ For example, the heading to section 69, albeit not forming part of the Criminal Investigation Act 2006 (see section 32(2) of the Interpretation Act 1984), is “People and vehicles in public places, search of for security purposes”.
63. “Basic search”, meaning of

(1) A person who is authorised by this Act to do a basic search of a person may do any or all of the following —

(a) scan the person with an electronic or mechanical device, whether hand held or not, to detect any thing;¹⁶

(b) remove the person’s headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not his or her inner clothing or underwear, in order to facilitate a frisk search;

(c) frisk search¹⁷ the person;

(d) search any article removed under paragraph (b).

(2) A person who is authorised by this Act to do a basic search of a person is not, unless authorised to do so under Part 9, authorised to also do a forensic procedure on the person being searched.

2.13 When conducting a basic search, the searching police officer has supplementary powers, which are prescribed in section 65 of the Act:

65. Searches, ancillary powers for

(1) This section operates if a person (the searcher) is authorised by this Act to do a basic search or a strip search of a person.

(2) In the case of a basic search or a strip search, the searcher may do any or all of the following for the purposes of doing the search —

(a) stop and detain the person for a reasonable period;

¹⁶ An ‘electronic or mechanical device’ would include the use of metal detector arches and wands.

¹⁷ This means “to quickly and methodically run the hands over the outside of the person’s clothing”: section 3(1) of the Criminal Investigation Act 2006.
(b) search any thing being carried by or under the immediate control of the person;

(c) order the person to remove any thing that might injure the searcher when doing the search from any article that the person is wearing;

(d) order the person to do anything reasonable to facilitate the exercise by the searcher of any power in this section, or in section 63 or 64, as the case requires.

(3) In the case of a basic search, the searcher may also photograph part or all of the search while it is being done.

(4) ...

(5) A person who is detained under subsection (2)(a) when he or she is not under arrest is to be taken to be in lawful custody.

2.14 Part 8, Division 3 of the Act contains legislative instructions for how basic searches and strip searches must be conducted:

**70. Basic search or strip search, rules for doing**

(1) This section operates if a person (the **searcher**) is authorised by this Act to do a basic search or a strip search of a person.

(2) Before the searcher does a basic search or a strip search of the person the searcher must, if reasonably practicable —

(a) identify himself or herself to the person[18];

(b) inform the person of the reason for the search;

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[18] This means that the police officer must “(i) give the person the officer’s official details; and (ii) if the officer is not in uniform, show the person evidence that the officer is a police officer” either immediately or as soon as practicable. A police officer’s ‘official details’ are his or her surname and rank and, if his or her official details are required to be stated on a document, the officer’s registered number: sections 11(1)(a) and (2) and the definition of ‘official details’ in section 3(1) of the **Criminal Investigation Act 2006**.
(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.

(3) 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 if, due to the seizure, the person is left without adequate clothing or footwear in the circumstances; and

(f) the person must not be questioned while it is being done about any offence that he or she is suspected of having committed.

2.15 In addition, and if practicable, a police officer conducting a basic search must be of the same gender as the person being searched, unless the police officer is also a doctor or a nurse.\textsuperscript{19}

2.16 Whenever the Act requires a police officer to inform a person about any matter, which is the case with basic searches, and the person is, for any reason, unable to understand or communicate in spoken English sufficiently, the police officer must, if it is

\textsuperscript{19} Section 71 of the \textit{Criminal Investigation Act 2006}. 
practicable to do so in the circumstances, use an interpreter or other qualified person or other means to inform the person about the matter.\textsuperscript{20}

2.17 The Western Australia Police (WA Police) provided the following example of what a basic search could involve:

\begin{quote}
Mr Budge: \ldots as far as a basic search goes from a police perspective, it really is the removing of the outer garments, including the hat, and the patting down of the person’s clothing that they are wearing, the patting down of the pockets, down the trouser legs, and down to the shoes and the removal of the shoes.\textsuperscript{21}

The CHAIRMAN: When you say “outer garments”, I take it that means, say, coats, jackets, jumpers ... cardigans, that sort of thing.

Mr Budge: And gloves; that is correct.

The CHAIRMAN: Not taking off shirts or anything of that nature.

Mr Budge: No.

The CHAIRMAN: You are leaving a layer of clothing at the very least.

Mr Budge: That is correct.\textsuperscript{21}

\ldots

I think it depends a lot on the time, place and circumstances that are in place at that time as well. The pat search may differ on some occasions depending on that time, place and circumstance. If I were searching a male person, depending on the circumstances, the most I would do is that I may run my hands through their hair, check the collar, pat down the chest and back and the sleeves, and then I would put their pockets on the outside. I can reach into the pockets to see if there is anything in the pockets. I would pat down the back of the person. It does not include the genitals of a person, so you would do from the thigh down to the feet in a pat sort of search and frisk-type search.\textsuperscript{22}
\end{quote}

\textsuperscript{20} Ibid, section 10.

\textsuperscript{21} Superintendent Gary Budge, Western Australia Police and Hon Michael Mischin MLC, Chair, Standing Committee on Legislation, Transcript of Evidence, 2 February 2010, p7.

\textsuperscript{22} Superintendent Gary Budge, Western Australia Police, Transcript of Evidence, 2 February 2010, p8.
In terms of approaching a person for the purposes of stop and search, the WA Police offered the following evidence:

- “They would certainly identify themselves to the person to start with. They would explain to them the reason for the search and why they needed to conduct the search. They would ask the person to consent. If the person did not consent, they would explain to them that if they did not consent, they may be committing an offence. If they did consent, depending on the practicalities of it and the location they were in, they would conduct a search there if it was practicable.”

- “The police would in most instances say, “We are conducting a search.” They would try to create an explanation. They are not likely to say, “We are not telling you. Just do what you are told”, because it is not in our interests to try to antagonise people, because that makes the whole process a lot more difficult to deal with. What we try to do is keep them on side and talk them through the issue. You may get to a stage where you have to say, “Well, this is the law. You have to walk through that metal detection arch.” It may escalate to that level. I can tell you that in 95 to 99 per cent of cases, people, having had it explained to them, and after providing even a further explanation in some cases, will comply with the act.”

Under The Criminal Code, a person who obstructs (that is, prevents, hinders or resists) a public officer in the performance of the officer’s functions could be liable for up to three years in prison if tried by the Supreme Court or District Court and to a maximum of 18 months in prison or a maximum fine of $18,000 if tried by the Magistrates Court (or the Children’s Court when constituted so as not to consist of or include a judge of that court). This sanction would apply to the obstruction of any stop and search performed by a police officer.

The Committee was provided with the following example of how a police officer may deal with a person who is being searched and who becomes non-compliant or objects to the search:

*Mr Budge:* It is certainly a matter of time, place and circumstances. There may be times when a person becomes violent, as opposed to a person just being non-compliant. So the circumstances are different. In the case of non-compliance, the police would certainly attempt to

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23 Superintendent Gary Budge, Western Australia Police, Transcript of Evidence, 2 February 2010, p8.
24 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p30.
25 The definition of a ‘public officer’ includes a police officer: section 1 of The Criminal Code.
26 Sections 172, 1 and 5 of The Criminal Code, when read with section 67 of the Interpretation Act 1984.
2.11 If they became non-compliant and obstructive to the police officers undertaking their duty, they certainly would be liable to be charged with obstructing police.

... 

Mr Budge: After some communication with the person, an explanation would be made that the search was going to be conducted, and if they became violent towards the police, then the police would use reasonable force to effect the arrest and conduct the search.

The CHAIRMAN: And that may involve restraint by another officer?

Mr Budge: Certainly.

The CHAIRMAN: Handcuffing if necessary?

Mr Budge: We usually use handcuffing, yes.

The CHAIRMAN: And any other forms of restraint or force?

Mr Budge: No, not generally, and the handcuffs are to protect the police and the person themselves from injury.27

2.21 When conducting a basic search on a person under section 69, a police officer who then forms a reasonable suspicion that the person has any thing relevant to an offence may also undertake a strip search28 of the person pursuant to section 68 (but only if the police officer also reasonably suspects that a strip search is necessary in the circumstances)29. In this way, a basic search under sections 68 or 69 can escalate into a strip search.

**Examples of Other Legislative Powers of Stop and Search which do not Require Consent, Arrest or a Search Warrant**

2.22 The legislative powers of search discussed under this heading are exercisable without the consent of the person involved, without that person being arrested and without the authority of a search warrant. The following discussion identifies what can be searched under each power, who can conduct the search and whether the search power is triggered by a reasonable suspicion. In addition, Table 1 below contains a summary

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27 Superintendent Gary Budge, Western Australia Police, and Hon Michael Mischin MLC, Chair, Standing Committee on Legislation, *Transcript of Evidence*, 2 February 2010, p9.

28 ‘Strip search’ is defined in section 64 of the *Criminal Investigation Act 2006*.

29 *Ibid*, section 72(2).
of these elements and various other features of these search powers. The powers to stop and search people under section 68 of the Act are included in the table as a comparison.

Examples of Other Legislative Police Powers to Stop and Search People

2.23 Legislative powers of the police to stop and search people can be found in other statutes dealing with specific, unlawful items, such as:

- firearms for which there is no licence, permit or other authority: see section 24(4) of the Firearms Act 1973;
- things being, or suspected of being, used in the commission of offences: section 23 of the Misuse of Drugs Act 1981;
- things regulated or prohibited in the Public Transport Authority Regulations 2003 pursuant to section 69(3) of the Public Transport Authority Act 2003: section 61 of the Public Transport Authority Act 2003; and
- weapons or something else that will afford evidence of the commission of an offence: section 13(1) of the Weapons Act 1999.\(^{30}\)

2.24 Each of the above stop and search powers is predicated on the searching police officer having reasonable grounds to suspect that the person has these items.

2.25 Section 13 of the Terrorism (Extraordinary Powers) Act 2005 empowers a police officer to conduct a “basic search” or a “strip search” on a person whom the police officer reasonably suspects:

\[
\begin{align*}
(a) & \text{ is about to enter, is in, or has recently left, a target area;} \\
(b) & \text{ is a target person;} \\
(c) & \text{ is in the company of a target person in suspicious circumstances; or} \\
(d) & \text{ is in a target vehicle,}
\end{align*}
\]

for the purposes of looking for a thing connected with a terrorist act.

Examples of Other Legislative Police Powers to Search Land, Water and Objects

2.26 The police are authorised under various Acts to stop, where applicable, and search, for example, land, water, premises, tents, camps, unauthorised structures, trains, aircraft,  

\(^{30}\) This section also authorises police officers to stop and search a person whom the police officer suspects on reasonable grounds to be committing an offence: section 13(1)(a) of the Weapons Act 1999.
vehicles, vessels and documents with reasonable grounds for suspicion, for example, the commission of an offence. Examples of these powers can be found in: section 124(1), when read with section 49, of the Conservation and Land Management Act 1984; sections 38 and 39 of the Act; section 24(4) of the Firearms Act 1973; sections 183, 184, 186 and 191(1)(d), when read with section 180, of the Fish Resources Management Act 1994; section 155(3) of the Liquor Control Act 1988; section 23 of the Misuse of Drugs Act 1981; section 14 of the Terrorism (Extraordinary Powers) Act 2005; and section 49(1)(c) of the Transport Co-ordination Act 1966.

2.27 Examples of legislative powers for the police to stop and search boats or vehicles without the need for reasonable suspicion can be found in sections 191(1)(a) and (b), when read with section 180, of the Fish Resources Management Act 1994 and section 53 of the Road Traffic (Administration) Act 2008.

An Example of Legislative Powers for Non-Police Officers to Stop and Search People

2.28 A Public Transport Authority security officer has statutory powers to stop and search a person where the officer has a reasonable suspicion that the person is in possession of anything regulated or prohibited by the Public Transport Authority Regulations 2003 pursuant to section 69(3) of the Public Transport Authority Act 2003. 31

Examples of Legislative Powers for Non-Police Officers to Search Land, Water and Objects

2.29 People other than police officers are authorised under various Acts to stop, where applicable, and search, for example, land, water, premises, tents, camps, unauthorised structures, trains, aircraft, vehicles, vessels and documents with reasonable grounds for suspicion, for example, the commission of an offence. Examples of these powers can be found in: section 124(1) of the Conservation and Land Management Act 1984 (exercisable by rangers or conservation and land management officers); section 39 of the Act; sections 183, 184, 185, 186 and 191(1)(d) of the Fish Resources Management Act 1994 (exercisable by fisheries officers); section 49(1)(c) of the Transport Co-ordination Act 1966 (exercisable by a person authorised by the Director General of the Department of Transport); and section 20(2)(b) of the Wildlife Conservation Act 1950 (exercisable by wildlife officers).

2.30 Sections 191(1)(a) and (b) of the Fish Resources Management Act 1994 are an example of a legislative power for fisheries officers to stop and search boats or vehicles without the need for reasonable suspicion.

31 Section 61 of the Public Transport Authority Act 2003.
Table 1: Summary of Various Elements of Western Australian Legislative Powers to Stop and Search without Consent, Without Arrest and Without a Search Warrant (‘NA’ denotes ‘Not Applicable’)

<table>
<thead>
<tr>
<th>Empowering Act</th>
<th>Conducted by</th>
<th>Reasonable Suspicion</th>
<th>Search of a</th>
<th>Type of Search of Person</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Police Officer</td>
<td>Other Officer</td>
<td>Person</td>
<td>Land/Object</td>
</tr>
<tr>
<td>s 124 Conservation and Land Management Act 1984</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
</tr>
<tr>
<td>s 38 Criminal Investigation Act 2006</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
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<tr>
<td>s 39 Criminal Investigation Act 2006</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
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<td>s 68 Criminal Investigation Act 2006</td>
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<td>✓</td>
<td>✓</td>
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<td>s 24 Firearms Act 1973</td>
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<td>✓</td>
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<tr>
<td>ss 183, 184, 186 and 191(1)(d) Fish Resources Management Act 1994</td>
<td>✓</td>
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<tr>
<td>ss 191(1)(a) and (b) Fish Resources Management Act 1994</td>
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<td>✓</td>
<td>NA</td>
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<tr>
<td>s 155(3) Liquor Control Act 1988</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
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<tr>
<td>s 23 Misuse of Drugs Act 1981</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>s 61 Public Transport Authority Act 2003</td>
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<td>✓</td>
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<tr>
<td>s 53 Road Traffic (Administration) Act 2008</td>
<td>✓</td>
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<td>✓</td>
<td>NA</td>
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<tr>
<td>s 13 Terrorism (Extraordinary Powers) Act 2005</td>
<td>✓</td>
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<td>✓</td>
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<tr>
<td>s 14 Terrorism (Extraordinary Powers) Act 2005</td>
<td>✓</td>
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<td>✓</td>
<td>NA</td>
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<tr>
<td>s 49(1)(c) Transport Co-ordination Act 1966</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
</tr>
<tr>
<td>s 13 Weapons Act 1999</td>
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<td>✓</td>
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<tr>
<td>s 20(2)(b) Wildlife Conservation Act 1950</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
</tr>
</tbody>
</table>

32 As defined in section 63 of the *Criminal Investigation Act 2006*.
33 As defined in *ibid*, section 64.
34 Although the search must be conducted by either a police officer of the same sex as the person being searched or a medical practitioner: section 23(2) of the *Misuse of Drugs Act 1981*.
35 Although the search must be conducted by either a police officer of the same sex as the person being searched or a medical practitioner: *ibid*.
36 Although the search must be conducted by an officer of the same sex as the person being searched and body cavity searches are not authorised: sections 62(1) and (3) of the *Public Transport Authority Act 2003*.
37 Although the search must be conducted by an officer of the same sex as the person being searched and body cavity searches are not authorised: *ibid*.
38 As defined in Schedule 2, clause 2 of the *Terrorism (Extraordinary Powers) Act 2005*, which is effectively identical to the definition of a ‘basic search’ in section 63 of the *Criminal Investigation Act 2006*.
39 As defined in Schedule 2, clause 3 of the *Terrorism (Extraordinary Powers) Act 2005*, which is very similar to the definition of a ‘strip search’ in section 64 of the *Criminal Investigation Act 2006*. A strip search can only be conducted if the police officer reasonably suspects “(a) that the person is a target person; (b) that a strip search is necessary; and (c) that the seriousness and urgency of the situation require a strip search to be done”: section 13(3) of the *Terrorism (Extraordinary Powers) Act 2005*. 
Committee Comment

2.31 On the basis of the Committee’s review of a sample of Western Australian law, the Committee observed that there is existing legislation which allows police officers and other public officers to search vehicles without consent, without arrest, without a search warrant and without having formed a reasonable suspicion, although this sort of power to search objects does not appear to be common. However, the Committee noted that it is unprecedented in Western Australia for legislation to authorise police officers or other public officers to stop and search people in public places without the prerequisite of reasonable suspicion where there is also no requirement for consent, arrest or a search warrant.

Finding 1: The Committee finds that in Western Australia, there is existing legislation which allows police officers and other public officers to search vehicles without consent, without arrest, without a search warrant and without having formed a reasonable suspicion. However, this sort of power is rare.

Finding 2: The Committee finds that in Western Australia, no current legislation authorises police officers or other public officers to stop and search people in public places without consent, without arrest, without a search warrant and without having formed a reasonable suspicion.

HOW THE BILL WILL CHANGE THE LAW

Clause 5 of the Bill (Proposed Sections 70A and 70B of the Act)

2.32 Among other things, the Bill proposes to insert sections 70A and 70B into Part 8, Division 2 of the Act. \(^{40}\) Proposed section 70A will provide police officers with a new power to stop and search people, and vehicles under their charge:

- without the prior consent of the person who is being searched, or whose vehicle is being searched;
- without the person being lawfully arrested;
- without a search warrant; and
- without the need for the searching officer forming a reasonable suspicion.

\(^{40}\) Clause 5 of the Criminal Investigation Amendment Bill 2009.
2.33 A person and/or the vehicle under his or her charge will be exposed to a section 70A stop and search if he or she (and the vehicle) is in a public place\(^{41}\) which is in an area:

- that has been prescribed in regulations (that is, legislation made by the Executive Government) made under proposed section 70A(1)(a) of the Act, while the prescription is operative; and

- that is the subject of a declaration made by the Commissioner of Police, or his or her delegate, with the approval of the Minister for Police, under proposed section 70B of the Act, while the declaration is operative.

2.34 The prescription of an area by regulations would require publication of the regulations in the *Western Australian Government Gazette*, tabling of the regulations in Parliament and the regulations would be subject to disallowance by Parliament, as is currently the case with the prescription of an area under section 69(1)(a) of the Act.\(^{42}\) Unlike a declaration made under section 69(2) of the Act, the declaration of an area under proposed section 70B will require ministerial approval\(^{43}\) and, once made, must be gazetted as soon as is practicable, although no consequences flow from a failure to gazette the declaration\(^{44}\). However, no other form of advertising is required for prescribing or declaring an area under either the proposed or existing laws, so members of the public may not be aware that they are either in or entering a designated area.\(^{45}\)

2.35 Unlike a person who is confronted with a section 69 stop and search, who may refuse consent to the search and either leave the public place or refrain from entering it, a person who is to be searched under proposed section 70A will have no choice but to submit to the search.

2.36 As is currently the case with section 69, a person who declines to enter an area designated under proposed sections 70A and 70B may, in the appropriate circumstances, give a police officer reason to search the person using the officer’s section 68 or other statutory powers of search.

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\(^{41}\) This includes “(a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or not; (b) a place to which the public has access with the express or implied approval of, or without interference from, the occupier of the place; and (c) a school, university or other place of education, other than a part of it to which neither students nor the public usually has access”: section 3(1) of the *Criminal Investigation Act 2006*.

\(^{42}\) See sections 41 and 42 of the *Interpretation Act 1984*. Refer to paragraphs 4.10 to 4.11 in this Report for a discussion about the parliamentary process of disallowing regulations.

\(^{43}\) Proposed section 70B(1) of the *Criminal Investigation Act 2006*; clause 5 of the Criminal Investigation Amendment Bill 2009.

\(^{44}\) Proposed section 70B(5) of the *Criminal Investigation Act 2006*; clause 5 of the Criminal Investigation Amendment Bill 2009. Refer to paragraphs 4.117 to 4.122 in this Report for a discussion of this issue.

\(^{45}\) These issues are discussed further in paragraphs 2.61 to 2.63 and 4.35 to 4.49 in this Report.
2.37 As is the case with all current searches conducted by the police, a person who obstructs (including, prevents, hinders or resists) a public officer in the performance of the officer’s functions could be liable to up to three years in prison if tried by the Supreme Court or District Court and to a maximum of 18 months in prison or a maximum fine of $18,000 if tried summarily by the Magistrates Court (or the Children’s Court when constituted so as not to consist of or include a judge of that court).

2.38 The Minister for Police stated that it is “highly likely” that the act of obstructing a search would be prosecuted summarily. The option of arresting a person for obstructing a search and then taking them to a police station will be “a last resort and very dependent upon the specific circumstances, place of the search, extent of resistance and general demeanour of the individual.”

2.39 As with the current police powers to stop and search people under the Act and under the statutes discussed at paragraphs 2.23 to 2.25 in this Report, the stop and search powers proposed by the Bill will apply to children and young people and people who are vulnerable, such as those with a mental illness or disability. The issue of whether children and young people and vulnerable persons may be disproportionately affected by the Bill will be considered in paragraphs 3.172 to 3.185 in this Report. The issue of whether children and young people and vulnerable persons will require specific protections from the proposed powers is discussed in paragraphs 5.31 to 5.43 and 5.44 to 5.54 in this Report.

2.40 The Bill does not articulate the circumstances in which, or the frequency with which, the proposed powers are to be used. The Commissioner of Police indicated that, as far as he was concerned, the proposed stop and search powers will be used sparingly, and only in exceptional cases:

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46 A ‘summary trial’ is “A trial involving a judge or magistrate as the sole fact finder. At common law, trials were only by jury and consequently summary trials are entirely statutory. Generally, the procedure is similar to that followed in a trial by jury in so far as the taking of evidence and addresses is concerned”: Encyclopaedic Australian Legal Dictionary, On-line, Lexis-Nexis.

47 Sections 172, 1 and 5 of The Criminal Code, when read with section 67 of the Interpretation Act 1984.


50 The Criminal Investigation Act 2006 uses the term ‘protected person’, which means: “a person who is a child or an incapable person”: section 73. A ‘child’ is defined as “a person who is under 18 years of age and in respect of whom there are no reasonable grounds to suspect that he or she is an incapable person” and an ‘incapable person’ is defined as “a person of any age — (a) who is unable by reason of a mental disability (which term includes intellectual disability, a psychiatric condition, an acquired brain injury and dementia) to understand the general nature and effect of, and the reason for and the consequences of undergoing, a forensic procedure; or (b) who is unconscious or otherwise unable to understand a request made or information given under this Act or to communicate whether or not he or she consents to undergoing a forensic procedure”: section 73.
In fact, if we used it a dozen times in a year, I would be surprised, unless there was a particular issue. I do not see us going out and immediately hitting the streets with stop and search in many different areas of Western Australia. We would use it for high pressure situations that come up from time to time, and we would use it cautiously based on intelligence that we have. I would want to be convinced that the legislation is useful; I do not want to go out and use it indiscriminately.\(^{51}\)

2.41 However, the Bill does not constrain the use of the proposed powers in the manner articulated by the Commissioner.

### Committee Comment

2.42 The Bill is not unique in proposing to allow police officers to search **vehicles** without consent, without arrest, without a search warrant and without having formed a reasonable suspicion.\(^{52}\) However, the Committee noted that the Bill is unique in proposing to authorise police officers to stop and search **people** in public places without the prerequisite of reasonable suspicion where there is also no requirement for consent, arrest or a search warrant.\(^{53}\) This is reflected in the *Explanatory Memorandum* for the Bill, which says:

> Proposed new section 70A of the Criminal Investigation Act 2006 will provide police officers with powers to search people and vehicles that are in public places within … prescribed or declared areas, without the consent of the person and without the ordinary circumstances of reasonable suspicion.\(^{54}\) (underlining added)

### Finding 3: The Committee finds that in Western Australia, the Criminal Investigation Amendment Bill 2009 is not unique in proposing to allow police officers to search vehicles without consent, without arrest, without a search warrant and without having formed a reasonable suspicion. However, this sort of power is rare.

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\(^{51}\) Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p37.

\(^{52}\) Refer to paragraphs 2.1 to 2.31 in this Report for a discussion about current stop and search powers.

\(^{53}\) Refer to paragraphs 2.1 to 2.31 in this Report for a discussion about current stop and search powers.

\(^{54}\) *Explanatory Memorandum* for the Criminal Investigation Amendment Bill 2009, p1.
Finding 4: The Committee finds that in Western Australia, the Criminal Investigation Amendment Bill 2009 is unique in proposing to authorise police officers to stop and search people in public places without consent, without arrest, without a search warrant and without having formed a reasonable suspicion.

Police Auxiliary Officers’ Use of the Proposed Stop and Search Powers

2.43 Hon Giz Watson MLC and Ms Adele Carles MLA were concerned by the prospect of police auxiliary officers exercising the proposed stop and search powers.\textsuperscript{55}

2.44 Proposed section 70A of the Act will authorise police officers to exercise the proposed stop and search powers. ‘Police officer’ is defined in section 5 of the \textit{Interpretation Act 1984} as \textit{“a person appointed under Part I of the Police Act 1892 to be a member of the Police Force of Western Australia”}. This definition applies to all legislation in the State.

2.45 While police auxiliary officers are not police officers,\textsuperscript{56} they do have all of the powers, duties, obligations, authorisations, exemptions and exceptions which apply to police officers or members of the Police Force under any legislation apart from the \textit{Police Act 1892}. However, the document appointing a police auxiliary officer\textsuperscript{57} or the relevant written law may explicitly provide otherwise.\textsuperscript{58} The Bill does not explicitly prohibit police auxiliary officers from exercising the proposed stop and search powers. Therefore, police auxiliary officers will be able to exercise these proposed powers unless their individual appointing documents state otherwise.

2.46 However, the WA Police maintained that police auxiliary officers will not be able to exercise the proposed stop and search powers.\textsuperscript{59} Further, the Commissioner of Police stated that:

\begin{quote}
Auxiliary officers will not be allowed to work in the front line. \textit{They will not be on the streets at all.}\textsuperscript{60}
\end{quote}

\textsuperscript{55} Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p7; and Submission No 9 from Ms Adele Carles MLA, 18 January 2010, p3.

\textsuperscript{56} Section 38I of the \textit{Police Act 1892}.

\textsuperscript{57} Which is issued by the Commissioner of Police: \textit{Explanatory Memorandum} for the Police Amendment Bill 2009, p3.

\textsuperscript{58} Section 38H of the \textit{Police Act 1892}.

\textsuperscript{59} Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p3.

\textsuperscript{60} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p49; and Mr Russell Armstrong, General President, WA Police Union of Workers, \textit{Transcript of Evidence}, 9 February 2010, pp24-25.
2.47 The WA Police Union of Workers (Police Union) was of the same view. The following exchange occurred during the hearing with the Police Union:

Mr Armstrong: My understanding is that auxiliary officers will not be walking the beat. They will be backroom people. They will be dealing with custody, driving vehicles, transporting drugs, property or whatever to certain locations and doing the backroom jobs. My understanding, and the guarantee, is that these auxiliary officers will not be out in the street taking the job of sworn police officers.

Hon KATE DOUST: They will not in any circumstance be conducting stop and search, as far as you know?

Mr Armstrong: It has not been proposed at all.

Hon ALISON XAMON: ... Mr Armstrong, you are not ruling out the possibility that auxiliary officers will still have the power to undertake stop and search? They may not be put in operational situations where that would occur, but they will have that power, is that correct?

Mr Armstrong: Auxiliary officers will have limited powers. That will be confined to watch-houses and lockups and the backroom area. They will not actually be dealing with walking the beat or anything like that. We would strongly oppose auxiliary officers taking the role of a sworn police officer out in the street as we have seen in the UK.  

Committee Comment

2.48 Notwithstanding the views of the Commissioner of Police and the Police Union, there is nothing in the Bill or the Act prohibiting police auxiliary officers from exercising the proposed stop and search powers. In the absence of such express prohibition, police auxiliary officers will have the power to stop and search people and vehicles under proposed section 70A of the Act unless their individual documents of appointment state otherwise. This issue is discussed further in paragraphs 5.2 to 5.3 of this Report.

Finding 5: The Committee finds that, subject to their individual appointing documents, police auxiliary officers will be able to exercise the stop and search powers proposed by the Criminal Investigation Amendment Bill 2009.

61 Mr Russell Armstrong, General President, WA Police Union of Workers, Hon Kate Doust MLC, participating Member of the Legislative Council on 9 February 2010, and Hon Alison Xamon MLC, Member of the Standing Committee on Legislation, Transcript of Evidence, 9 February 2010, pp24-25.
How a Proposed Stop and Search will be Conducted

2.49 Proposed section 70A authorises police officers to conduct basic searches of people.\(^{62}\) As such, the powers prescribed in sections 63 and 65 of the Act and the rules governing basic searches provided in sections 10, 70 and 71 of the Act, apply to the proposed stop and search powers (see paragraphs 2.12 to 2.21 in this Report).

2.50 Section 71 requires the searching police officer to be of the same gender as the person being searched, if practicable. The WA Police gave evidence as follows:

*Mr Penn:* It comes down to issues of practicality, one being how readily we might be able to get hold of a female police officer. If there is a need to have that search conducted expeditiously and we cannot get hold of a female officer for, say, a period of time, then it might not be practical to wait until that female officer attends in order to conduct a search. ...

*Mr Budge:* And the scenario that Mr Penn has just put is unlikely in the metropolitan area, or close to the metropolitan area. That section about where it is practicable, because of the geographic area that Western Australia is, is particularly put into legislation to allow for those practicalities that occur in remote Western Australia.\(^{63}\)

2.51 The Premier and the Minister for Police have made public comments which suggest that the basic searches which will occur under the proposed stop and search powers will be confined, at least in the first instance, to the use of metal detector arches and wands.\(^{64}\) For example, the Minister for Police explained that:

*in designated areas between certain hours people may be liable to a non-intrusive search by police officers using a metal detector to ensure that they are not carrying weapons.*

...
A police officer may feel it necessary to go a bit further and ask somebody to remove his or her jacket. I will give an example. If a police officer waves his wand over a person and it beeps, and the police officer has a concern that that person might be carrying a weapon in his or her jacket, the police officer might ask that person to take his or her jacket off. The police officer would have the power to check the jacket pockets to see whether they were concealing a knife or a gun. If nothing is found or it is a bunch of keys or whatever else, that person would go on his or her way.  

2.52 In a later example, the Premier stated as follows:

*a lot of the debate [on the Bill] has been about that intrusive nature [of the proposed stop and search powers]. I just want to reassure people two things; the search will be a metal detector or walking through an arch as you would do at an airport*[66] - not obtrusive [sic]. The search, if it is applied, would only apply late at night, in the early hours [of] the morning in a designated area, parts of Northbridge is the obvious example. Why? Because the police know there are significant numbers of people walk around with knives and other weapons; that’s what it’s about.  

2.53 However, the definition of a basic search in the Act incorporates more than this: for example, it can involve a ‘frisk search’[68] and the removal of the person’s outer clothing to facilitate the frisk search (refer to paragraphs 2.12 to 2.21 in this Report).  

2.54 The WA Police indicated that metal detector arches and wands would be the most efficient tools for the preliminary searching of people for hidden metallic weapons. However, due to resource constraints, these tools were most likely to be available only in the metropolitan areas and large regional centres:

An arch is only a preliminary device to indicate whether someone has a significant piece of metal in their possession. We are talking about metallic weapons, because it would obviously not pick up a baseball bat, even if it could be secreted. An arch is a way of making an initial discrimination. ... The first response from the police would be to ask someone to turn out his pockets or to show us what is under his coat, or something like that. I am not an expert in these areas, but it may

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65 Hon Robert Johnson MLA, Minister for Police, Parliament of Western Australia, Legislative Assembly, Parliamentary Debates (Hansard), 12 November 2009, pp8955-8956.

66 The Committee noted that airport searches can also include frisk or ‘pat-down’ searches.


68 This means “to quickly and methodically run the hands over the outside of the person’s clothing”: section 3(1) of the Criminal Investigation Act 2006.
be that the second level of screening is like what we have at the airport; if someone sets the arch off, the wand is run over and the location of a piece of metal is found and we ask, “Could we have a look at what’s there, please?” We may not even need to progress to a physical pat down search. The other thing for us is that it needs to be a very efficient, quick method, because obviously a lot of people going through will not be carrying weapons, so we do not want to be bogged down doing pat down searches of everyone in the area, because we do not have the resources or the time, and it is not useful. We would be looking for one particular thing, and there would then be maybe another level of wand search. We would then ask the person to produce whatever is there, and if he does not produce it, we might have to move on to a pat down type of scenario.

... 

We cannot always guarantee that an arch will be used, but I am talking about screening in an area where there are lots of people and lots of police, and a lot of police infrastructure, like Perth or any of the main towns around Western Australia. In the more remote locations, an arch may not be available for the application of this particular power for this particular reason, and we may have to resort to some other means. It may be that we can get wands out to lots of those places.

... 

... If we are searching particularly for metal then the most efficient way of doing that is to use an arch or a wand if we have them at our disposal. That is the most efficient way of doing it.69

2.55 There are currently no metal detector arches available for use by the police in Western Australia, although they do have the use of approximately 25 metal detector wands in the Perth area.70 The Commissioner of Police indicated to the Committee that the proposed stop and search powers will not be utilised until a sufficient number of metal detector arches are available:

**Dr O’Callaghan:** We need metal detection equipment. We do not want to go out and start patting people down because we do not have metal detection equipment; that is not going to occur. The metal

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69 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, pp27-28.

70 Dr Karl O’Callaghan, Commissioner of Police, and Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, Western Australia Police, Transcript of Evidence, 10 March 2010, p56.
detection arches will not be purchased until money has been provided, and that process will have to occur at some stage before we actually use the legislation.

Hon SALLY TALBOT: What sort of number will you be knocking on the Treasurer’s door with?

Dr O’Callaghan: I do not know what they are, but we will have to work within the number that we have; whether that is half a dozen or 10 to start with. I would imagine that with most of these capital purchases there is an incremental build. We will not go out and buy 100 all at once; we will buy some, and then the next year add to that and expand.  

Committee Comment

2.56 Although the Premier and the Minister for Police have assured the public that they expect searches to be limited to metal detector arches and wands, the proposed powers can involve searches of a more intrusive nature, for example, a frisk search. This issue is discussed further in paragraphs 4.79 to 4.81 in this Report.

2.57 The Committee was of the view that, due to limited resources, stops and searches conducted under the proposed powers, as with existing police stop and search powers, will be likely to:

- involve frisk searching of individuals, possibly by police officers who are of the opposite sex to the individuals. The Committee was concerned that this may mean that it will be difficult for police officers to achieve the objectives of sections 70(3)(b) and 71 of the Act when carrying out stops and searches, including those conducted under the proposed powers; and

- be conducted by relatively inexperienced police officers without the supervision of more senior police officers in the context raised by the Commissioner of Police (the issue of supervised use of the proposed stop and search powers is discussed in paragraphs 6.23 to 6.26 in this Report).

2.58 Regional areas may be more susceptible to these issues than metropolitan areas due to

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71 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, and Hon Dr Sally Talbot MLC, Deputy Chair, Standing Committee on Legislation, Transcript of Evidence, 10 March 2010, p57.

72 Basic searches and strip searches must not be any more intrusive than is reasonably necessary in the circumstances. Refer to paragraphs 2.12 to 2.21 in this Report for a discussion on basic searches.

73 If practicable, basic searches must be conducted by a person of the same sex as the person being searched. Refer to paragraphs 2.12 to 2.21 in this Report for a discussion on basic searches.

74 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, pp18, 19 and 35.
the smaller pool of police officers available to draw on when required.

2.59 Notwithstanding that the Committee was advised that the implementation of the Bill will be cost-neutral,\textsuperscript{75} (the question of resourcing is discussed at paragraphs 6.27 to 6.31 in this Report) the Committee recognised that capital expenditure will be required before the proposed powers can be exercised in the way outlined by the Commissioner of Police, the Premier and the Minister for Police.

Maximum Duration of Designation of an Area

2.60 An area may be designated by being prescribed for up to 12 months or declared for up to two months.\textsuperscript{76} The Committee noted that these are maximum periods. The WA Police advised that, in practice, the period of designation is likely to be interrupted; that is, only certain times of the day are likely to be prescribed or declared, depending on what is informed by police intelligence.\textsuperscript{77} The issues associated with the maximum periods of designation and the desirability of legislatively limiting the periods and frequency for which areas can be designated are discussed in paragraphs 4.58 to 4.63 and paragraphs 4.109 to 4.113 in this Report, respectively.

Publication Requirements for a Designation

2.61 The prescription or the written record of the declaration of an area must be published in the \textit{Western Australian Government Gazette}.\textsuperscript{78} This requirement for gazettal is an inherent feature of regulations, as is the requirement for regulations to be tabled in Parliament.\textsuperscript{79}

2.62 Conversely, the requirement for the gazettal of declarations is specifically provided for in clause 5 of the Bill (proposed section 70B(5) of the Act), although the validity

\textsuperscript{75} Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p56; and Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, \textit{Transcript of Evidence}, 19 May 2010, p14.

\textsuperscript{76} Clause 5 of the Criminal Investigation Amendment Bill 2009 (proposed sections 70A(2) and 70B(4) of the \textit{Criminal Investigation Act 2006}).

\textsuperscript{77} For example, Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, pp3, 5 and 6; and Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, \textit{Transcript of Evidence}, 2 February 2010, p11.

\textsuperscript{78} With respect to regulations, see section 41 of the \textit{Interpretation Act 1984}. With respect to declarations, see clause 5 of the Criminal Investigation Amendment Bill 2009 (proposed section 70B(5) of the \textit{Criminal Investigation Act 2006}).

\textsuperscript{79} Sections 41 and 42 of the \textit{Interpretation Act 1984}. 25
of the declaration is not affected by a failure to comply with this requirement.\(^{80}\) This issue is discussed later in this Report at paragraphs 4.117 to 4.122.

2.63 Other potential forms of publicising the prescription or declaration of areas are discussed at paragraphs 4.35 to 4.49 in this Report.

**How an Area would be Chosen for Designation**

2.64 Although proposed sections 70A and 70B of the Act do not prescribe any criteria which must be satisfied before an area is prescribed or declared, the WA Police advised the Committee that, as a matter of policy, the following factors might be considered:

- *the nature of activities that take place in the area;*
- *whether or not alcohol or drugs and [sic] frequently consumed in the area;*
- *whether or not there is a propensity for person [sic] to carry weapons in the area;*
- *whether there is a propensity for violence in the area; and*
- *the risk to the general public or [sic] a person carrying a weapon or dangerous article in the area.*\(^{81}\)

2.65 Proposed section 70B(3) provides that a declared area must not be larger than is reasonably necessary, having regard to the reasons for making the declaration.

2.66 The WA Police emphasised that, in selecting an area for prescription or declaration, it will be focusing on the characteristics of the area in question, not targeting groups of people.\(^{82}\) For example, if the Executive Government was considering the prescription of Northbridge under proposed section 70A(1)(a):

> it may be that the government asks us to look at whether there is any merit in declaring a part of Northbridge and asks us to look at various issues that might have taken place, such as the antisocial behaviour over a period of time, and we might present that to the government and say, “This is the information you have asked for.”

The government might then decide it wants some regulations drawn

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\(^{80}\) Clause 5 of the Criminal Investigation Amendment Bill 2009 (proposed section 70B(5) of the Criminal Investigation Act 2006).

\(^{81}\) Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, pp5 and 8.

\(^{82}\) Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, *Transcript of Evidence*, 2 February 2010, p15.
up to cover that particular area. From that point of view, some of those are pretty much in the government’s hands as to whether they want us to look at particular areas and to look at the incidents of violence or drug offences and weapons offences in that area, to give the government some information as to whether it thinks, for example, that regulations ought to be made.  

2.67 However, some scenarios raised by the WA Police in the course of evidence as to the necessity for the proposed powers plainly focused on the characteristics of categories of people. This is discussed in further detail in paragraphs 3.133 to 3.138 in this Report.

2.68 In the context of attempting to prevent or deter knife crime with the use of the proposed stop and search powers, the Commissioner of Police assured the Committee that he would need to be convinced of a significant problem with knife crime in an area before he would even consider seeking the declaration of an area under proposed section 70B. When policing large-scale events, the Commissioner of Police indicated that he:

> would have to be convinced that there is a significant threat of harm being done to people at a particular event before we would move to want to use the stop-and-search powers. I have never heard of it for the Royal Show. I have never heard of it for the Big Day Out. There have been some issues with drugs, but I do not think that would necessarily justify it, because you could get around that scenario with sniffer dogs anyway.

> ... if there was a particular event going on where we knew there was a significant level of the threat of criminal damage or serious criminal damage, we may seek to convince someone that we need the powers. I cannot envisage that sort of scenario in the types of things that you have been talking about, because a civil protest is not the same as a protest where people go and cause widespread damage and they assault each other. ... We would not seek—I certainly as commissioner would not seek—to use the stop-and-search powers in that sort of space.

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83 Ibid, p33.
84 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p39.
2.69 The WA Police also advised the Committee that the police manual will be updated to include the criteria which district superintendents ought to consider before preparing and presenting a proposal to the Commissioner of Police for an area to be declared. Although this advice was given with regard to the declaration of areas, the Committee would expect these criteria to inform the Commissioner’s advice to the Minister for Police regarding the prescription of an area by regulation.

2.70 At the time of this inquiry, the WA Police had not yet identified any public places for prescription or declaration in anticipation of the passing of the Bill:

   Mr Budge: We have not proposed any areas. If the legislation were passed, we would have to undertake some very rigorous statistical analysis and information gathering.

   Hon JOCK FERGUSON: So you have not already done that?

   Mr Budge: No, we have not.

   Mr Penn: The reason for that is there are no proposals at this stage for any particular area to be subject to a declaration or regulations to be made. We are not looking at any particular area at this point in time.

Committee Comment

2.71 The decision to declare any area depends on how a Commissioner of Police chooses to exercise his or her discretion. A decision by the Minister for Police to prescribe an area by regulation would ideally be informed by the advice of the Commissioner of Police. Notwithstanding the assurances of the Commissioner and other WA Police officers, the police manual is a non-binding internal document which can be changed without notice or external scrutiny. Accordingly, the decision to designate an area and the extent of the designation will largely be at the discretion of the Commissioner of Police.

2.72 As there are no statutory criteria for the designation of an area, there is nothing to prevent, for example, the designation of areas where certain public events, including
lawful protests and industrial action, are proposed to be held.

2.73 The Committee considered that the Bill should articulate the criteria governing any decision to designate an area. The issues associated with the bases for prescribing and declaring areas and the desirability of legislative limitations upon the discretion to designate areas are discussed at paragraphs 4.17 to 4.28 and paragraphs 4.29 to 4.34 in this Report.

Specific Location of the Proposed Stops and Searches

2.74 The Committee was advised that, other than prescribing or declaring a whole suburb, the police may want to exercise the proposed stop and search powers in and around, for example, the public transport system:

*maybe at specific stations at specific times, and these times and these locations would be driven by the intelligence that we hold. So there is no point in doing just a random stop-and-search at any railway station around Perth at any time of the day. They would have to be specifically targeted to when we know those types of offences are occurring and only for that defined period.*

2.75 Hon Giz Watson drew the Committee’s attention to a concern that the proposed stop and search powers could be exercised in homeless shelters, if such places fall within the definition of ‘public place’ under the Act and a particular homeless shelter is located within a prescribed or declared area. If that is the case, Homelessness Australia advised Hon Giz Watson of its concern that the privacy of shelter clients would be compromised, and young homeless people may be discouraged from accessing shelter services and be more mistrustful of youth workers. When the Committee queried whether homeless shelters could constitute a ‘public place’ for the purposes of the Act, and therefore, the Bill, the WA Police advised that the answer was not clear:

*Mr Penn: ... the police would be able to conduct a search only in public places within that [prescribed or declared] area. So if you took the Northbridge area as an example, there are a number of private residences that might potentially be in that area. The legislation will*
not give the police the power to conduct searches in those private residences. If the police felt that there was a need to conduct a search in a private residence, they would need to go through the normal process of getting a search warrant. In answer to your question about a homeless shelter, the Criminal Investigation Act has quite a broad definition of what is a “public place”. As to whether a homeless shelter would fit within that definition, I cannot categorically say whether it would or it would not. It would depend on how the homeless shelter was managed, and who actually had access to that place and under what conditions, as to whether it would fit within the definition of a “public place” under the Criminal Investigation Act, and therefore whether, if it was in a prescribed area, the police would be able to exercise those powers.

Hon ALISON XAMON: So the police would not necessarily be able to carry out those powers?

Mr Penn: No. As I say, it would depend on whether it did fit within that definition. If we had more details of a particular homeless shelter, we could seek some legal advice as to whether that particular place did fit within the definition of a “public place” under the act, and therefore whether the police would be able to exercise those powers. But certainly places like restaurants and nightclubs are public places, so if those types of venues were within a prescribed area, the police would be able to exercise those powers in those venues.  

Committee Comment

2.76 The Committee recognised that homeless shelters and other places with similar characteristics may fall within the definition of a public place and therefore, when located within a prescribed or declared area, may be a place in which police officers can exercise the proposed stop and search powers.

2.77 A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) was of the view that this potential outcome is of concern because homeless shelters, refuges and crisis centres are places where vulnerable people go to seek assistance and therefore, these places should not be subject to compulsory police stop and search powers with no requirement for reasonable suspicion, consent, arrest or a search warrant.

91 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, and Hon Alison Xamon MLC, Member of the Standing Committee on Legislation, Transcript of Evidence, 2 February 2010, pp11-12. Similar information was given in writing: Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p4.
However, a minority of the Committee considered that, as such places are currently subject to police powers of stop and search, they should not be specifically excluded from the operation of the proposed powers. They, too, could be the scene of potential outbreaks of violence and ought not become sanctuaries for those seeking to carry weapons in public. The occupants of shelters and like places ought to be entitled to protection equal to that available to other members of the public.

The subject of exempting certain places from the operation of the Bill, should it be passed, is dealt with at paragraphs 4.17 to 4.28 in this Report.

**IS THE BILL MODELLED ON ANY OTHER LEGISLATION?**

The Committee considered a range of similar police stop and search powers (that is, powers which do not require arrest, a search warrant or reasonable suspicion) in existing Western Australian, Victorian, New South Wales and United Kingdom legislation in an effort to draw on experience with these powers to date. The findings of the Committee are summarised in a comparison table which is attached as Appendix 5. The table provides a comparison of some of the major features of relevant legislation in each jurisdiction.

Despite the fact that there are examples of statutory police powers of stop and search in other Australian jurisdictions and the United Kingdom which are similar to the powers proposed by the Bill, the Committee was advised that the Bill was not modelled on any existing legislation in other jurisdictions. However, it appeared that the WA Police had considered legislation in other jurisdictions when preparing its proposal for the Bill:

> We were looking at the context in which some of those laws have come about. Some of the laws in New South Wales have certainly come about as a result of the Cronulla riots, so we were conscious that maybe some of those laws had a different driver to them, but we still looked at them and notwithstanding what might have been the drivers for those laws to take place in those other jurisdictions, we looked at what exactly those laws provided for and asked whether it was something we might want to consider.

Although the United Kingdom’s experience with similar stop and search powers is the most extensive out of all the jurisdictions considered by the Committee, the WA
Police advised that the United Kingdom experience did not have a bearing on the preparation of the Bill.95

**Committee Comment**

2.83 From its research into the above jurisdictions, it was apparent to the Committee that the Bill is not unique in Australia or internationally in dispensing with the usual requirement for consent, arrest, search warrants or reasonable suspicion before a police stop and search can be conducted. However, the Committee found it is rare to dispense with such requirements.

**Finding 6:** The Committee finds that, in an Australian and international context, the Criminal Investigation Amendment Bill 2009 is not unique in proposing to allow police officers to stop and search people and vehicles without consent, arrest, a search warrant or reasonable suspicion. However, this sort of statutory power appears to be rare among common law jurisdictions.

**CONSULTATION ON THE BILL**

2.84 The WA Police advised the Committee that the following organisations were consulted in the preparation of the Bill: the WA Police, the Office of the Attorney General and the Premier’s Office, through the Office of the Minister for Police.96

**Committee Comment**

2.85 Given the nature of the Bill and the experiences of other jurisdictions when they introduced similar legislation, the Committee considered that wider consultation should have occurred. However, the Committee regarded this inquiry as an opportunity, albeit late in the legislative process, for interested individuals and organisations to provide their views on the Bill.

**URGENCY OF THE BILL**

2.86 When queried about the urgency of the Bill, the WA Police provided the following response:

> I suppose that it is urgent in the context of, as Superintendent Budge mentioned, there is a crime prevention and deterrent aspect to this. Certainly if the legislation was enacted in the immediate future, I

95 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p37.

96 Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p1.
certainly think that the government would then probably be looking at what areas ought to be declared to try to maybe clean up some of those areas and make them safer for people to go into them. I am just surmising that that might be in the government’s mind. I think that from that perspective, the government is probably keen to get the legislation through so that if they would want to enact these powers, then they could do so, but there is certainly nothing that we have been directed to do at this stage to address it.\footnote{Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, \textit{Transcript of Evidence}, 2 February 2010, p34.}
CHAPTER 3
POLICY OF THE BILL

STATED POLICY OF THE BILL

3.1 According to the Second Reading Speech, the Bill is a response to:

an increasing concern by government, police and the community in relation to the proliferation of weapons and the increasing number of incidents of violence and antisocial behaviour in entertainment precincts.98

3.2 The Committee was advised that the general policy for the Bill was conceived in 2006:

At the time we were concerned about increasing detections of weapons carriage on the public transport system. That is where the genesis of this discussion started. ... Specifically, at that time, we spoke about people coming on and off trains—not buses and things like that.99

3.3 Specific instructions to identify ways in which the police could enhance their powers, including powers of stop and search, were given in November 2008.100

3.4 The policy of the Bill is expressed in the Second Reading Speech:

As a result of this [the concern referred to in paragraph 3.1], it has been identified that powers of search need to be extended to enable police officers to stop and search people and vehicles in these areas without the consent of the person and without the need for the usual reasonable suspicion test.101

3.5 Researchers for the United Kingdom’s Home Office have previously identified six policing goals which are most commonly relied upon as the perceived benefits of police stop and search powers. These goals are crime prevention, crime detection,
crime disruption, crime deterrence, order maintenance and intelligence gathering. During this inquiry, the WA Police and the Police Union made reference to at least some of these goals, citing crime prevention, crime detection, crime disruption and crime deterrence as the perceived benefits of the Bill.

Evidence of the Need for the Bill

3.6 Several submitters contended that there is no evidence that the stop and search powers proposed by the Bill are required. Their contention was based on a range of assertions, including the following:

- The Government had failed to provide any statistics or research to confirm its claim that there has been a proliferation of weapons and an increase in incidents of violence and anti-social behaviour in entertainment precincts.

- The Government had failed to provide any research or evidence of consultation to substantiate its claim that there is increasing community concern about the above apparent problems.

- The Government had failed to demonstrate how the current laws are inadequate for combating the above apparent problems.

3.7 Dr Frank Morgan, a criminologist and Director of the Crime Research Centre at the University of Western Australia, observed that the Bill has been introduced before the

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103 Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, p3; and Superintendent Gary Budge, Western Australia Police, Transcript of Evidence, 2 February 2010, pp24 and 25.

104 Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, p3; and Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, pp3, 6 and 7.

105 For example, Submission No 5 from Hon Giz Watson, 13 January 2010, p2; Submission No 6 from Search for Your Rights, 16 January 2010, p5; Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, p1; Submission No 9 from Ms Adele Carles MLA, 18 January 2010, p2; Submission No 11 from The Law Society of Western Australia, January 2010, pp6 and 8; Submission No 12 from the Commissioner for Equal Opportunity, 18 January 2010, p2; Submission No 13 from the SCALES Community Legal Centre, January 2010, p7; Submission No 14 from Youth Legal Service Inc Western Australia, received 19 January 2010, p1; Submission No 15 from Mr Johnson Kitto, 15 January 2010, pp2, 5-7 and 8; Submission No 16 from South Coastal Women’s Health Services, 18 January 2010, p1; Submission No 17 from the Pilbara Community Legal Service, 18 January 2010, p1; Submission No 18 from Ms Catherine Hall, 18 January 2010, p1; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p3; Submission No 24 from Ms Gabrielle Jane Walker, received 10 February 2010, p1; Submission No 25 from Street Law Centre WA Inc, received 23 February 2010, p3; and Submission No 26 from Mr Simon Woodings, 24 February 2010, pp1 and 2.
This review of the operation and effectiveness of the Act is due to occur as soon as is practicable after 1 July 2012, but can happen sooner. Dr Morgan was of the view that the use and effectiveness of the current stop and search powers should be assessed systematically before any new powers are introduced.

3.8 With respect to concerns about the proliferation of weapons, violence and anti-social behaviour in entertainment precincts, the WA Police testified that:

*The levels of violence and antisocial behaviour in Perth and Northbridge are the highest levels in the state. It causes us concern. The levels of weapons-related offences in those two areas cause us some concern. We accept that those statistics we have in front of us are a percentage of the number of people who would be in possession of weapons within those areas. I would not hazard a guess at what percentage, but the fact that we are seizing that amount of weapons is a clear indication to us that there are a number of people who are entering those areas in possession of dangerous and offensive weapons. The levels of assault in Perth and Northbridge are the highest in the state. People in possession of weapons are likely to use those weapons when conflict or aggression occurs, on many occasions with devastating consequences, be they fatal or very serious, and that is a concern to us.*

3.9 However, with respect to the carriage and potential for the use of weapons, Associate Professor David Indermaur, a criminologist with the Crime Research Centre, University of WA, gave evidence that:

*many young men, for example, will conceal a pocket-knife or a small knife on them because they have had a difficult interpersonal situation in the past and they feel like they need a little bit more defence, if you like. A lot of young men perhaps carry around a weapon like this—we are talking about young men between the ages of about 13 and 16—and they might carry this so-called weapon on them for a kind of comfort and reassurance and never use it. In fact, I suspect most*
young men who carry weapons like this for those purposes would never use that weapon.\textsuperscript{110}

3.10 The Children’s Commissioner for England has stated that:

\textit{Our work over the year has shown that children and young people are significantly more likely to carry a weapon, most often for self-protection, if they believe gun crime and knife crime are problems in their area.}\textsuperscript{111}

\ldots

Most children or young people who have carried a knife or gun say that they have done so for protection or out of fear. Of the four per cent of those aged 12 to 17 whom 11 MILLION’s survey found have carried a knife illegally, the reason given by the great majority was “for protection”, with “fear” being the next most common explanation. In some cases, a perceived need for protection is linked to risks associated with criminal or anti-social activity, particularly in groups. But whatever the reason, where young people believe that others are carrying weapons, this can raise the level of carrying within communities.\textsuperscript{112}

3.11 The WA Police conceded that the Bill was prepared without any research into, and without any attempt to address, the reasons why people carry weapons:

\textbf{Dr O’Callaghan:} ... The fact is that we have not done any empirical research or sociological research as to the reasons why anyone would carry a weapon. ... I guess it is reasonable to assume what was said here before, that at least some people are carrying weapons as a perceived self-defence mechanism in case they come up with other people with knives on the streets. That, of course, is not in itself a defence to committing an offence.

\textbf{The CHAIRMAN:} No. It just might help inform strategies to attack the core reasons for that increase in the incidence of people carrying weapons. If you understand why it is that they are doing it, you may be able to try to alleviate that problem and distract them from the necessity or —

\textsuperscript{110} Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, \textit{Transcript of Evidence}, 5 May 2010, p15.


\textsuperscript{112} \textit{Ibid}, p24.
In February 2010, the Committee was advised that the December 2008 introduction and deployment of police initiatives in Northbridge, designed to address the root causes of a range of offences, have coincided with what appear to be significant reductions in the levels of “volume crime”. Over the same period, the level of assaults and anti-social behaviour in Northbridge has remained steady, although more recent figures have been encouraging:

Mr Budge: ... Since my arrival there [Northbridge, which is part of the Perth District] in December 2008, 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 re-look at 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, which has resulted in a licence being cancelled and a person being banned; taking a no-tolerance policy to violence and antisocial behaviour in the street; and a range of other initiatives. At this stage we are seeing some encouraging signs in regard to Northbridge and in regard to volume crime.

... 

Mr Budge: At this time, when we were comparing last year to this year—I mean we are looking at financial years—we are having some encouraging results. Robberies are down about 45 per cent in the area —

... 

— which are violent offences committed against people. We have burglaries and car theft down significantly. In regard to car theft, down about 60 per cent, and burglaries as well. In regard to stealing and damages offences, they are down quite significantly. In regard to assaults, they are at the same level as last year. We have not seen a significant drop or change in the report of assault statistics or the

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113 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Hon Michael Mischin MLC, Chair, Standing Committee on Legislation, Transcript of Evidence, 10 March 2010, p55.

114 Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p2. According to the Western Australia Police’s Volume Crime Strategy 2008-2010, ‘volume crimes’ are those crimes that “cause the greatest impact on the community”. In the strategy, burglary, robbery, stealing of vehicles and assaults were regarded as ‘volume crimes’: Western Australia Police, Volume Crime Strategy 2008-2010, p2.
antisocial behaviour that is on the street. While we are having an impact in regard to volume crime, we are not at this particular time having a lot of success in regard to the violence and antisocial behaviour that is on the street, although it is encouraging that the numbers are starting to drop now with some other initiatives being put in place.

Hon ALISON XAMON: Can I just ask briefly the sorts of initiatives that we are talking about?

Mr Budge: Sure. We work quite strongly with the Department for Child Protection and Mission Australia in regard to the young people in Northbridge policy. We recognise that the philosophy of taking them off the street was a good one because these children were in need of care and protection, and they were subjected to physical and moral danger whilst they were in Northbridge. We certainly decided that there needed to be some more attention given to the families. We have certainly been working with Mission Australia and the Department for Child Protection in stronger relationships and some more intense work with families, because these children come from some of the most challenged backgrounds imaginable.

Hon ALISON XAMON: So dealing with the root causes?

Mr Budge: Exactly, yes. That is something we are still looking at. We are encouraged that it may have some impact into the future. Whether that is realised is something that we will only know into the future.\footnote{Superintendent Gary Budge, Western Australia Police, and Hon Alison Xamon MLC, Member of the Standing Committee on Legislation,\textit{Transcript of Evidence}, 2 February 2010, pp18-19.}

3.13 After the end of the 2009/2010 financial year, it was reported that there had been significant falls in the numbers of certain crimes in Northbridge when compared to the 2008/2009 crime figures, as follows:

- Non-domestic assault fell by ten per cent.
- Burglary fell by 56 per cent.
- Car theft fell by 59 per cent.
- Violent robbery fell by 29 per cent.
- Theft fell by 28 per cent.
• Damage complaints fell by 22 per cent.\textsuperscript{116}

3.14 Further evidence provided by the WA Police to support the need for the proposed stop and search powers were crime statistics showing that there has been a steady increase in the recorded number of offences involving weapons in the State from 1999/2000 to 2008/2009:

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Note: Assault offences are included in Total Offences

Table 3: Total Number of Offences Involving the Use of Weapons in Western Australia and Categorised by Public and Private Places from 1999/2000 to 2008/2009 as Recorded by the Western Australia Police\textsuperscript{118}

<table>
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\textsuperscript{117} These statistics were tabled by the Western Australia Police during a hearing with the Committee on 10 March 2010.

\textsuperscript{118} These statistics were tabled by the Western Australia Police during a hearing with the Committee on 10 March 2010.
Table 4: Total Number of Assault Offences Involving the Use of Weapons in Western Australia and Categorised by Public and Private Places from 1999/2000 to 2008/2009 as Recorded by the Western Australia Police^{119}

<table>
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<th>Year</th>
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Table 5: Total Number of Offences Involving the Use of Weapons in Public Places in Western Australia and Categorised by Types of Public Places from 1999/2000 to 2008/2009 as Recorded by the Western Australia Police^{120}

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^{119} These statistics were tabled by the Western Australia Police during a hearing with the Committee on 10 March 2010.

^{120} These statistics were tabled by the Western Australia Police during a hearing with the Committee on 10 March 2010.
Table 6: Total Number of Assault Offences Involving the Use of Weapons in Public Places in Western Australia and Categorised by Types of Public Places from 1999/2000 to 2008/2009 as Recorded by the Western Australia Police

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<td>Shops</td>
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<td>16</td>
<td>24</td>
<td>32</td>
<td>24</td>
<td>54</td>
<td>76</td>
<td>59</td>
<td>72</td>
<td>75</td>
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<td>Transport</td>
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<td>99</td>
<td>147</td>
<td>140</td>
<td>364</td>
<td>588</td>
<td>832</td>
<td>933</td>
<td>845</td>
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<td>Water</td>
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<td>3</td>
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<td>4</td>
<td>6</td>
<td>4</td>
<td>8</td>
<td>24</td>
<td>5</td>
</tr>
</tbody>
</table>

3.15 However, the WA Police conceded that this steady increase in the recorded number of offences involving weapons in the State from 1999/2000 to 2008/2009 could be in part attributed to factors other than merely more offending. These factors include improved detection through an increase in the number of police officers, better policing methods, the introduction of closed circuit television and increased patronage on the public transport system:

*Mr Dawson:* Yes. There are probably two other elements to that. One is obviously that the Public Transport Authority has been expanded to include the Mandurah–Peel extension, but in 2003 there was an added increase of 50 uniformed police, who are in addition to the Public Transport Authority officers who have police powers. We have increased the numbers of police officers on the transport system to accommodate extra patronage on the trains, for instance.

*Dr O'Callaghan:* So I think it is fair to say that de facto you will get more weapons detections because you have got more police; and we have got a very strong focus on the transport system for just that issue.122

...  

*Dr O'Callaghan:* ... The CCTV cameras give us is the ability to inquire into and resolve an issue, particularly where a serious assault has taken place in an area that has got CCTV coverage. Certainly it

121 These statistics were tabled by the Western Australia Police during a hearing with the Committee on 10 March 2010.
122 Mr Christopher Dawson, Deputy Commissioner, and Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p5.
has an effect on our ability to resolve an offence because we can see it taking place on CCTV.

Mr Dawson: ... In fact, CCTV provides, quite frankly, excellent evidence in terms of an investigation after an offence because you have got digitally recorded evidence which can assist in the prosecution of a person by way of identifying both the individuals who were present and what actually took place. But the other matter is using it for intelligence purposes, because if there is a large gathering of people, or if we can see that there is a build up of certain conduct taking place, we can deploy resources to go there. So we very much welcome the expanded use of CCTV because it has been very effective in terms of both the detection and the prevention of crime in the first place.123

...  

Dr O’Callaghan: ... between 2003, before the [extra] police came on the network, and 2004, when they did, there was an increase of 400 [offences involving weapons on ‘transport’124] and the following year there was an increase of 500 [offences involving weapons on ‘transport’].125

...

Hon ALISON XAMON: ... you have also given evidence that a lot of this coincided with increased numbers of police being provided to enable them to catch these people [who are carrying weapons]. Do you have any evidence, then, overall ... of an increase in people carrying weapons, or perhaps is this reflective of more effective policing?

Dr O’Callaghan: It could be. It could be the fact that there are more people travelling on the rail system, that the rail system is more

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123 Dr Karl O’Callaghan, Commissioner of Police, and Mr Christopher Dawson, Deputy Commissioner, Western Australia Police, Transcript of Evidence, 10 March 2010, pp11-12.

124 Refer to Table 2 above. In that table, ‘Transport’ refers to bus stops, train stops, railway lines, marinas and harbours, public transport and the airports: Email from Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, 24 March 2010, p1.

125 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p12.
extensive than it was in the year 2000, that there are more police around doing more detection work.\textsuperscript{126}

3.16 The significance of the deployment of extra police officers on the public transport system is reflected in Table 5 and Table 6 above. From 2003/2004 to 2008/2009, the category of ‘transport’\textsuperscript{127} had by far the highest incidence of assaults and total offences involving weapons in comparison to other public places. There was a jump in the number of these offences on ‘transport’ in the three successive financial years of 2003/2004, 2004/2005 and 2005/2006. While these numbers have remained high ever since, they have not increased as dramatically. The State-wide total numbers of offences involving weapons follows the same trend from 1999/2000 to 2008/2009, rising significantly in 2003/2004 to 2005/2006 (refer to Table 2 above)

3.17 The Public Transport Authority’s Transperth figures (see Figure 1 below) also confirm that there has been a slow increase in the use of public transport since 1969/1970, although there was a large jump in usage in the 1990s. A large growth in patronage also occurred after the opening of the Mandurah train line in December 2007.\textsuperscript{128}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{transperth_figure.png}
\caption{Total Boardings on Public Transport Authority’s Transperth Services from 1969/1970 to 2008/2009\textsuperscript{129}}
\end{figure}

\textsuperscript{126} Hon Alison Xamon MLC, Member of the Standing Committee on Legislation, and Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p54.

\textsuperscript{127} In that table, ‘Transport’ refers to bus stops, train stops, railway lines, marinas and harbours, public transport and the airports: Email from Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, 24 March 2010, p1.


\textsuperscript{129} \textit{Ibid}, p9.
3.18 The growth in the use of Transperth trains since 2004/2005 is reflected in Figure 2 below.

![Figure 2: Patronage on Public Transport Authority’s Transperth Trains from 2004/2005 to 2008/2009](image)

3.19 According to the Police Union, there are anecdotal reports from its members who work on the front-line in “high profile” areas, such as Northbridge, that these areas are “known ‘after hours’ trouble spots”\(^{131}\) and are experiencing increases in the levels of violence and weapons carriage.

3.20 The growth in the number of offences involving weapons may also be partly explained by a general increase in the State’s population, both transient and permanent, over the last ten financial years, particularly during the ‘mining boom’ in the mid-2000s. Although the number of these offences has increased, the Committee saw no evidence that the rate of offences (for example, the number of offences per capita) has also increased. The Committee noted that even if the rate of offences has risen, it may not have done so in proportion to the increase in population.

3.21 Associate Professor Indermaur was of the view that a “very thorough analysis of weapon carrying”\(^{132}\) would need to be conducted before he could confirm whether there has been an escalation of such activity, saying:

> My experience is that people usually make statements about this, but that there is not enough of a critical audience in Western Australia to

\(^{130}\) *Ibid*, p22.

\(^{131}\) Letter from Mr RL Armstrong, General President, WA Police Union of Workers, 2 March 2010, p1.

\(^{132}\) Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, *Transcript of Evidence*, 5 May 2010, p8.
subject such claims to scrutiny and to ask how that research was done and how you got your estimate of weapon carrying at times A, B, C and D. That research would need to be done properly before we can make the claim that weapon carrying has increased. What is a weapon? A weapon can be anything from a kitchen knife to a machete. You then need to say that we are comparing apples with oranges. A lot more fine-grained analysis needs to be done on what we call a weapon.  

3.22 Associate Professor Indermaur was also sceptical about claims that there has been an increase in violent crime in the State. He advised the Committee that the best indicator for trends in violent crime is the rate of homicide, which has decreased in the past ten years:

There may have been an increase [in violent crime] in specified areas, depending on the availability of alcohol, because alcohol is the biggest predictor of violent crime, and extended trading permits can cause a jump in certain areas at certain times. Overall, the homicide rate in Western Australia has been coming down for the past 10 years.[134] That is a gold-standard indicator because we know about just about all the homicides that occur. Crimes like assaults are subject to reporting behaviour. When you look at the police report of assaults, you might see an increase in the police reported results, but that does not represent an increase in real results because for that we would need to look at all the assaults that have happened, which we do not have an adequate measure of.  

3.23 Associate Professor Indermaur provided the following explanation for why some members of the community may support the Bill:

Certainly it is my view that people overestimate their chances of victimisation.[136] The legislation is being played out largely through individuals who are unlikely to be subject to this legislation. It is

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133 Ibid.

134 This was confirmed during an address by the Honourable Chief Justice Wayne Martin to the Australian and New Zealand Society of Criminology, who stated that the indexed rates of reported homicides in Western Australia over the ten years ending 2008 had declined by about 40 per cent: Address by the Honourable Chief Justice Wayne Martin, Chief Justice of Western Australia, to the Australian and New Zealand Society of Criminology Conference on 23 November 2009, Perth, Popular Punitivism - The Role of the Courts in the Development of Criminal Justice Policies, p18.

135 Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, p8. See also, p10.

136 This is supported by recent findings of the Australian Institute of Criminology: L Roberts and D Indermaur, Australian Government, Australian Institute of Criminology, Research and Public Policy Series Report Number 101: What Australians think about crime and justice: results from the 2007 Survey of Social Attitudes, 2009, ppix and 9.
about responding to fear. I have studied, as I have mentioned, a lot about the public’s perceptions of crime. Often support for legislation such as this is carried not on instrumental fears about what might happen to the individual who supports such legislation, but it is a symbolic act of supporting the police because of the kind of general loss of social power and so forth. It would take a long time to go into the sociodynamics of that. From a criminologist’s point of view, part of my role and our role is to bring clarity into the discussion so that we know exactly what we are talking about. ... public perceptions are largely driven not by personal experience with crime, but by perceptions of crime. The understanding of and expectations about crime for the vast majority of people—much greater than 90 per cent of people in Western Australia—come from the media.137 (underlining added)

3.24 Evidence from the WA Police confirmed Associate Professor Indermaur’s observations about the rate of homicide in the State. Appendix 6 contains statistics from the WA Police showing the absolute numbers and rates of attempted murder, manslaughter and murder offences involving the use of weapons in Western Australia from 2000 to April 2010. The Committee converted some of this information into the figures which appear below. Figure 3 and Figure 4 below indicate that the numbers of attempted murder and manslaughter offences involving weapons generally increased between 2000 and 2004 and decreased after 2004. The number of murders involving weapons was volatile and generally increasing leading up to 2004 and was lower and steadier from 2005 to 2009. Figure 5 and Figure 7 below show that the majority of attempted murders and murders involving weapons tended to occur in dwellings, while Figure 6 below indicates that manslaughters involving weapons occurred slightly more often in non-dwellings.

137 Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, pp7-8.
Number of Homicide Offences Involving Weapons in Western Australia

![Figure 3: Number of Attempted Murder, Manslaughter and Murder Offences Involving Weapons in Western Australia from 2000 to 2009](image)

Figure 3: Number of Attempted Murder, Manslaughter and Murder Offences Involving Weapons in Western Australia from 2000 to 2009\(^{138}\)

Number of Homicide Offences Involving Weapons in Western Australia in Non-Dwellings

![Figure 4: Number of Attempted Murder, Manslaughter and Murder Offences Involving Weapons in Non-Dwellings in Western Australia from 2000 to 2009](image)

Figure 4: Number of Attempted Murder, Manslaughter and Murder Offences Involving Weapons in Non-Dwellings in Western Australia from 2000 to 2009\(^{139}\)

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\(^{138}\) Email from Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, 27 May 2010, Attachment, p1.

\(^{139}\) Ibid.
Number of Attempted Murder Offences Involving Weapons in Dwellings and Non-Dwellings as a Proportion of Total Attempted Murder Offences Involving Weapons

Figure 5: Number of Attempted Murder Offences Involving Weapons in Dwellings and Non-Dwellings, as a Proportion of Total Attempted Murder Offences Involving Weapons, in Western Australia from 2000 to 2009\textsuperscript{140}

Number of Manslaughter Offences Involving Weapons in Dwellings and Non-Dwellings as a Proportion of Total Manslaughter Offences Involving Weapons

Figure 6: Number of Manslaughter Offences Involving Weapons in Dwellings and Non-Dwellings, as a Proportion of Total Manslaughter Offences Involving Weapons, in Western Australia from 2000 to 2009\textsuperscript{141}

\textsuperscript{140} Ibid.

\textsuperscript{141} Ibid.
Figure 7: Number of Murder Offences Involving Weapons in Dwellings and Non-Dwellings, as a Proportion of Total Murder Offences Involving Weapons, in Western Australia from 2000 to 2009\textsuperscript{142}

3.25 Figure 8 to Figure 11 below indicate that the rates of these offences generally increased from 2000 to 2004 and decreased after 2004. The rates in regional areas were more volatile than the rates in metropolitan areas\textsuperscript{143}, but the rates in both regional and metropolitan areas have an overall downward or steady trend.

\textsuperscript{142} Ibid.

\textsuperscript{143} This could be explained by the fact that regional areas are less populated than metropolitan areas, so even small increases or decreases in the number of offences would translate to relatively large movements in the rate of offences when measured per 100,000 people.
Figure 8: Total Rate of Attempted Murder, Manslaughter and Murder Involving a Weapon in Western Australia per 100,000 People from 2000 to 2009\textsuperscript{144}

Figure 9: Rate of Attempted Murder Involving a Weapon in Western Australia per 100,000 People from 2000 to 2009\textsuperscript{145}

Figure 10: Rate of Manslaughter Involving a Weapon in Western Australia per 100,000 People from 2000 to 2009\textsuperscript{146}

\textsuperscript{144} Email from Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, 27 May 2010, Attachment, p1.

\textsuperscript{145} Ibid.

\textsuperscript{146} Ibid.
3.26 In addition, the WA Police advised the Committee that:

_In that same reporting period [2000 to 2009], all volume crime [for example, burglary, motor vehicle theft and robbery] across the state is down and fairly consistent with the drop in homicide, even though these numbers are small._

3.27 The Committee acknowledged that there has been a significant increase over the past decade in the reported number of offences involving the use of weapons. However, the Committee did not have sufficient evidence to be able to conclude whether there has been a growth in the rate of offences involving weapons in public places in the State over the same period. Indeed, it was apparent to the Committee that the rate of violent crime in Western Australia, as indicated by the rate of homicide involving weapons, has generally decreased in the last decade. Nevertheless, it was accepted by the Committee that there remains an increasing concern on the part of government, the police and in the community about the number of offences involving weapons and violent and anti-social behaviour in parts of the State at various times.

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147 Ibid.

148 According to the Western Australia Police’s Volume Crime Strategy 2008-2010, ‘volume crimes’ are those crimes that “cause the greatest impact on the community”. In the strategy, burglary, robbery, stealing of vehicles and assaults were regarded as ‘volume crimes’: Western Australia Police, _Volume Crime Strategy 2008-2010_, p2.

149 Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, Western Australia Police, _Transcript of Evidence_, 19 May 2010, p16.
3.28 The Committee noted the variety of initiatives implemented by the authorities in the Northbridge entertainment precinct and that they appear to have been successful in reducing violent and other anti-social behaviour over the past two years. To a large extent, the effectiveness of these initiatives depends upon a cooperative relationship with the public. The Committee commended the WA Police for undertaking these initiatives and for proposing to pursue these policies notwithstanding the potential passage of the Bill.

3.29 The question is to what extent may the Bill work as an adjunct to the effectiveness of these measures, or potentially undermine the effectiveness of these initiatives by eroding public trust, confidence and goodwill. The potential for the Bill to increase public distrust of the police is discussed in paragraphs 3.191 to 3.197 in this Report.

3.30 The Committee was also concerned that reliance upon the proposed powers may distract police effort and resources away from current and future positive initiatives.

**Victoria’s Experience with Similar Stop and Search Powers**

3.31 The Police Union and the WA Police cited the Victorian equivalent of the proposed stop and search powers\(^\text{150}\) as an example of how very similar police powers have been successful in detecting people carrying weapons in public places. However, the relatively new Victorian powers do not seem to have been as successful in deterring such activity. Their comments related to an occasion when the Victorian Chief Commissioner of Police declared the Footscray Railway Station as a planned designated area where the new stop and search powers could be used. The designation commenced on 7 January 2010:\(^\text{151}\)

- "In Victoria, with very similar legislation, they advertise seven days before that they are going to a certain location—they charged 12 people and took knives and machetes off people. They advertised. I have to really say that a lot of our people who carry knives and weapons probably are not the brightest of people. They do not read the paper, and they will carry them. [If the Bill is passed and] If they come into a prescribed area, we will have the ability to search these people there and then and take them off the street. Under the current legislation [in Western Australia], if they do not consent, they walk away scot-free, to be able to commit a crime."

...  

*I have spoken to the president of the Police Association of Victoria. Their members tell them they are quite happy with the current legislation. They*

\(^{150}\) Refer to Appendix 5 for a summary of the elements of the relevant Victorian provisions, which commenced operation on 16 December 2009.

have to advertise for seven days that they will be at a certain location, and people are still carrying weapons. They are taking weapons off people. So under that, which is very similar to the prescribed locations [in the Bill], people still carry weapons. It is working and their members over there are very happy with it.”

- “the Victorian legislation invites, requires in fact, public notification some weeks prior to that search taking place. So I think it is quite instructive to note that people were still carrying weapons even with the public knowledge put out there and they were aware that the searches were to take place.”

- “This is Footscray train station in Melbourne. They have to publish that [the Victorian Chief Commissioner of Police’s declaration of a planned designated area] in the newspaper, I think, and they still got 12 weapons and 180 people passed through the gate, so it may be that it [the advertisement] did not have much of an effect ...”

**UNITED KINGDOM’S EXPERIENCE WITH STOP AND SEARCH POWERS**

3.32 The United Kingdom’s experience with stop and search powers which are similar to those proposed by the Bill is the most extensive of all the jurisdictions considered by the Committee during this inquiry. Furthermore, the Committee had available to it a significant body of research and analysis of the operation of the laws in the United Kingdom.

3.33 While police officers in the United Kingdom have many statutory stop and search powers at their disposal, there are only two Acts which authorise them to stop and search people and/or vehicles without a search warrant and without holding a reasonable suspicion: section 60 of the *Criminal Justice and Public Order Act 1994* (UK) (Section 60 Powers) and section 44 of the *Terrorism Act 2000* (UK) (Section 44 Powers). Therefore, for the purposes of this inquiry, the Committee focused its research on the Section 60 Powers and Section 44 Powers. As the Bill’s policy does not relate to the policing of terrorist activities, the Committee considered the Section 60 Powers to be more comparable to the stop and search powers proposed by the Bill.

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154 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p46.
156 See, for example, Equal Opportunity and Diversity Board, MPA, *Report of the MPA Scrutiny on MPS Stop and Search Practice*, United Kingdom, October 2004, p20.
3.34 Many submissions drew the Committee’s attention to the fact that the use of stop and search powers in the United Kingdom have resulted in limited policing success and some negative and counter-productive consequences. These submissions were consistent with the research and observations which have been made by academics, criminologists, the Home Office and the Metropolitan Police Authority (MPA) in the United Kingdom, some of which are summarised below.

3.35 In response to the 1999 report of the inquiry into the matters arising from the death of Stephen Lawrence, the United Kingdom’s Home Office commissioned its Policing and Reducing Crime Unit (Research, Development and Statistics Directorate) to carry out a programme of research on police stop and search powers. The research produced a Police Research Series consisting of six papers and one briefing note. In the first of these papers, the authors produced a table (refer to Table 7 below) which lists some of the most common claims which have been made about stop and search powers and their response to each claim, based on the available research:

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157 Submission No 6 from Search for Your Rights, 16 January 2010, pp7-8; Submission No 9 from Ms Adele Carles MLA, 18 January 2010, p4; Submission No 12 from the Commissioner for Equal Opportunity, 18 January 2010, pp3-5; Submission No 13 from the SCALES Community Legal Centre, January 2010, pp4 and 5; Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, pp2 and 3; Submission No 24 from Ms Gabrielle Jane Walker, received 10 February 2010, p1; Submission No 25 from Street Law Centre WA Inc, received 23 February 2010, pp5-6; and Submission No 26 from Mr Simon Woodings, 24 February 2010, p2.

158 The MPA is an independent statutory authority which is responsible for ensuring that the Metropolitan Police Service in London is held publicly accountable for its performance: Equal Opportunity and Diversity Board, MPA, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, p4.


Table 22: Claims about stops and searches and responses based on research

<table>
<thead>
<tr>
<th>Claim</th>
<th>Response</th>
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<tbody>
<tr>
<td>Crime would go through the roof if it wasn’t for searches.</td>
<td>There is little existing evidence that suggests that this is the case. In general, the direct disruptive effect of searches on crime appears small, and there is no clear evidence that searches are a strong deterrent to potential offenders. Though it is possible that the very existence of search powers may have some deterrent effect, this has not been demonstrated by research, as yet.</td>
</tr>
<tr>
<td>Searches are crucial for detecting offenders.</td>
<td>Searches probably make a small contribution to detecting offenders for crime in general. However, they can provide an important source of arrests, for some forces in particular.</td>
</tr>
<tr>
<td>Searches help catch serious offenders.</td>
<td>This may or may not be true. Currently, there is little evidence to assess this claim. However, in relation to drugs arrests from searches, which overall make up about a third of search arrests, this does not seem to be the case.</td>
</tr>
<tr>
<td>Only those who deserve it (i.e. criminals) get searched.</td>
<td>Although stops and searches are clearly targeted at offenders, a substantial proportion of stops, and to a lesser extent searches, are nonetheless carried out on people who are not involved in offending.</td>
</tr>
<tr>
<td>Searches are an irreplaceable form of intelligence.</td>
<td>Searches do provide useful intelligence. However, it is likely that this is well utilised because of the requirement to record them. It seems likely that intelligence from a range of other encounters, including stops, could also provide the basis of good intelligence if properly utilised.</td>
</tr>
<tr>
<td>Experiences of stops and searches alienate those at the receiving end.</td>
<td>Generally speaking, stops appear to be less alienating than searches, which clearly are. However, by treating people politely and respectfully, and providing good explanations, this alienation can be minimised.</td>
</tr>
<tr>
<td>Disproportionality is a product of police racism.</td>
<td>It may be that stereotyping and racism play a role in disproportionality. However, there are other structural factors which contribute to this.</td>
</tr>
</tbody>
</table>

3.36 In assessing police stop and search powers in the United Kingdom, the Home Office researchers considered the following to be indicators of the legitimacy of the powers:

• public trust and confidence - that they are carried out fairly and with good reason;

• legality - that they are used within the guidelines designed to regulate their practice; and

• effectiveness - that they are targeted in a way that maximises interventions with active offenders and minimises those with law-abiding members of the public.\(^{164}\)

3.37 In the following summary of some of the research and other findings and observations which have been made about the United Kingdom’s police stop and search powers, the Committee has assessed whether the evidence is positive, negative or neutral, based on whether the evidence threatens or promotes the above three indicators of legitimacy identified by the United Kingdom’s Home Office. The Committee also considered whether the finding or observation supports the introduction of police stop and search powers which do not require consent, arrest or search warrants, and which do not require the searching police officer to hold a reasonable suspicion.

Neutral Evidence

3.38 The Section 60 Powers and Section 44 Powers were supposed to have been used in exceptional circumstances\(^ {165}\) but their use has increased significantly since the powers were first introduced (Section 60 Powers were introduced circa 1997 and the predecessors to the Section 44 Powers\(^ {166}\) were introduced circa 1996)\(^ {167}\). As reflected in Figure 12 and Figure 13 below, the use of Section 60 Powers increased nearly seven times from 1997/1998 to 2007/2008 and the use of Section 44 Powers increased over eight times from 1997/1998 to 2007/2008.

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\(^{165}\) The powers authorised by section 60 of the Criminal Justice and Public Order Act 1994 (UK) “was first introduced in the name of tackling violence associated with football matches”: Professor Marian FitzGerald, Visiting Professor of Criminology, University of Kent, Background Note: Analyses of MPS knife crime data and the use of s60 searches, 2 February 2010, p3; and Lord Carlile of Berriew QC, Report on the Operation in 2008 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006, United Kingdom, June 2009, pp10 and 29.


Figure 12: Number of Searches conducted in England and Wales using Section 60 Powers from 1997/1998 to 2007/2008\textsuperscript{168}

Figure 13: Number of Searches conducted in England and Wales using Section 44 Powers from 1997/1998 to 2007/2008 (excluding searches conducted by British Transport Police)\textsuperscript{169}

\textsuperscript{168} The raw data was drawn from D Povey, K Smith (Editors), T Hand and L Dodd, Home Office, \textit{Police Powers and Procedures England and Wales} 2007/08, Second Edition, United Kingdom, 30 April 2009, p35.

\textsuperscript{169} Note that these figures do not include the stops and searches conducted by the British Transport Police, who are "known to account for a relatively high number of stop and searches." The raw data was drawn from D Povey, K Smith (Editors), T Hand and L Dodd, Home Office, \textit{Police Powers and Procedures England and Wales} 2007/08, Second Edition, United Kingdom, 30 April 2009, p36.
3.39 Researchers for the United Kingdom’s Home Office concluded that the role and effectiveness of stops and searches in relation to the police maintaining order, one of the six perceived benefits of police stop and search powers,\(^\text{170}\) is unknown:

\[
\text{The role and effectiveness of [stops and] searches in relation to intensive ‘order maintenance’ activity by the police is unknown. While this type of policing in general can have a short-term impact on serious crime, it has the potential to damage police legitimacy and hamper the effectiveness of policing in the longer-term.}\(^\text{171}\)
\]

Negative Evidence

3.40 The total arrest\(^\text{172}\) rates for Section 60 Powers were in the order of an average of 4.24 per cent from 1997/1998 to 2007/2008: ranging from a low of 2.92 per cent to a high of 6.35 per cent. The arrest rates for offensive weapons or dangerous instruments, that is, the intended objects of the search,\(^\text{173}\) were lower: an average of 1.01 per cent from 1997/1998 to 2007/2008, ranging from a low of 0.53 per cent to a high of 2.73 per cent. The full range of arrest and detection rates for Section 60 Powers is presented in Figure 14, Figure 15, Figure 16, and Figure 17 below.

\(^{170}\) Refer to paragraph 3.5 in this Report.


\(^{172}\) That is, arrests for offensive weapons or dangerous instruments, which are the intended objects of the searches (section 60(4) of the *Criminal Justice and Public Order Act 1994* (UK)), and arrests for other reasons.

\(^{173}\) See section 60(4) of the *Criminal Justice and Public Order Act 1994* (UK).
Section 60 Powers: Rates of Arrest and Detection

Figure 14: Rates of Arrest and Detection for Searches conducted in England and Wales using Section 60 Powers from 1997/1998 to 2007/2008\textsuperscript{174}

Section 60 Power: Rates of Total Arrests

Figure 15: Rates of Total Arrests for Searches conducted in England and Wales using Section 60 Powers from 1997/1998 to 2007/2008\textsuperscript{175}


\textsuperscript{175} \textit{Ibid.}
3.41 The total arrest\textsuperscript{178} rates for Section 44 Powers were an average of 1.25 per cent from 1997/1998 to 2007/2008, ranging from a low of 0.7 per cent to a high of 2.11 per cent. The arrest rates for terrorism offences, that is, the intended objective of the search,\textsuperscript{179}

\textsuperscript{176} Ibid.

\textsuperscript{177} Ibid.

\textsuperscript{178} That is, arrests for articles of a kind which could be used in connection with terrorism, which are the intended objects of the searches (section 45(1) of the \textit{Terrorism Act 2000} (UK)), and arrests for other reasons.

\textsuperscript{179} See section 45(1) of the \textit{Terrorism Act 2000} (UK).
were lower again - an average of 0.09 per cent from 1998/1999\textsuperscript{180} to 2007/2008, ranging from a low of zero per cent to a high of 2.73 per cent. The full range of arrest and detection rates for Section 44 Powers is presented in Figure 18 and Figure 19 below.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{sections44powers.png}
\caption{Rates of Total Arrests for Searches conducted in England and Wales using Section 44 Powers from 1997/1998 to 2007/2008\textsuperscript{181}}
\end{figure}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{sections44powers2.png}
\caption{Rates of Arrest for Intended Objective for Searches conducted in England and Wales using Section 44 Powers from 1997/1998 to 2007/2008\textsuperscript{182}}
\end{figure}


\textsuperscript{182} \textit{Ibid.}
3.42 The rate of detection of persons found to be carrying offensive weapons or dangerous instruments for Section 60 Powers was an average of 2.63 per cent from 1997/1998 to 2007/2008, ranging from a low of 0.69 per cent to a high of 7.23 per cent (refer to Figure 14 and Figure 17 above).

3.43 As indicated in Figure 20 and Figure 21 below, the majority of stops and searches conducted under Section 60 Powers and Section 44 Powers yield arrests for offences which are not the intended targets of the powers.

Figure 20: Number of Arrests for Intended Objective and Number of Arrests for Other Reasons as a Proportion of Total Arrests for Searches conducted in England and Wales using Section 60 Powers from 1997/1998 to 2007/2008

Figure 21: Number of Arrests for Intended Objective and Number of Arrests for Other Reasons as a Proportion of Total Arrests for Searches conducted in England and Wales using Section 44 Powers from 1998/1999 to 2007/2008

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183 Ibid, p35.
184 Ibid, p36.
3.44 Statistically, a black person in England and Wales is more likely than a white person to be stopped and searched (under all of the available stop and search powers), although the arrest rates resulting from the stops and searches is approximately the same for both black people and white people.\(^ {185}\) Put another way, the statistics show that black people in England and Wales are six times more likely to be stopped and searched than would be expected based on their numbers in the general population.\(^ {186}\)

3.45 Researchers for the United Kingdom’s Home Office and the MPA considered that the precise reasons for the disproportionate use of police stop and search powers are likely to be complex.\(^ {187}\) Possible explanations include:

- the concentration of policing in areas with high minority ethnic populations, perhaps because of higher rates of crime;

- perhaps linked to the above, more people from minority ethnic backgrounds in public places at times stops and searches take place, thereby being more ‘available’ to be stopped or searched (e.g. FitzGerald and Sibbitt, 1997; MVA, 2000)\(^ {188}\);

- a higher level of involvement in crime by certain ethnic minorities (e.g. Reiner, 1992)\(^ {189}\), prompting officers to stop or search ethnic minorities more often based on suspect descriptions and intelligence. This might also interact with, and amplify, any racism within the criminal justice system (Reiner, 1992)\(^ {190}\).\(^ {191}\)

\(^{185}\) Equal Opportunity and Diversity Board, Metropolitan Police Authority, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, pp6 and 56-57.


\(^{189}\) This appears to be a reference to R Reiner, ‘Race, Crime and Justice: Models of interpretation’, in LR Gelsthorpe (Editor), Minority Ethnic Groups in the Criminal Justice System, Cambridge, Institute of Criminology, 1993.

\(^{190}\) This appears to be a reference to ibid.

Researchers for the United Kingdom’s Home Office and the MPA concluded that, in addition to these “structural” reasons referred to above, the effect of police stereotyping and racism could not be discounted. In fact:

The disproportionality of stop and search rates is a reflection of a collective pattern of police culture and practice. It is still managing to operate beneath the radar that is usually employed to detect and address harmful practices.

The Scrutiny Panel [of the MPA] is forced to conclude by the evidence presented that stop and search practice continues to be influenced by racial bias.

... It [the Scrutiny Panel of the MPA] has concluded – after a careful review of the evidence – that racial bias and stereotyping in individual police officer’s behaviour continues to be a significant determining factor in disproportionality. Institutional racism – as reflected in the policies, priorities and practices (or lack thereof) of the Metropolitan Police Service – continue to be dominant factors in both permitting and causing disproportionality in stop and search rates.

All police stop and search powers for which information is available are used disproportionately against ethnic minority communities (when compared with their numbers in the general population). The disproportion is most extensive where the
searching police officer’s discretion is widest,\textsuperscript{196} for example, where the searching police officer is not required to hold a reasonable suspicion before conducting a stop and search.

3.48 The MPA found that there is a widely-held perception in London of racially discriminatory policing, and at the very least, the police suffer from a serious public relations problem.\textsuperscript{197} Similarly, researchers for the United Kingdom’s Home Office found that black people and people from other ethnic minority communities perceive that, generally, stop and search powers are used against them in a disproportionate manner:

\begin{quote}
Black and Asian respondents felt that they were more frequently stopped than white people, and that they were targeted because of their ethnic background. There was also a perception that young men, particularly in groups, and people out at night were more likely to be stopped.\textsuperscript{198}
\end{quote}

3.49 Researchers for the United Kingdom’s Home Office found that the experience of being searched is associated with reduced confidence in the police among those searched.\textsuperscript{199}

3.50 Researchers for the United Kingdom’s Home Office found that the disproportionate use of stops and searches against people from ethnic minority communities appears to contribute directly to a reduced confidence in the police among these groups.\textsuperscript{200}

3.51 Researchers for the United Kingdom’s Home Office concluded that any perceived benefits of stop and search powers generally (for example, finding drugs, weapons or stolen items) are considered to be outweighed by the distrust, fear and anxiety, alienation, aggravation and resentment caused by the use of the powers. These

\begin{flushleft}

\textsuperscript{197} Equal Opportunity and Diversity Board, Metropolitan Police Authority, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, p29.

\textsuperscript{198} J Miller, P Quinton & N Bland, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Briefing Note, Police Stops and Searches: Lessons from a Programme of Research, United Kingdom, September 2000, p5.

\textsuperscript{199} J Miller, N Bland & P Quinton, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Police Research Series Paper 127: The Impact of Stops and Searches on Crime and the Community, United Kingdom, September 2000, p(vi) and see generally, pp50-52.

\textsuperscript{200} J Miller, N Bland & P Quinton, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Police Research Series Paper 127: The Impact of Stops and Searches on Crime and the Community, United Kingdom, September 2000, p(vi) and see generally, pp50-52.
\end{flushleft}
disadvantages of the use of stop and search powers can damage the police force’s relationship with the community and, therefore, hamper the effectiveness of all policing initiatives.\textsuperscript{201} Findings of the MPA have confirmed this:

-In summary, current stop and search practice appears to the Scrutiny Panel to be a use of scarce police resources that might make policing more difficult.\textsuperscript{202}

Professor Marian FitzGerald held a similar view.\textsuperscript{203} Refer to paragraphs 3.57, 3.58 and 3.66 in this Report for findings and observations about the financial and social costs of the use of police stop and search powers in the United Kingdom.

3.52 Researchers for the United Kingdom’s Home Office relied on arrest rates resulting from stops and searches when concluding that the use of stops and searches has only a minor role (when using British Crime Survey figures from 1997/1998) or a “notable” but “relatively small role” (when using police figures from 1998/1999) in detecting crimes which are, in theory, susceptible to being detected by searches,\textsuperscript{204} and an even smaller role in detecting crime generally.\textsuperscript{205} The MPA and Professor Marian FitzGerald similarly questioned the effectiveness of stops and searches as a means of achieving this policing objective.\textsuperscript{206}

3.53 Researchers for the United Kingdom’s Home Office concluded that the use of stop and search powers has only a limited effect on the direct disruption of crime.\textsuperscript{207} The

\textsuperscript{201} J Miller, P Quinton & N Bland, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Briefing Note, Police Stops and Searches: Lessons from a Programme of Research, United Kingdom, September 2000, p5; and ibid, p30.

\textsuperscript{202} Equal Opportunity and Diversity Board, Metropolitan Police Authority, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, p9 (and for further discussion of this issue, pp21-40).

\textsuperscript{203} Professor Marian FitzGerald, Visiting Professor of Criminology, University of Kent, Background Note: Analyses of MPS knife crime data and the use of s60 searches, 2 February 2010, pp6-7.

\textsuperscript{204} The crimes which are, in theory, susceptible to being detected by searches are burglary, vehicle theft, bicycle theft, stealth theft from the person, robbery, wounding and snatch theft from the person: J Miller, N Bland & P Quinton, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Police Research Series Paper 127: The Impact of Stops and Searches on Crime and the Community, United Kingdom, September 2000, p(v), p23 and Table 8 and p27, and pp25 and 26 and Table 10 and p27.

MPA similarly questioned the effectiveness of stops and searches as a means of achieving this policing objective.\textsuperscript{208}

3.54 Researchers for the United Kingdom’s Home Office concluded that there is “\textit{little solid evidence}” that the use of stop and search powers deters crime generally. The MPA similarly questioned the effectiveness of stops and searches as a means of achieving this policing objective.\textsuperscript{209} However, the Home Office researchers indicated that the intense use of searches in particular areas may have a localised deterrent or displacement effect.\textsuperscript{210}

3.55 Researchers for the United Kingdom’s Home Office concluded that, based on arrest rates and the approach of searching police officers when determining whom to stop and search, searches are most effective when police have reasonable grounds for suspicion.\textsuperscript{211} For example, in 1999/2000, the use of Section 60 Powers yielded approximately only one third of the arrests produced by searches conducted under section 1 of the Police and Criminal Evidence Act 1984 (UK) and a quarter of those produced by section 23 of the Misuse of Drugs Act 1971 (UK), both of which require reasonable grounds for suspicion.\textsuperscript{212} Officers who were interviewed during the study:

\begin{quote}
pointed out that they were more ready to search people under this power where evidence was not strong. One officer described how he targeted s60 searches in the following way: Anyone causing trouble really - but people who aren’t worth pulling [arresting] cause they haven’t done enough.\textsuperscript{213}
\end{quote}

3.56 Researchers for the United Kingdom’s Home Office concluded that, in general, the public are more satisfied with a police stop when they feel they have been treated fairly and politely, \textit{given a reasonable explanation}, and not searched.\textsuperscript{214}

3.57 Evidence provided to the MPA suggested that the total financial cost of stop and search to Londoners, whether initiated with or without reasonable suspicion and

\textsuperscript{208} Equal Opportunity and Diversity Board, Metropolitan Police Authority, \textit{Report of the MPA Scrutiny on MPS Stop and Search Practice}, United Kingdom, October 2004, p59 (and for further discussion of this issue, pp56-59).

\textsuperscript{209} Ibid.


\textsuperscript{211} Ibid, p46 and see generally, pp38-40.

\textsuperscript{212} Ibid, p39 and Table 15.

\textsuperscript{213} Ibid, p39.

measured purely in relation to the average time it takes a constable to stop and search, equated to £2,666,579 for 2002.215

3.58 The MPA found that the social cost of the use of stop and search powers is impossible to measure but is significant and cannot be ignored. Witnesses reported to the Scrutiny Panel of the MPA that, as a result of disproportionate police stop and search practice, they felt:

- a diminished sense of belonging;
- shame and humiliation;
- fear, and that there was a heightened community fear;
- insecurity;
- disempowerment;
- anxiety;
- intimidation; and
- helplessness and hopelessness.216

3.59 People in minority communities which have been targeted, particularly children, had an ingrained expectation that stops and searches are a ‘normal’ part of life and there is nothing they can do about it.217 The following excerpts from the MPA’s report illustrate this:

Based on the evidence of witnesses, the Scrutiny Panel [of the MPA] concludes that widespread and repeated stops and searches upon innocent citizens is more than a hassle or annoyance. It has real and direct consequences. Those large numbers of innocent citizens who experience it often pay the price emotionally, mentally and in some cases even financially and physically.

To argue that the widespread use of stop and search as a police practice is harmless, that it only hurts those who break the law, is to totally ignore the psychological and social costs that can result from always being considered one of the usual suspects.

215 Equal Opportunity and Diversity Board, Metropolitan Police Authority, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, p41.
As one witness to the Scrutiny Panel said:

“Walking down the street with a couple of friends and, a couple of white guys and a few black guys, and the police stopped the group of us but singled out one of my tall, black friends. He was like me, confident and knew right from wrong, and when he was harassed by the police he became, I suppose, slightly belligerent, why are you doing this to me? And within seconds there was six police vans and they jumped on him and arrested him for assault. Fortunately, we all went to court and he was let off. It was clear to the jury that he hadn’t done anything wrong, but unfortunately for my friend, he went on a downward spiral. I saw him some ten years later and he’d been in and out of prison, so that had a profound effect on him.”

It is impossible to quantify the cost to these individuals, their families and friends, their communities and society overall. Nevertheless, it is clear to this Scrutiny Panel [of the MPA] that the damage inflicted by existing stop and search practice in London is significant and cannot be ignored.

The guarantee to all persons for equal protection under the law is one of the most fundamental principles of our democratic society. Police officers should not endorse or act upon stereotypes, attitudes or beliefs that a person’s race, ethnicity or nationality increases that person’s general propensity to act unlawfully. There is no trade-off between effective policing and the protection of the rights of all Londoners. We can and must have both.

Professor Marian FitzGerald suggested to the MPA that Section 60 Powers are being used more often to circumvent the reasonable suspicion requirements of other stop and search powers. The MPA was of the view that this assertion tended to be confirmed by the steady annual increase in the reliance on section 60. The Commissioner of Police in Western Australia advised the Committee that, on his recent visit to the United Kingdom, the Assistant Commissioner of the Metropolitan Police Service had

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218 Ibid, p42.
220 Ibid, p49.
221 Ibid, p58.
commented to him that these powers had been overused. The MPA was also of the view that the Metropolitan Police Service had begun to use Section 44 Powers more frequently, and in preference to the stop and search powers requiring a reasonable suspicion. In fact, ever since the commencement of section 44 of the Terrorism Act 2000 (UK) on 19 February 2001:

successive section 44 authorisations, each covering the whole of the Metropolitan Police district and each for the maximum permissible period (28 days), have been made and confirmed ...

3.61 The MPA received evidence from Professor Marian FitzGerald that police may have used Section 60 Powers as a method of ‘social control’, for example, to break up crowds of young people and to generally maintain the peace, rather than as a method of ‘true’ policing. That is, there is a suggestion that the police are using the Section 60 Powers for purposes outside the scope of their legal authority because the object of the Section 60 Powers is to search for, and find, offensive weapons and dangerous instruments.

3.62 Professor Marian FitzGerald provided the Committee with data which indicates there is no direct relationship between the use of Section 60 Powers and a rise or fall in knife crime (refer to Table 8 and Figure 22 below). In addition, Professor FitzGerald has received the following anecdotal evidence from police officers:

police officers I respect both in London and elsewhere have expressed to me their concerns about the indiscriminate use of the power. Several have pointed out that they have effectively had to resist political pressure unquestioningly to increase the use of 60 on the pretext of tackling knife crime, adding that they have been vindicated

222 “It became incorporated in the way they did daily policing, instead of being occasionally used as an effective tool when it needed to be applied”: Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p37.


224 Case of Gillan and Quinton v The United Kingdom, European Court of Human Rights, Application No 4158/05, 12 January 2010, paragraph 34.

225 Equal Opportunity and Diversity Board, Metropolitan Police Authority, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, pp59-60 (and for further discussion of this issue, pp56-59).

226 Refer to Appendix 5 for a summary of the elements of section 60 of the Criminal Justice and Public Order Act 1994 (UK).

227 Professor Marian FitzGerald, Visiting Professor of Criminology, University of Kent, Background Note: Analyses of MPS knife crime data and the use of s60 searches, 2 February 2010, pp5-6.
by seeing local falls in knife crime which are as good as or better than other areas which have not shared their scruples."\textsuperscript{228}

Table 8: Metropolitan Police Service Figures for Numbers of Searches using Section 60 Powers and Knife Crime Figures in the Top 11 Knife Crime Boroughs for 1 April 2009 to 30 October 2009\textsuperscript{229}

<table>
<thead>
<tr>
<th></th>
<th>Recorded knife crime FYTD 08-09</th>
<th>N s60 searches FYTD 09-10</th>
<th>% Change in knife crime FYTD 09-10 compared to previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newham</td>
<td>416</td>
<td>13347</td>
<td>-7.7</td>
</tr>
<tr>
<td>Southwark</td>
<td>464</td>
<td>9437</td>
<td>8.6</td>
</tr>
<tr>
<td>Hackney</td>
<td>329</td>
<td>7221</td>
<td>-13.1</td>
</tr>
<tr>
<td>Haringey</td>
<td>321</td>
<td>3970</td>
<td>-5.9</td>
</tr>
<tr>
<td>Waltham Forest</td>
<td>340</td>
<td>3123</td>
<td>6.2</td>
</tr>
<tr>
<td>Brent</td>
<td>367</td>
<td>2212</td>
<td>-1.3</td>
</tr>
<tr>
<td>Tower Hamlets</td>
<td>307</td>
<td>1971</td>
<td>-11.1</td>
</tr>
<tr>
<td>Lambeth</td>
<td>390</td>
<td>1512</td>
<td>3.8</td>
</tr>
<tr>
<td>Croydon</td>
<td>321</td>
<td>1496</td>
<td>-5.3</td>
</tr>
<tr>
<td>Lewisham</td>
<td>313</td>
<td>1479</td>
<td>-7.0</td>
</tr>
<tr>
<td>Islington</td>
<td>306</td>
<td>840</td>
<td>-24.8</td>
</tr>
</tbody>
</table>

\textsuperscript{228} Professor Marian FitzGerald, Visiting Professor of Criminology, University of Kent, Background Note: Analyses of MPS knife crime data and the use of s60 searches, 2 February 2010, p4.

\textsuperscript{229} Compiled by Professor Marian FitzGerald in ibid, p5.
3.63 In relation to Section 44 Powers, Lord Carlile, the statutorily-appointed independent reviewer of the operation of the Terrorism Act 2000 (UK) and Part 1 of the Terrorism Act 2006 (UK), has stated that the stopping and searching conducted under section 44 is “rightly perceived as a significant intrusion into personal liberties.”

He described the exercise of the powers as an invasion of the stopped person’s freedom of movement and civil liberties.

3.64 Lord Carlile stated that there was “ample anecdotal evidence” to suggest that the police had been stopping and searching white people under the Section 44 Powers just to produce greater racial balance in the statistics for the powers.

3.65 Lord Carlile has questioned the efficacy of the Section 44 Powers. For example, he recently stated as follows:

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233 Ibid.
I am sure that safely it could be used far less. There is little or no evidence that the use of section 44 has the potential to prevent an act of terrorism as compared with other statutory powers of stop and search. Whilst arrests for other crime have followed searches under the section, none of the many thousands of searches has ever resulted in conviction of a terrorism offence. Its utility has been questioned publicly and privately by senior Metropolitan Police staff with wide experience of terrorism policing.\(^{234}\)

3.66 In relation to Section 44 Powers, Lord Carlile found that the damage to community relations, if the powers are used incorrectly, can be considerable.\(^{235}\)

3.67 Lord Carlile found that the purpose and deployment of section 44 powers are poorly understood.\(^{236}\)

3.68 In May 2009, after conducting a review into the use of the Section 44 Powers, the Metropolitan Police Service determined that the powers should continue to be available in the vicinity of sites of key symbolic and strategic importance across London. In other places however, police officers should only stop and search individuals using the power under section 43 of the\(^{237}\) Terrorism Act 2000 (UK), which requires the searching constable to have grounds to suspect that the person might be engaged in a terrorism-related offence, except where authorised by a specific directive.\(^{237}\) The Committee understood that this merely reflected the powers already available under the existing legislation, as Section 44 Powers can only be utilised as the result of a specific authorisation by a police officer of sufficient rank.

3.69 On 12 January 2010, the European Court of Human Rights found that section 44 of the\(^{239}\) Terrorism Act 2000 (UK) breached Article 8 (Right to respect for private and family life)\(^{239}\) of the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms:

\[
\text{the Court considers that the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the}
\]

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\(^{234}\) Ibid, p31.

\(^{235}\) Ibid, pp29 and 31.

\(^{236}\) Ibid, p29.

\(^{237}\) Case of Gillan and Quinton v The United Kingdom, European Court of Human Rights, Application No 4158/05, 12 January 2010, paragraph 48.

\(^{238}\) Section 44 of the Terrorism Act 2000 (UK). See also, the comparison table in Appendix 5.

\(^{239}\) Article 8 provides that “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
2000 Act are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They are not, therefore, “in accordance with the law” [as is required by Article 8] and it follows that there has been a violation of Article 8 of the Convention.  

3.70 In response to this ruling, on 8 July 2010 the Home Secretary issued interim guidelines for the police to cease their use of the Section 44 Powers in relation to the searching of individuals. Police are permitted to continue to use the Section 44 Powers to search vehicles, but only if they hold a reasonable suspicion of terrorist activity. These interim guidelines were designed to ensure compliance with the court’s ruling and to provide clarity for the police before an expected review of all anti-terrorism legislation in the United Kingdom during the northern hemisphere’s 2010 summer.

Positive Evidence

3.71 People in the United Kingdom are generally supportive of all stop and search powers in principle, provided that they are used legally and fairly.

3.72 Researchers for the United Kingdom’s Home Office concluded that the use of stop and search powers can obtain intelligence for the police. This was seen to be an “added value”, given that stops and searches cannot be justified purely on the basis of gathering intelligence.

240  Case of Gillan and Quinton v The United Kingdom, European Court of Human Rights, Application No 4158/05, 12 January 2010, paragraph 87.


242  http://www.guardian.co.uk/law/2010/jul/08/anti-terror-stop-and-search-scrapped, (viewed on 9 July 2010); and A Banks, ‘UK legal ruling hits stop and search laws’, The West Australian, 10 July 2010, p3. Due to its reporting date, the Committee did not pursue the results of this review.

243  J Miller, N Bland & P Quinton, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Police Research Series Paper 127: The Impact of Stops and Searches on Crime and the Community, United Kingdom, September 2000, p(vi) and see generally, p47. More recently, “11 MILLION’s survey shows some support for stop and search among those aged 12 to 17 as a way of reducing gun and knife crime, with white and black and minority ethnic (BME) young people similarly inclined towards it: 20 per cent and 19 per cent respectively. Support is stronger among lower socio-economic groups in TKAP [Tackling Knives Action Programme] areas [refer to footnote 248 in this Report for a list of these areas], and strongest among those groups in London, at 29 per cent”: 11 MILLION, Standing Together: Principles to Reduce Children and Young People’s Involvement in Gun and Knife Crime, United Kingdom, 7 July 2009, p20.

3.73 The WA Police quoted the following statistics to support its assertion that the incidence of knife crime in the United Kingdom had reduced since their police stop and search powers were introduced:245

- In London, there had been an 18 per cent drop in the number of young people (aged under 20) injured by knives between April and September 2008, when compared with the same period in 2007.246

- “youth violence” during the Halloween week in 2008 was 30 per cent lower than in the same week in 2007.247

The Committee noted that the meaning of ‘youth violence’ is unclear and the source provided by the WA Police for this information does not indicate the region from which the statistic is drawn.

- In the first nine areas outside of London where a cross-government Tackling Knives Action Programme248 had also been implemented, there was a 27 per cent fall in the number of teenagers admitted to hospital after being injured with a blade.249

The Committee noted that the sources provided by the WA Police for this information do not provide the reference periods for this statistic; that is, the Committee does not know which periods were being compared.

- In the first ten areas where the Tackling Knives Action Programme was implemented, there was a 17 per cent fall in serious knife crimes (homicide, attempted murder and grievous bodily harm with intent) against young people

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245 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p36.


247 Ibid.

248 The Tackling Knives Action Programme is a cross-government action programme which was launched in June 2008 to lower the number of teenagers killed or seriously wounded by knives and to increase the public’s confidence in the safety of public areas. The programme originally ran in ten police force areas (Essex, Greater Manchester, Lancashire, Merseyside, Metropolitan Police (or London), Nottinghamshire, South Wales, Thames Valley, West Midlands and West Yorkshire) but has now expanded to 15 police force areas and the British Transport Police. Some of the initiatives include: “stepping up enforcement operations; targeting the most dangerous young people in each area; carrying out home visits and sending letters to parents if their children are known to carry weapons; working with accident and emergency departments on information sharing; setting up or expanding youth forums to enable young people to have a say in local issues; and clamping down on retailers who continue to sell knives to young people”: http://www.crimereduction.homeoffice.gov.uk/tackling_knives.htm, (viewed on 12 May 2010); and http://www.crimereduction.homeoffice.gov.uk/tacklingknivesb.pdf, (viewed on 12 May 2010).

when the June 2008 (98 offences) and October 2008 (81 offences) figures were compared. 250

- In the first ten areas where the Tackling Knives Action Programme was implemented, more than 2,200 weapons had been seized between June and October 2008. 251

- In the first ten areas where the Tackling Knives Action Programme was implemented, the proportion of searches which uncovered a weapon in October 2008 was half of that recorded in June 2008. 252

The Committee noted that the source document referred to by the WA Police did not provide the exact proportions involved.

3.74 However, for the following reasons, these statistics did not convince the Committee of the effectiveness of Section 60 Powers and Section 44 Powers:

- Despite assurance that it could do so, and notwithstanding several requests from the Committee to provide it, the WA Police failed to provide the primary source of the statistics, instead referring the Committee to two online newspaper articles and a two-page dot-point fact sheet issued by the United Kingdom’s Home Office, all of which were lacking in detail.

- The sources of information provided by the WA Police do not indicate that Section 60 Powers or Section 44 Powers were solely responsible for achieving the short-term reduction in the incidence of knife crimes. Rather, these results seemed to have been the product of a range of whole-of-community strategies. The two operations which were featured in the information sources to which the WA Police referred the Committee were the Tackling Knives Action Programme 253 and Operation Blunt 254. It appeared to the Committee that both of these operations involved a multi-faceted approach to reducing knife crime rather than merely relying on police stop and search powers. These include

251 Ibid.
252 Ibid.
253 See footnote 248 in this Report for a discussion about the Tackling Knives Action Programme.
254 Operation Blunt is an initiative of the Metropolitan Police Service launched in London in November 2004 which aims to reduce the number of knives on London’s streets. It focuses on the “preventative element of anti-crime work, particularly knife amnesties, high profile community reassurance in high knife crime areas, educating young people in schools to deter them from knife crime and community engagement”: http://www.london.gov.uk/gangs/projects/cross-borough/project-04.jsp, (viewed on 12 May 2010).
educating and engaging the community, particularly young people, who “tend to be highly represented in the victimisation in terms of knife crimes”255.

Relevance to Western Australia

A number of submitters drew the Committee’s attention to the problems experienced in the United Kingdom with respect to police stop and search powers, particularly where reasonable suspicion was not a prerequisite to the use of the powers. Some of them urged the Committee to recommend that the Bill not be passed to avoid repeating the mistakes which have been made in the United Kingdom.256

While making it clear to the Committee that the operation of stop and search laws in other jurisdictions was a subject that had not been part of their research activities and that they had not read the evidence received by the Committee, Dr Frank Morgan and Associate Professor David Indermaur made observations about the relevance of other jurisdictions’ experience to Western Australia.

Dr Frank Morgan commented that “one would expect the UK experience to have something to say for Australia, but the social mix in Australia (and WA) is unique.”257 In his view, by far the best information for Western Australia would be a “systematic analysis” of the operation of the current stop and search legislation over the last two to three years.258 Dr Morgan was of the view that a “good enough” analysis of the current stop and search powers under the Act could be conducted within three to four months and would generate “invaluable information to assess the value” of the existing powers and “whether changes were needed”.259

Associate Professor David Indermaur was of the view that the United Kingdom is the “major comparator” for Western Australia “because it is the most similar and relevant to the state.”260

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255 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p36.
256 For example, Submission No 6 from Search for Your Rights, 16 January 2010, pp7-8; Submission No 9 from Ms Adele Carles MLA, 18 January 2010, p4; Submission No 12 from the Commissioner for Equal Opportunity, 18 January 2010, pp3-5; Submission No 13 from the SCALES Community Legal Centre, January 2010, pp4 and 5; Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, pp2-3; Submission No 25 from Street Law Centre WA Inc, received 23 February 2010, pp5-6; and Submission No 26 from Mr Simon Woodings, 24 February 2010, p2.
257 Email from Dr Frank Morgan, Director, Crime Research Centre, University of Western Australia, 6 May 2010, Attachment 1, p2.
258 Ibid.
259 Ibid; and Associate Professor Dr Frank Morgan, Director, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, p23.
260 Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, pp10-11.
Committee Comment

3.79 In the absence of a review of existing legislative stop and search powers of the police in this State, and it appears, other Australian jurisdictions, the United Kingdom experience provides the most comprehensive analysis of the potential impact of stop and search legislation.

3.80 The Committee noted the experience of the United Kingdom with its Section 44 Powers and Section 60 Powers, which reflected the reservations expressed in several submissions received in evidence and the testimony of witnesses discussed later in this Chapter.

GENERAL TENOR OF SUBMISSIONS

3.81 The submissions received by the Committee were overwhelmingly negative. The majority of the submitters agreed that public safety is an important issue: they wished to see violent and anti-social behaviour reduced and agreed that people should be able to enjoy public places without the threat of violence. However, 25 of the 26 submitters were of the view that the proposed stop and search powers would not achieve this purpose. Some of the concerns were that the Bill goes ‘too far’ and that the additional powers will not solve the underlying problems which result in violent and anti-social behaviour.

3.82 Therefore, the majority of submitters disagreed with the main aspect of the underlying policy of the Bill, that is, to introduce the additional stop and search powers. These submitters recommended that the Bill not be passed based on this fundamental, in principle, disagreement with the policy of the Bill. Many of these submitters were of the view that if the Bill does proceed, amendments would be needed to improve the legislative safeguards offered by the Bill. Later chapters of this Report should be read in this light.

SURVEYS OF PUBLIC PERCEPTION OF THE BILL

Westpoll

3.83 In a Westpoll survey, commissioned by The West Australian newspaper, and conducted over two days in early December 2009, 67 per cent of the people surveyed were reportedly in favour of the Bill. However, after obtaining further details of the survey and the demographics of the respondents, the Committee found that the result was of questionable value.

261 Conversely, the WA Police Union of Workers was of the view that the proposed stop and search powers would achieve this purpose: Submission No 10 from the WA Police Union of Workers, 18 January 2010.

3.84 The relevant question in the survey (question 1.5) was asked in conjunction with two preceding questions, as follows:

Q1.4a I want to turn now to some state issues. Would you be any more or less likely to visit Northbridge if it was declared a stop and search area, which means that police can stop and search anyone?

Q1.4b Do you think the police stop and search powers will make Northbridge a safer place for ordinary people to have a night out?

Q1.5 Do you agree with the legislation?

3.85 67 per cent of the respondents answered ‘yes’ to question 1.5. The results for the above three questions and the demographics of the respondents for the survey and each of the three questions are attached as Appendix 7.

3.86 Despite the emphasis put on such polls by the media organisations which commission them and tout them as news, most are of doubtful or, at best, little value for several reasons. First, the questions, though topical, are imprecise and presume a certain level of knowledge that the person questioned may not possess. From the limited responses obtained, it is impossible to know the extent of the respondent’s knowledge of the subject matter about which he or she is being questioned. There is no filtering to determine whether the respondent knows, for example, the current state of the laws relating to police stop and search powers, let alone whether he or she is aware of what is proposed by the Bill or the implications of what is proposed. In this particular case, for example, police can at present ‘stop and search anyone’, even without their consent, although they must have a reasonable suspicion that the person stopped has on them a thing relevant to an offence (refer to paragraphs 2.1 to 2.31 in this Report for a discussion of the existing police stop and search powers).

3.87 Second, the sample is comparatively small and not controlled for its representational values. Notwithstanding that it may have some sort of statistical validity, it can hardly be said to be a measure of the views of the population of Western Australia. It appears that 403 people were polled. This is just 0.03 per cent of the 1,341,554 people enrolled to vote in the May 2009 Fourth Daylight Saving Referendum or, to put it another way, the views of one out of every 3,329-odd Western Australian adults. Therefore, this Westpoll could hardly be a decisive indicator of the views of the Western Australian public.

3.88 Finally, there is no evidence of a filtering of respondents to the survey, for example, to determine whether they were already likely to visit Northbridge. The relevance of the extent to which the proposed laws would influence whether the respondents would be

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“more or less likely to visit Northbridge if it was declared a stop and search area”, if they were never likely to visit Northbridge in the first place, is minimal. The Committee noted that 58 per cent of “metropolitan” and 65 per cent of “country WA” respondents said it would make “no difference” to them.

What Matters to the West

3.89 In a What Matters to the West survey, commissioned by The West Australian newspaper and the Channel Seven television station, and conducted for just over a week in or about February 2010, the people who responded to the relevant question were reported as being “divided over the proposed stop and search powers ...” 264 The survey was conducted on-line, with 3,496 people starting the survey and 2,483 people completing the survey. 265

3.90 47.5 per cent of the 3,049 respondents to the relevant question in the survey (question 42 - “Do you support the Barnett Government’s proposed stop and search powers for WA Police?”) answered ‘yes’, 44.1 per cent answered ‘no’ and 8.3 per cent answered ‘don’t care’. The questions immediately preceding question 42 appeared to be unrelated, although question 43 concerned people’s perceptions of the level of safety in Northbridge: “43. When would you go to Northbridge with friends or family?” 266 The questions, answers and demographic information of the respondents to this survey are attached as Appendix 8.

3.91 The Committee gave no weight to the results of this survey because it did not involve randomised sampling and relied upon self-nominating participants.

WA’s Biggest Law and Order Survey 2010

3.92 According to the results of a law and order survey entitled, “WA’s Biggest Law and Order Survey 2010”, commissioned by The Sunday Times, perthnow.com.au and the Channel Nine television station, and conducted for two weeks, the “public largely supports stop and search powers for police ...”. 267 Although more than 9,100 responses to the survey were obtained, only 2,000 of them were “randomly selected and analysed”. 268

3.93 66.26 per cent of the 2,000 people who responded to the relevant question were reported as answering ‘yes’ to question 9 in the survey: “Do you support the push for stop and search powers for WA police?” 28.49 per cent and 5.24 per cent of the

266 What Matters to the West survey questions and results supplied by The West Australian newspaper.
268 Ibid.

3.94 For reasons similar to those discussed above in relation to the Westpoll and What Matters to the West surveys, the Committee could not give weight to the results of this survey.

**Committee Comment**

3.95 The several polls run by media organisations were not a reliable indication of public acceptance of the proposed laws for the reasons outlined above.

3.96 The Committee could not know how well informed the public is about the existing police powers to stop and search or the public’s understanding of what is proposed by the Bill. Members of the Committee were concerned that many people are unaware that police already have the power to stop and search a person whom an officer suspects is in possession of a weapon or other thing relevant to an offence.

**SHOULD REASONABLE SUSPICION BE MAINTAINED?**

**What is Reasonable Suspicion?**

3.97 As stated in paragraph 2.32 of this Report, a police officer wishing to stop and search a person or vehicle under proposed section 70A will not be required to have a reasonable suspicion before doing so. To understand the implications of not having the usual requirement for reasonable suspicion, the Committee considered what is involved in the reasonable suspicion test, which, for example, is contained in section 68 of the Act.\footnote{Refer to paragraph 2.5 in this Report for a discussion about this section.}

3.98 ‘Suspicion’ may be something less than belief.\footnote{Hughes v Dempsey (1915) 17 WALR 186 at 187.} The Macquarie Dictionary defines it as the:

\begin{quote}
\textit{imagination of the existence of guilt, fault, falsity, defect, or the like, on slight evidence or without evidence. ... imagination of anything to be the case or to be likely; a vague notion of something.}\footnote{The Macquarie Dictionary, On-line, Macmillan Publishers Australia, 2010.}
\end{quote}

3.99 Section 4 of the Act defines ‘reasonably suspects’ as follows:
For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable. (underlining added)

3.100 This definition reflects the common law meaning of ‘reasonable suspicion’:

Reasonable suspicion means that there must be something more than imagination or conjecture. It must be the suspicion of a reasonable man warranted by facts from which inference can be drawn, but it is something which falls short of legal proof.273

3.101 The reasonable suspicion test is therefore an objective one, in the sense that the grounds which the individual police officer holds as justification for a stop and search must be assessed objectively as being reasonable in all the circumstances. The Law Society of Western Australia (Law Society) offered the following explanation of the test:

Reasonable suspicion has to be assessed in light of any particular factual scenarios. It is impossible, really, for me to say that this is what reasonable suspicion is. ... It is a suspicion that a reasonable police officer would have when faced with that particular factual scenario. It still comes back to the suspicion of the police officer, which is why I say it is a low threshold. As long as it is a reasonable suspicion that would be held by a reasonable police officer, we are over the threshold.

...

“Reasonable” imports to the degree of objectivity; the objectivity of reasonable police officers. That incorporates their intuition based upon their experience and their assessment of the way a person is walking down the street. In another scenario, a police officer is walking down the road in Northbridge. He looks down an alley and sees two people who appear, based upon his judgement, to be acting furtively in the shadows. He sees one person’s hand go out to another person, and they are looking around furtively. One of them then scurries down to the other end of the alleyway because he has seen that the police officer is looking down the alley. That is sufficient for those police officers to have a reasonable suspicion that a drug deal has taken place and it gives them the authority to chase, apprehend and search those people. If they find drugs or weapons, the charge

273 Hughes v Dempsey (1915) 17 WALR 186 at 187.
would go to court and there would not be a magistrate in the state who would exclude the evidence on the basis that there was an illegal search and that the police officers could not have had a reasonable suspicion. 274

3.102 An excerpt from the WA Police training curriculum was tabled during a hearing on 10 March 2010 with representatives of the WA Police and is attached as Appendix 10. It explains that the reasonable suspicion test is:

What would a reasonable person acting without passion or prejudice fairly suspect from the circumstances? 275

3.103 According to the excerpt, evidence which would not be permitted to be used in a later trial may be used for the development of reasonable suspicion. These include hearsay evidence and the person’s criminal history. The time, place and circumstances of the police officer’s encounter with the person may also be used to develop reasonable suspicion. 276 The following scenario is offered as an example of how the reasonable suspicion test could be satisfied:

a person speaks to you and tells you that he overheard a conversation in a hotel that two men intended to commit a burglary that night.

There have been a number of burglaries on electrical stores in the area in the early hours of the morning, witnesses have reported seeing a white van parked in the vicinity at the time of the burglaries. You are called to attend an alarm at an electrical store, as you travel into the area you observe a white van leaving the area.

You stop the van and find the driver is known to you and you are aware that he has prior convictions for burglary.

Although none of the above information may be admitted as evidence in court, the combined effect of it would be sufficient to allow the development of a reasonable suspicion which would be sufficient to search the vehicle. 277

274 Mr Hylton Quail, President, The Law Society of Western Australia, Transcript of Evidence, 9 February 2010, p9.

275 Excerpt from the Western Australia Police training curriculum entitled, ‘Reasonably Suspects’, p2.


277 Ibid, p3.
3.104 Conversely:

*The fact that someone either refuses to participate in a search or fits a particular profile group is not sufficient and would not justify, in my mind, a search under the normal search powers [that is, would not meet the reasonable suspicion test].*

3.105 The fourth paper in a research programme conducted for the United Kingdom’s Home Office revealed that police officers’ suspicions were aroused as a result of the following factors:

- **appearance** - including youth, clothing, types of vehicle, incongruence, in some cases ethnicity, being known to the police, and fitting suspect descriptions;
- **behaviour** - including ‘suspicious activity’ and observed offending;
- **time and place** - resulting from officer availability for proactive duties and officer expectations about where and when people are suspicious; and
- **information or intelligence** - such as suspect descriptions and local intelligence on crime.

3.106 Depending on the circumstances, any or all of the above factors may give rise to a reasonable suspicion.

**Government’s Justification for not Requiring the Test for Reasonable Suspicion to be Applied**

3.107 The Government and the Police Union recognised that the proposed stop and search powers are a departure from the normal requirement that the searching police officer have a reasonable suspicion prior to conducting a search.

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278 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p22.


281 *Explanatory Memorandum* for the Criminal Investigation Amendment Bill 2009, p1; and Submission No 10 from the WA Police Union of Workers, 18 January 2010, p1.
The Government’s explanation for the need not to have the requirement for reasonable suspicion is that it will assist in the prosecution of offences detected in the course of a search. It claimed that prosecutions have in the past been hampered by difficulties in proving that stops and searches were conducted with the requisite reasonable suspicion:

*Under the current law, police can only stop and search a person if they reasonably suspect that a person is in possession of something relevant to an offence*, such as weapons or drugs.

*When the offender is taken to court, time and resources are often spent arguing whether the officer can justify the grounds for their suspicion instead of whether the offender was actually in possession of weapons, drugs or other illegal objects.*

*The result is that some offenders get off on a technicality related to the reasons for the search taking place.*

However, the few examples tendered as evidence of cases which apparently have some bearing on this issue did not support the Government’s, WA Police’s nor the Police Union’s contention that the need to have a reasonable suspicion has created any impediment to a prosecution. The only relevant case presented to the Committee was that of the Magistrates Court trial of Darren Van Dongan on 9 February 2006. The WA Police provided the Committee with a summary of the evidence in the trial, which is attached as Appendix 11. Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, WA Police, gave the Committee a summary of the events surrounding the trial, as follows:

*In essence, what happened was that a couple of police officers pulled a person over to conduct a search and told the person in question that they were going to search them. They uncovered some drugs. During the course of the arrest also there was a short struggle, so that the person was charged with the drug offences and also, I think, a hindering police offence. The trial proceeded as per normal, but the officers in question gave their evidence. At no point during the trial was there any question raised or the officers had to give any*
indication to the magistrate as to what their reasonable suspicion was. It was never an issue raised by defence counsel, so the officers did not have to go into, “This is the reason why I searched the person.” It was only in the final summing up of the defence counsel that defence counsel put in the mind of the magistrate that, “Well, the officers have not shown any justification for their reasonable suspicion, so because they have not shown that justification, you ought to throw this matter out and that you ought not to admit into evidence the fact that the drugs were found.” So there was no opportunity in this particular case for the officers to actually put their grounds to the magistrate and the magistrate took on face value what defence counsel had put an[d] threw out the case. So there was no opportunity to test the reasonable suspicion on that one and the WA Police decided that given the nature of the offences and what the likely penalty might be if we were to appeal against it, we decided not to appeal against this. So there was a question there with reasonable suspicion that the court has not even given the officers the opportunity to put their case and it is well established that even if a court cannot find that the officers had a reasonable suspicion, the court can still allow that into evidence[286].[287] (underlining added)

3.110 For the following reasons, the Committee was of the view that this case did not demonstrate a deficiency with the Act and the current general requirement for reasonable suspicion prior to the conduct of a police stop and search:

- First, the case reveals that the court proceedings were flawed in the following respects:
  
  (a) In the course of the closing addresses, the defence was permitted to raise an issue which had not been raised during the trial and which the prosecution was not given the opportunity to rebut.
  
  (b) The magistrate, having accepted that the search of Mr Van Dongan had been carried out unlawfully, appears not to have fully considered the principles established by the High Court in *Bunning v Cross* (1977-1978) 141 CLR 54, which allow ‘improperly’ obtained evidence to be admitted into court proceedings if the circumstances of the case warrant that admission.

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286 For example, this is the principle established by the High Court in *Bunning v Cross* (1977-1978) 141 CLR 54.

287 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, *Transcript of Evidence*, 2 February 2010, pp26-27.
• The Committee was informed by the WA Police that, notwithstanding that it considered the magistrate’s decision to be wrong and there were strong grounds for appeal, the WA Police chose not to take that course.

• The case precedes the 1 July 2007 commencement of the majority of the provisions in the Act, including sections 154 and 155. Section 154 authorises the court hearing the trial to admit evidence which was obtained ‘improperly’ in three circumstances. One of these circumstances is when the court decides to admit the evidence under section 155: that is, if the court is satisfied that “the desirability of admitting the evidence outweighs the undesirability of admitting the evidence.” This discretion can only be exercised after the court has considered the factors listed in section 155(3):

(a) any objection to the evidence being admitted by the person against whom the evidence may be given;

(b) the seriousness of the offence in respect of which the evidence is relevant;

(c) the seriousness of any contravention of this Act in obtaining the evidence;

(d) whether any contravention of this Act in obtaining the evidence —

(i) was intentional or reckless; or

(ii) arose from an honest and reasonable mistake of fact;

(e) the probative value of the evidence;

(f) any other matter the court thinks fit.

These factors reflect the principles in Bunning v Cross (1977-1978) 141 CLR 54.

• The WA Police conceded that the magistrate’s decision in the Van Dongan case would have had even less of a prospect of being correct if it had been made after the commencement of sections 154 and 155 of the Act.288

3.111 The WA Police was also unable to offer any anecdotal evidence of a prosecution being frustrated because the officer did not have the requisite reasonable suspicion to search the person being charged.289

3.112 The Law Society was also unaware of any cases since 1997 where difficulties were caused to a prosecution by the reasonable suspicion test:

I think the government were asked whether they were aware of any instances of a prosecution having failed, and there was reference to one instance of a prosecution having failed because evidence relating to a search was rejected by a court because the reasonable suspicion threshold had not been met. I understand that decision was quickly overturned on appeal. Now for myself, when I went to search for it, I could not find it. In fact I had to go back to 1997 to find a single example of a matter going before the Supreme Court to do with the issue of reasonable suspicion. I think perhaps the best way, though, to answer your question is this: ... all I do is criminal law. I am a criminal lawyer by choice and I have never in the 15 years of my daily practice in the criminal courts of Western Australia taken a point where I have argued for the proposition that a police officer did not have a reasonable suspicion, and I have never seen it argued. I have never seen a court in this state, and I have never even seen a lawyer in this state ... argue to have evidence excluded on the basis that a police officer did not have a reasonable suspicion. ... even in those very rare instances where it might be said that a police officer did not have a reasonable suspicion at the time that he conducted a search, the law is that evidence obtained as a consequence of what is therefore an illegal search can nevertheless be properly admitted in a court; and that is as a consequence of a decision in a case called Bunning and Cross. So in fact this notion that the law needs to be amended to get around the requirement of reasonable suspicion is really a man of straw; it is a problem that simply is not there. What the requirement for reasonable suspicion really does is make it necessary to focus the search on a particular individual. It is the removal of the requirement of reasonable suspicion in this case which is going to allow mass searching. It is going to allow the police to say, “Stand in that queue. All of you are going to be searched before you can enter the area.” So it is not in our view really about reasonable suspicion because it is pretty easy in fact for a police officer to have a reasonable suspicion and search someone; but the removal of reasonable suspicion is what is going to allow mass searching. And that is what is repugnant.290

289 Superintendent Gary Budge and Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 2 February 2010, p29.

290 Mr Hylton Quail, President, The Law Society of Western Australia, Transcript of Evidence, 9 February 2010, p5.
3.113 The Committee also obtained evidence that the reasonable suspicion test is not hard to satisfy:

_The CHAIRMAN_: We say cogent intelligence, but often policing is not based on that but on intuition and a sense of trouble.

_Mr Quail_: You and I know that that constitutes reasonable suspicion, Mr Mischin. 291

...

_Mr Quail_: I heard the Minister for Police say that the threshold for reasonable suspicion is too high. I have not heard police officers say that; I have not heard a police officer say that he has difficulty overcoming reasonable suspicion, because every police officer with any experience knows that reasonable suspicion is a very low hurdle to jump over. I have heard the Minister for Police say it; I have not heard him back it up with any evidence at all, so the Law Society would completely reject that. The second thing we would say in terms of the second limb of the member’s question about whether the threshold for reasonable suspicion is too high, is no—it is a very low threshold. 292

3.114 In this respect, the Committee noted that the suspicions of the searching police officer need only be reasonable in the circumstances, not correct or irrefutable. Put another way, if the grounds upon which the searching police officer relied for his or her reasonable suspicion were subsequently found to be false or non-existent, the stop and search would still be lawful, as long as it was reasonable, in that particular instance, for the officer to rely on those grounds. 293 The submission from Mr Johnson Kitto made the same observation. 294

3.115 The Police Union gave contradictory evidence about the difficulty of applying the reasonable suspicion test:

_The CHAIRMAN_: And you say that that is not working satisfactorily at the moment because a police officer has to formulate a suspicion based on reasonable grounds.

291 Hon Michael Mischin MLC, Chair, Standing Committee on Legislation, and Mr Hylton Quail, President, The Law Society of Western Australia, Transcript of Evidence, 9 February 2010, p8.

292 Mr Hylton Quail, President, The Law Society of Western Australia, Transcript of Evidence, 9 February 2010, p9. See also, Mr Quail’s comment which is quoted at paragraph 3.101 in this Report.

293 See the definition of ‘reasonably suspects’ in section 4 of the Criminal Investigation Act 2006, quoted at paragraph 3.99 in this Report.

294 Submission No 15 from Mr Johnson Kitto, 15 January 2010, p6.
Mr Armstrong: That is correct.  

... 

The CHAIRMAN: Pursuing this question of reasonable suspicion, do you believe that it is a difficult threshold to overcome? 

Mr Armstrong: In its current form? 

The CHAIRMAN: Yes. 

Mr Armstrong: No. 

3.116 When the Committee queried this issue with the WA Police and asked for any evidence, anecdotal or otherwise, of police officers having problems with satisfying the reasonable suspicion test, the WA Police provided limited anecdotal evidence of this: 

- Superintendent Gary Budge said that: 

  There is certainly anecdotal evidence of that and I have certainly been involved in discussions with police officers, and there has been much debate about the subjective nature of reasonable suspicion. \(^{297}\) We have talked about scenarios where some police say, “Yes, I believe that would give me a reasonable suspicion to search the person”, and others have said, “No, I don’t think that would give me a reasonable suspicion.” \(^{298}\) 

- Dr Karl O’Callaghan, Commissioner of Police, and Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, gave the following reasons for the lack of this evidence: 

  Dr O’Callaghan: I think the problem would be that a lot of this business about whether an officer has reasonable suspicion or not and feels like they can search someone or not is in the mind of the officer who is conducting the response, so that does not go recorded; in other words, there is no reason to record a thought process. To back-capture that sort of information would be almost impossible unless we went out to try to ask officers whether they had ever been in
such a scenario. I do not know whether you [Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, WA Police] are able to enlighten anybody about that, but the problem is we do not capture that sort of information so we do not have access to it.

Mr Brown: I do not think in my career it has ever been something that has been discussed; you either have a reasonable suspicion and you take actions from there on, or you do not and you go about your business. 299

### Committee Comment

3.117 The Committee recognised that reasonable suspicion, although not considered to be an onerous threshold, must sometimes be assessed by police officers very quickly and in very trying circumstances. Although police officers may differ as to whether a given set of circumstances may give rise to their having reasonable suspicion, the Committee understood that the difficulty was not with the requirement of having to hold a reasonable suspicion but perhaps with a police officer’s confidence that his or her own judgment would stand up to objective scrutiny.

3.118 However, the evidence to the Committee was that establishing the reasonableness of an officer’s suspicion, as a precondition to a search leading to a charge, has not proved to be an impediment to a successful prosecution.

3.119 Further, the Committee noted that the WA Police did not express concerns about there being any deficiency in the training police officers receive regarding the issue of reasonable suspicion.

### Finding 7: The Committee finds that the concept of reasonable suspicion, which is a prerequisite for almost all police stop and search powers, is readily understood and not difficult to apply.

### Finding 8: The Committee finds that proving the reasonableness of the suspicions held by a police officer when exercising police stop and search powers has not been an impediment to a successful prosecution.

### The Importance of the Reasonable Suspicion Test

3.120 As explained by the Law Society:

299 Dr Karl O’Callaghan, Commissioner of Police, and Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, Western Australia Police, Transcript of Evidence, 10 March 2010, p45.
What the requirement for reasonable suspicion really does is make it necessary to focus the search on a particular individual. 300

3.121 In other words, in a designated area, the Bill will empower police officers to search anyone they like for whatever reason they like, or for no reason at all. Once a person is selected from a crowd to be stopped and searched under the proposed powers, there will be no opportunity for the person to refuse the stop and search.

3.122 For essentially these reasons, several of the submissions received by the Committee called for the reasonable suspicion test to be maintained in all police stop and search powers. 301 A selection of the comments is provided:

- “SCALES firmly believes that reasonable suspicion is an absolutely necessary check on police action. If an officer is going to conduct a search, they must at least turn their mind to whether or not there is enough evidence to support a reasonable suspicion that a search is necessary. This is a legal test which requires that there is more than simply prejudice and assumption because the person searched looks young, aboriginal or homeless or they speak to the officer in a way the officer does not like.” 302

- “Existing legislative framework which requires reasonable suspicion, must be retained, and has worked admirably in the past.” 303

- “Saying someone “behaved suspiciously” or “looked suspicious” without a requirement for a qualified explanation of what constitutes “suspicious” cannot be acceptable. This would allow officers too much scope for indulging in the exercise of personal bias or vindictiveness toward certain types ... . This legislation would encourage unbridled indulgence by less disciplined officers seeking outlets for their own subjective views victimising innocent citizens who otherwise would escape unnecessary harassment.” 304

300 Mr Hylton Quail, President, The Law Society of Western Australia, Transcript of Evidence, 9 February 2010, p5.

301 For example, Submission No 5 from Hon Giz Watson MLC, 13 January 2010; Submission No 6 from Search for Your Rights, 16 January 2010, pp4 and 6; Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, p3; Submission No 11 from The Law Society of Western Australia, January 2010, pp5 and 6-7; Submission No 13 from the SCALES Community Legal Centre, January 2010, p3; Submission No 15 from Mr Johnson Kitto, 15 January 2010, pp2-3, 6-7 and 8; Submission No 16 from South Coastal Women’s Health Services, 18 January 2010, p1; Submission No 17 from the Pilbara Community Legal Service, 18 January 2010, p1, Submission No 18 from Ms Catherine Hall, 18 January 2010, p1; Submission No 21 from Mr Vincent Sammut, 21 January 2010, p2; Submission No 22 from Mr Tadeusz Edmund Krysiak, 22 January 2010, p1; Submission No 25 from Street Law Centre WA Inc, received 23 February 2010, pp2 and 3; and Submission No 26 from Mr Simon Woodings, 24 February 2010, pp1 and 2-3.

302 Submission No 13 from the SCALES Community Legal Centre, January 2010, p3.

303 Submission No 15 from Mr Johnson Kitto, 15 January 2010, p8.

304 Submission No 21 from Mr Vincent Sammut, 21 January 2010, p2.
• “[Under the Bill,] ... the requirement of ‘reasonable suspicion’ is removed from the legislation, meaning that police officers are able to conduct searches on a person in an area prescribed by the regulations even if they do not harbour suspicion that the person may be carrying concealed weapons. ... this opens up the possibility of some police officers conducting searches on the basis of personal prejudice, whether consciously or not.”305

3.123 One submission went further, by suggesting that the requirement for police officers to hold a ‘reasonable suspicion’ be replaced by a prescribed “set of criteria which is more specific in defining procedure and appropriate modes of intervention”. That is, a suggestion that the legislated police stop and search powers should be more prescriptive than using the phrase ‘reasonable suspicion’.306

3.124 During a hearing, the Commissioner for Children and Young People reiterated her concerns about the removal of the usual requirement for reasonable suspicion and the effect this may have on children and young people:

I am concerned that when we remove the test in the current legislation that governs stop and search, which is to do with having reasonable suspicion, it then becomes a question of what criteria would you employ to stop and search a child. One of the things that stands out for me as a concern is difference, and children and young people who might have a disability or a mental illness, or some other issue, might stand out for someone on the beat assessing whether they should stop and search.307

... once that threshold is removed, the likelihood of more children coming into contact with the police is increased.308

**Committee Comment**

3.125 The Committee heard that the reasonable suspicion test is not difficult to satisfy and helps ensure that searches are focused and objective, and so instils greater confidence in the public that the police powers will be used responsibly.

305 Submission No 25 from Street Law Centre WA Inc, received 23 February 2010, p2.
307 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p3.
Other Arguments for an Exception to the Requirement for Reasonable Suspicion

3.126 The Police Union asserted that:

*The average law abiding citizen, in the Union’s view should applaud such legislation because it is aimed as deterrence to a growing minority in our community whose actions attract police attention.*

(underlining added)

3.127 In the Committee’s view, it could be argued that if a person’s actions attract police attention, it is very likely that the police officer will form the requisite reasonable suspicion to stop and search that person under section 68 of the Act or some other legislative stop and search power requiring reasonable suspicion. In such circumstances, the police officer is unlikely to require the proposed stop and search powers.

3.128 The Police Union also offered the following scenario as an example of how the reasonable suspicion test can fail and, by implication, how the Bill will avoid this problem:

*What happens is some people may come along who are acting in an antisocial way doing certain things that would draw our attention to them. We may have a reasonable suspicion that they are carrying something and we would be able to search them, but if somebody was walking past who just appeared normal and was carrying a knife or a machete, they would walk straight past us and walk down the road and may stab somebody. We have seen this time and time again when people have been injured by people carrying weapons, and some of them you would not pick. You would not stop them. It is a time/place circumstance.*

3.129 The Committee considered that unless everyone in that area was screened or searched, a police officer exercising the proposed powers would still be unlikely to detect such a person as described by the Police Union, unless the officer’s decision to stop that person was informed by police intelligence, lucky random selection, or some  

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310 Refer to the discussion of these powers in paragraphs 2.1 to 2.31 in this Report.


312 The Western Australia Police indicated that it would be impracticable for police officers to conduct mass searching using the proposed powers: for example, Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, and Superintendent Gary Budge, Western Australia Police, *Transcript of Evidence*, 2 February 2010, pp12-13, quoted at paragraph 3.132 of this Report; and Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p20.
3.130 In answer to this, representatives of the Police Union and the WA Police insisted that the proposed stop and search powers will not be used to target certain groups of people. Rather, anyone who is in a prescribed or declared area would be exposed to the powers.\footnote{Mr Russell Armstrong, General President, WA Police Union of Workers, \textit{Transcript of Evidence}, 9 February 2010, pp7, 15-16 and 22; Superintendent Gary Budge, and Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, \textit{Transcript of Evidence}, 2 February 2010, pp12 and 15, respectively; and Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p4.}

3.131 When the Committee queried what criteria, if not reasonable suspicion, a police officer would use to determine who to stop and search in a prescribed or declared area under the Bill, the Police Union provided the following explanation:

\begin{quote}
That will be up to the officers who are actually out there in those prescribed areas. I do not know. I cannot say what operations will be put in place and if we will check one in five or check everyone early in the night or check everyone at three o’clock in the morning. I honestly cannot say that.\footnote{Mr Russell Armstrong, General President, WA Police Union of Workers, \textit{Transcript of Evidence}, 9 February 2010, p12.}
\end{quote}

\begin{quote}
The best person to answer that question is the person on the street who will make the decision at that time. They know the feeling for the street, the circumstances, the atmosphere, the whole lot.\footnote{\textit{Ibid}, p16.}
\end{quote}

3.132 The Committee’s concerns about the potential for discriminatory use of the proposed stop and search powers were heightened by the following exchange with representatives of the WA Police, during which there was an implied concession that the proposed powers will not and cannot be used randomly:

\begin{quote}
\textbf{Mr Penn:} Certainly the police are not proposing that they will be conducting mass screenings or searching of people in these areas. It is simply not practicable to do so. It will not be the case that if there are 5,000 people in an entertainment precinct, all of those 5,000 people will be searched. It is simply not practicable for police resourcing to do that.
\end{quote}
Hon ALISON XAMON: But they can be indiscriminately searched without consent or without reasonable suspicion.

Mr Penn: They can be searched, yes, without consent or reasonable suspicion. I do not know if it is necessarily indiscriminate. We would expect that —

Hon ALISON XAMON: By definition, it would be indiscriminate if it is without reasonable suspicion.

Mr Penn: We would expect that there would be some reason why the police officers would want to search someone.

Hon HELEN MORTON: I do not understand that.

Hon ALISON XAMON: No, neither do I.

Hon HELEN MORTON: I do not understand what the reasons would be.

Hon ALISON XAMON: Other than suspicion.

Mr Penn: Let us put it this way: certainly, the expectation is that police officers will be reasonable in the way that they exercise their powers—not being unreasonable.

Hon ALISON XAMON: It may be an expectation, but the law does not prescribe that. In fact, at the moment, the current law imposes that reasonableness on the way that searches can be undertaken through the simple definition of reasonable suspicion. But once we remove that, what legal safeguards do we have?

Mr Penn: From a legislative point of view, you are correct, but the commissioner is proposing to issue some guidelines to police officers.

Hon ALISON XAMON: Guidelines can be changed on a whim and can be ignored.

Mr Penn: I doubt whether police officers would ignore them. If they are found to ignore them, they would be subject to disciplinary action by the commissioner.

Hon ALISON XAMON: If it can be demonstrated or proven that it actually happened.
Mr Budge: The practicalities of it are important. We do not intend to be funnelling people through a gate and mass searching large gatherings through areas like Northbridge. It would be impractical for us to do that.\textsuperscript{317}

3.133 Initially, the WA Police informed the Committee that the proposed stop and search powers are not intended to be used to target specific groups of people:

- “I think it is probably fair to say that the new provisions are about places and not people. There has been some debate about who we are going to look at in regard to the proposed legislation. It is not about any particular group of people. It is about the place. Anyone who was in a prescribed place would be liable to be searched.”\textsuperscript{318}

- “As Superintendent Budge mentioned earlier, it is looking at the place and it is not targeting groups of people.”\textsuperscript{319}

- “This is about not targeting specific groups of people; this is about going into an entertainment area and looking at people.”\textsuperscript{320}

- “Really, it is anyone who goes into the prescribed area. We are not about searching minority groups; that has been suggested. I have heard all these ridiculous, outlandish comments from people, including commentators and the like, that we are going to pick on Indigenous people, ethnic groups and husbands and wives, and that we will pat search the wife because she is good-looking. These are absolutely ridiculous comments and scaremongering.”\textsuperscript{321}

- “we are not about searching ethnic minority groups as has been suggested. This is for anyone, of any race, creed or whatever, who goes into that area. It is about everyone who could possibly be searched. The suggestion that we will pick on these particular groups is absolutely ridiculous.”\textsuperscript{322}

- “This is not about targeting certain groups. This is about everyone who goes into that area being subject to the legislation. I have heard all this

\textsuperscript{317} Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Hon Alison Xamon MLC and Hon Helen Morton MLC, Members of the Standing Committee on Legislation, and Superintendent Gary Budge, Western Australia Police, \textit{Transcript of Evidence}, 2 February 2010, pp12-13.

\textsuperscript{318} Superintendent Gary Budge, Western Australia Police, \textit{Transcript of Evidence}, 2 February 2010, p12.

\textsuperscript{319} Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, \textit{Transcript of Evidence}, 2 February 2010, p15.

\textsuperscript{320} Mr Russell Armstrong, General President, WA Police Union of Workers, \textit{Transcript of Evidence}, 9 February 2010, p7.

\textsuperscript{321} \textit{Ibid}, p15.

\textsuperscript{322} \textit{Ibid}, p16.
scaremongering about Aboriginals and you name it and that we will target them. The people we have targeted in the past are those committing offences. This is not about targeting particular groups of people. This is about making a particular area safe and free of weapons."

3.134 However, the WA Police advised at a subsequent hearing that the proposed powers are intended to be targeted at specific groups of people, such as known criminals, based on police intelligence:

**Dr O’Callaghan:** ... outlaw motorcycle gangs in Western Australia carry weapons and use them frequently. They are involved in organised crime and a number of other activities. If they go on a run and they come into town in Western Australia, say a country town somewhere, we do not have any reasonable power to simply stop and search them for weapons. If we were able to use legislation like this, we would use it when they turn up at a certain place and location. Based on intelligence, we would want to invoke stop-and-search legislation in that scenario and search all of those people to find out whether or not they are carrying weapons.

**The CHAIRMAN:** But that would involve, would it not, your having to declare that area in some fashion in advance of them arriving?

**Dr O’Callaghan:** Yes, and we often know what their run types are. So we have that information well in advance of the actual run. So we would want to declare that area prior, in the knowledge that they will turn up at that particular location.

**The CHAIRMAN:** So the way they can avoid that then is by not turning up there.

**Dr O’Callaghan:** That is true.324

...
would apply to just about any time the weapons legislation is used. It is not intended to screen every person that walks through the area. My intention, as Commissioner of Police, is to issue instructions that you do not screen randomly every person that goes through the area. We have antecedents and profiles on record for various types of offences and various types of issues. So we would focus on that antecedent or that profile, because otherwise you simply could not resource it.\footnote{Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, pp6-7.}

Mr Dawson: ... To use the example, as you have asked about, in terms of outlaw motorcycle groups, this [mass searching] is quite problematic in that you may have upwards of several hundred persons riding motorcycles, and they spread themselves out over many, many kilometres. They then take various side roads and whatever. It is not that you are dealing with an orderly group of people who are compliant. So you have to operationally deploy police around in order to try to get to a most effective way of stopping them. While we can stop, for instance, for RBT, and the Road Traffic Act provides adequate powers for police to require a person to submit a sample of breath, there is no overt power, as is proposed in this bill, to require all persons to comply with, for instance, a body search. That is why we see the opportunity for this power in this bill to specifically require persons, whether they consent or not, to be subjected to a search, because, as the commissioner has already outlined, we are dealing with people who are organised criminals, and so that is why we would want to use both our intelligence holdings and the information that we have on hand to effectively police. That is the primary reason we have used that as an example.\footnote{Mr Christopher Dawson, Deputy Commissioner, Western Australia Police, Transcript of Evidence, 10 March 2010, p12.}

Mr Dawson: To use one group as an example, the Rebels outlaw motorcycle group did a national run into Western Australia several years ago. We had a large contingent of police that met them at Eucla. That is an effective entry point for us to be able to require those people to be not only stopped and their motorcycles and
vehicles inspected; we would want to do more than just inspect vehicles. 327

...  

**Dr O’Callaghan:**  ... The fact that the person is a member of an outlaw motorcycle gang is not in itself reasonable suspicion to go and search them, not under the Misuse of Drugs Act and not under the Criminal Investigation Act, so the fact that they are members of an OMCG does not [in itself] give us the power to search them [under general stop and search powers328]. 329

...  

**Hon ALISON XAMON:**  But as I understood it, you were saying before that it was not necessarily a problem being able to reach that reasonable suspicion with outlaw motorcycle gangs.

**Mr Brown:**  No, that is not always the case. They are treated as individuals. Yes, we do apply random breath testing and it is very effective. We certainly apply the newly implemented drug testing on the roadside and we have apprehended quite a large number of outlaw motorcycle gang members riding on the roads drug affected and they have been prosecuted. We find we also use the vehicle standards regulations. If during the course of those discussions on the roadside any of those individual bikie members reach a threshold where we suspect them for whatever reason—and the intelligence can come to us from many sources and it is coming live so it is not just that we get it two or three weeks before about one individual; it might be coming from a range of covert sources to us at the roadside as to what we might suspect bikie number three in the queue as opposed to bikie numbers seven, eight and nine. Depending on the information that we have at the time, we were close to a search with reasonable suspicion that they are carrying drugs or weapons or whatever it might be.

**The CHAIRMAN:**  On that subject, are you looking at the distinction between having a reasonable suspicion about a particular person? You may have a suspicion about a group and that is where you find

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328  Refer to paragraphs 2.1 to 2.31 in this Report for a discussion of current police stop and search powers requiring reasonable suspicion.
that your current powers are not satisfactory, because they are not focused on a particular member of that group.

Mr Brown: That is correct. I would say there is a lot of missed opportunity when the rest of the group are allowed to pass through without being searched.\textsuperscript{330}

3.135 The Commissioner of Police advised the Committee that the issues associated with stopping and searching members of organised motorcycle gangs did not form part of the reasons for the preparation and introduction of the Bill. However, these issues have been discussed internally in the WA Police:

Hon HELEN MORTON: I was interested in the scenario that you gave us of the value of the new legislation intercepting or confronting a mob of bikies as they were reaching Eucla or somewhere like that and being able to use the legislation to stop and search them without any suspicion. I am interested in whether that scenario was considered at the time the bill was being considered or drafted or whether it came to light subsequent to that in the process of considering the utilisation of the bill and at the time the inquiry was taking place. The reason I am asking that is because that was the first we had heard about it. It had not been considered or discussed at any time in the media or in any of the discussions that we heard publicly. It certainly was not in the second reading speech. We are trying to understand whether that scenario was considered at the time the bill was being drafted or was it subsequent to that scenario?

Dr O’Callaghan: The discussion that we had previously with government about this was always focused around weapons in public places. As I think I indicated to the committee, the original debate related to the transport system, particularly trains. The issue of the bikie scenario was not raised in those preliminary discussions. Indeed, I cannot remember talking to any minister about it in the lead-up to the drafting of the legislation. We have obviously spoken internally about what impact it has on policing and how the legislation can be used. My evidence to the committee last time was probably the first airing of that discussion. I am not sure that government had that in mind when it sought to put this legislation forward.\textsuperscript{331}

\textsuperscript{330} Hon Alison Xamon MLC, Member of the Standing Committee on Legislation, Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, Western Australia Police, Hon Michael Mischin MLC, Chair, Standing Committee on Legislation, \textit{Transcript of Evidence}, 10 March 2010, p47.

\textsuperscript{331} Hon Helen Morton MLC, Member of the Standing Committee on Legislation, and Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 19 May 2010, pp16-17.
3.136 The Law Society held a different view to the WA Police, arguing that the reasonable suspicion requirements of section 68 of the Act do not prevent police officers from stopping and searching large groups of people:

That is the beauty of the law that we have had for not quite centuries; that is the beauty of section 68, which enshrines the common law search powers. Section 68 is what the police officer relies on to search the people in that situation; there is nothing preventing section 68 being used for five, 10, 20 or 30 people if they are part of a group who look like troublemakers, are behaving like potential troublemakers and whom the police reasonably suspect are going to engage in a fracas later in the night. There is absolutely nothing preventing the police using their existing powers under section 68 to search those people[332], and if they find weapons, not one of those prosecutions will be kicked out in a magistrate’s court in this state. Every single one of those prosecutions will be able to proceed on the basis that it was a lawful and reasonable search conducted by the police officers under the existing law. There is no need for a new law to allow that search to occur.[333]

3.137 Other places where the proposed stop and search powers may be used are train stations. Again, the WA Police maintained that the powers will be used in a targeted manner, with the focus on people who are either already known offenders or who fit an offender profile:

Hon SALLY TALBOT: So what you are imagining, were this bill to be passed, is that the Perth train station is not like the airport where everybody would go through the screen?

Dr O’Callaghan: No; absolutely not. There is no point in doing that level of screening. One, there is no point in doing it; two, the resource intensity and the inconvenience to the public would be just too great. You just would not want to do something like that.

Hon SALLY TALBOT: So how do you decide who goes through the screen?

Dr O’Callaghan: As we said before, we know with weapons carriage offences every time we charge someone with a weapons carriage offence there is an antecedent report created or a profile created of

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332 Except, perhaps, the practicalities of temporarily detaining a large number of people who may not be orderly or compliant, which the Committee noted is a problem that could never be resolved by legislation.

333 Mr Hylton Quail, President, The Law Society of Western Australia, Transcript of Evidence, 9 February 2010, p8.
the person who was carrying the weapon. Over time you build up quite a significant dossier of that information on what are the likely types of people who do it; you know, sex, age group, type of person; all that sort of thing. They are the people you would, for argument’s sake, focus on. If we go back to the bikie scenario in the middle of Brookton, you are not going to put the farmers through the gate because you are looking for bikies carrying weapons. The same thing at the Perth railway station: you are looking for a particular profile or a particular antecedent. You are not looking for everybody to go through the gate.334

... policing is always based on this sort of response. The police do not randomly go to anybody and start asking questions. They have got to have a starting point, because otherwise you get no value out of it and you use resources in a way which is not effective. So that is how police have always operated. They operate based on information they have about particular behaviours associated with particular groups of people.335

... Dr O’Callaghan: ... it is a pointless activity to put people through a gate when you know there is no possibility of them actually being weapons carriers. And police know that there are obviously going to be groups in the community that are not highly represented in weapons carriage. ... We might base our responses on knowing somebody. For argument’s sake, if the police know someone who is a previous offender or has committed previous offences and they see them coming into the area, they might direct those people through the gate. So there is a whole range of reasoned responses that police would use. I am pretty sure, and I will take further advice from the assistant commissioner, that we are unlikely to provide an absolutely indiscriminate response to stop-and-search.336 (Underlining added)

Hon Sally Talbot: ... When those criteria appear, like the diagnostic statistical manual for illnesses, if you tick a certain number of boxes

334 Hon Dr Sally Talbot MLC, Deputy Chair, Standing Committee on Legislation, and Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p20.
335 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p20.
you have got a reasonable chance of your suspicions being proved correct.

**Dr O’Callaghan**: Yes.

**Hon SALLY TALBOT**: Is that not precisely what [section 68 of] the existing act allows you to do?

**Dr O’Callaghan**: The difference between that and the existing act is that the existing act allows people to opt out of the search ... .

Mr Brown: ... So in an operation, for example, at the Perth train station, we would be identifying to the officers on the ground, or the operational commander would be, those sort of individuals whom we either know because they visit Northbridge frequently and are known in the past to have been in possession of weapons or have an extensive criminal record, and that would heighten our suspicion as well on how they acted.

... 

**Dr O’Callaghan**: ... In fact, if we used it a dozen times in a year, I would be surprised, unless there was a particular issue. I do not see us going out and immediately hitting the streets with stop and search in many different areas of Western Australia. We would use it for high pressure situations that come up from time to time, and we would use it cautiously based on intelligence that we have. I would want to be convinced that the legislation is useful; I do not want to go out and use it indiscriminately.

3.138 The Police Union also provided evidence contradicting its assertions that persons selected for search under the proposed powers would be chosen at random:

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337 Hon Dr Sally Talbot MLC, Deputy Chair, Standing Committee on Legislation, and Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p22. However, the Committee observed that the opportunity to “opt out” of a search would be an option available only if the officer were exercising the power under section 69 of the *Criminal Investigation Act 2006*. If a police officer had a reasonable suspicion upon which to base his or her decision to stop and search a person under section 68, the person could not decline to be searched.

338 Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p23.

339 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p37.
This is about not targeting specific groups of people; this is about going into an entertainment area and looking at people. It is not about searching families; this is about targeting people who we know who do carry drugs and who do carry weapons, and we have seen it.  

3.139 Although the WA Police and Police Union assured the Committee that the use of the proposed powers will be based on police intelligence and will, therefore, be targeted at known or ‘likely’ criminals, the Committee was mindful of the following evidence reported by the MPA:

And, as the Metropolitan Police Black Police Association put it:

"...if everything is so intelligence based - or stupidity based, depends how you look at it – why do we still have such a low hit rate? If it is supposed to be intelligence led, why are over 80% of people being stopped for no reason?

And why do we have a disproportionate number of people being stopped that are Black? Especially Black youth."  

United Kingdom’s Experience where Reasonable Suspicion is not Required

3.140 As previously noted in paragraphs 2.82, 3.32 and 3.79 of this Report, in the absence of sufficient data from comparable Australian jurisdictions, the most comprehensive analysis of police stop and search legislation available to the Committee came from the United Kingdom.

3.141 The United Kingdom’s experience with police stop and search powers was that better outcomes are achieved when these powers are predicated on reasonable suspicion, as illustrated by the comments below. The comments focus on the ineffectiveness of stops and searches conducted without reasonable suspicion and highlight the importance of maintaining public trust in the police as a means of ensuring the success of police work. Some of these comments are already reflected in the summary of negative evidence from the United Kingdom’s experience at paragraphs 3.40 to 3.70 in this Report.

3.142 In his latest report on the operation of the anti-terrorism Acts, Lord Carlile stated:

Search on reasonable and stated suspicion, though not in itself a high test, is more understandable and reassuring to the public.  

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340 Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, p7.

3.143 The European Court of Human Rights had the following concerns about the Section 44 Powers:

Not only is it unnecessary for him [the searching constable] to demonstrate the existence of any reasonable suspicion; he is not required even subjectively to suspect anything about the person stopped and searched. The sole proviso is that the search must be for the purpose of looking for articles which could be used in connection with terrorism, a very wide category which could cover many articles commonly carried by people in the streets. Provided the person concerned is stopped for the purpose of searching for such articles, the police officer does not even have to have grounds for suspecting the presence of such articles.\(^\text{343}\)

... 

... in the absence of any obligation on the part of the officer to show a reasonable suspicion, it is likely to be difficult if not impossible to prove that the power was improperly exercised.\(^\text{344}\)

3.144 Some studies have concluded that:

Laws permitting searches on the merest pretext ... and ‘suspicionless’ stops (such as section 60 of the Criminal Justice and Public Order Act [1994 (UK)], section 44 of the Terrorism Act [2000 (UK)] and section 163 of the Road Traffic Act [1988 (UK)]), are used unfairly, have enormous community impact and yield little in crime detection or prevention.\(^\text{345}\)

3.145 Recommendations 1 and 4 of a report prepared for the United Kingdom’s Home Office\(^\text{346}\) were as follows:

Searches should be used in an efficient and targeted way based on strong grounds for suspicion and making the best use of up-to-date intelligence about local crime problems.


\(^{343}\) Case of Gillan and Quinton v The United Kingdom, European Court of Human Rights, Application No 4158/05, 12 January 2010, paragraph 83.

\(^{344}\) Ibid, paragraph 86.


\(^{346}\) The report was commissioned by the United Kingdom’s Home Office but does not necessarily reflect its views.
The role of searches that do not require legal grounds, such as s60 and voluntary searches, needs to be considered carefully given their likely impact on community confidence and inefficiency at producing arrests.  

3.146 This research also questioned whether police stop and search powers which do not require reasonable suspicion should be used at all:

The Home Office and ACPO [Association of Chief Police Officers] should review whether, and in what circumstances, these types of searches should be used. Searches which do not require reasonable grounds for suspicion, such as s60 and voluntary searches, appear less likely to be targeted at genuine offenders and have a strong potential to alienate the public.

3.147 The above recommendations were supported by the following findings and observations:

- Stops and searches conducted without reasonable grounds for suspicion are more likely to fail to comply with the guidelines designed to regulate their practice.

- “The effectiveness of searches is greatest when they are based on strong grounds for suspicion and make the best use of intelligence.”

- “In general, the public are more satisfied with a police stop when they feel they have been treated fairly and politely, given a reasonable explanation, and not searched.”


349  Ibid. The ‘legality’ of a police stop and search was measured by whether the power to stop and search was used within the guidelines designed to regulate its use. ‘Legality’ was taken to be an indicator of the legitimacy of police stop and search powers. Refer to paragraph 3.36 in this Report for a discussion about what the Home Office researchers considered to be indicators of the legitimacy of police stop and search powers.

“Importance was placed on being given a genuine reason for stops and, particularly, searches. This was related to people’s satisfaction with stops and searches. If not provided, people felt uncomfortable and victimised.”

“Public confidence, legality[353] and effectiveness [that is, the indicators of the legitimacy354 of police stop and search powers] may be threatened in encounters involving: higher discretion; ...

For searches not requiring reasonable suspicion (e.g. s60 and voluntary searches), the report identifies a range of working practices and highlights that public confidence and effectiveness might be threatened because of the absence of well-defined grounds for suspicion.”

“[Police officers who were interviewed during the study] ... pointed out that they were more ready to search people under this power [Section 60 Powers] where evidence was not strong. One officer described how he targeted s60 searches in the following way:

Anyone causing trouble really - but people who aren’t worth pulling [arresting] cause they haven’t done enough.”

The MPA interpreted the steadily increasing use of Section 60 Powers in London as confirmation that constables in London are favouring these less onerous powers to those which require reasonable suspicion:

3.148
In her evidence to the Scrutiny Panel [of the MPA], Marian Fitzgerald suggested that the MPS might be circumventing the problems of using Section 1, of PACE [Police and Criminal Evidence Act 1984 (UK)] as a means of ‘social control’ by using section 60 of the CJPO Act [Criminal Justice and Public Order Act 1994 (UK)] instead (where ‘reasonable grounds’ for each individual search do not have to be justified legally). The data presented in section 3.1 [steady annual increase of the use of Section 60 Powers] would tend to confirm this. 357

3.149 All police stop and search powers for which information is available are used disproportionately against ethnic minority communities (when compared with their numbers in the general population). However, the disproportion is most marked where the searching police officer’s discretion is widest, 358 for example, where the searching police officer is not required to hold a reasonable suspicion before conducting a stop and search.

### Committee Comment

3.150 The Committee was mindful of the United Kingdom’s experience with, and extensive literature regarding, police stop and search powers which do not require reasonable suspicion.

3.151 The WA Police and the Police Union both gave inconsistent evidence as to how the proposed stop and search powers would be used. At times during the course of giving evidence, these witnesses suggested that the powers will be used randomly, while also asserting that they would be used in a selective and discriminating manner, targeted at certain persons or groups of people.

3.152 The WA Police and the Police Union attempted to reassure the Committee that the proposed powers will only be utilised against groups of people who are involved in criminal activity. However, the Committee noted that the Bill, as framed, offers no guidance or limits as to the use of its powers. The proposed powers could be applied to anyone for any reason.

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357 Equal Opportunity and Diversity Board, Metropolitan Police Authority, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, p58.

3.153 The WA Police indicated that it will be impossible for police officers to search every person within a prescribed or declared area. Therefore, despite the proposed stop and search powers not being predicated on reasonable suspicion, police officers exercising the powers may still be required to select whom to stop and search. How they will make that decision is unclear. It may be on bases that would, in any case, give rise to a reasonable suspicion. The Committee considered that, in practice, police officers would still be likely to base their selection on their suspicions, even if these suspicions do not amount to reasonable suspicion. However, there is the potential for the selection to be based, either consciously or subconsciously, on preconceptions, prejudices or some other irrational ground.

3.154 The only apparent safeguards against the discriminatory use of the proposed powers are the administrative directions of the current Commissioner of Police and the police manual, which, in turn, reflects these administrative directions. These safeguards can be changed without parliamentary oversight, either with the appointment of another Commissioner of Police with a different policing policy or if the incumbent Commissioner changes his or her mind. In the Committee’s view, it is unacceptable to have to rely only on administrative guidelines to ensure that these powers are exercised in a proper manner.

3.155 Despite the above, the Committee considered the argument that there may be a need for the proposed stop and search powers in very limited circumstances, for example, with respect to stopping and searching organised criminals who travel in large numbers. There may be intelligence available or other bases upon which a police officer could form a reasonable suspicion to stop and search individuals in that group pursuant to section 68 of the Act and other similarly general legislative stop and search powers. However, notwithstanding that a member or some members of a group of people may be likely to commit an offence, the WA Police indicated that that alone would be an insufficient basis for a reasonable suspicion to justify a search of the group or any particular individual within it. Likewise, it may be difficult to form a reasonable suspicion as to an individual within a group based on similar fact, hearsay, antecedents or time, place and circumstances if that individual is part of a group of people who are not otherwise involved in unlawful or suspicious activity at a particular time.

3.156 In relation to the above paragraph, a majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon) was not persuaded by this aspect of the WA Police’s evidence and was of the view that current police stop and search powers are adequate. However, a minority of the Committee considered that the evidence of the WA Police revealed circumstances where current police powers to stop and search may not meet legitimate security and public safety objectives.
CONCERNS ABOUT BREACHING HUMAN RIGHTS

3.157 All but one\textsuperscript{359} of the submitters were concerned that the exercise of the Bill’s proposed police stop and search powers will result in the breach of the human rights of the person being searched. For the reasons explained below, an individual’s personal liberties are infringed when he or she, or the vehicle in his or her control, is stopped and searched. The relevant questions are:

- whether this infringement is justified on the grounds of public safety;
- whether the Parliament should legislate to authorise the infringement on those grounds; and
- what safeguards should be prescribed in the legislation to minimise the level of infringement.

3.158 The human rights affected by the use of the proposed stop and search powers would include:

- the right to personal liberty. This right is defined in Article 9 of the International Covenant on Civil and Political Rights,\textsuperscript{360} to which Australia is a signatory, as follows:

\begin{quote}
\textit{Article 9}
\begin{itemize}
  \item 1. \textit{Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.}
\end{itemize}
\end{quote}

- the right to privacy. This right is defined in under Article 17 of the International Covenant on Civil and Political Rights\textsuperscript{361} as follows:

\begin{quote}
\textit{Article 17}
\begin{itemize}
  \item Everyone has the right to the protection of the law against arbitrary interference with his privacy, family, home and correspondence.
\end{itemize}
\end{quote}

\textsuperscript{359} Submission No 10 from the WA Police Union of Workers, 18 January 2010.

\textsuperscript{360} In relation to children, this right is reflected in Article 37 of the Convention on the Rights of the Child. In relation to people with disabilities, this right is reflected in Article 14 of the Convention on the Rights of Persons with Disabilities.

\textsuperscript{361} In relation to children, this right is reflected in Article 16 of the Convention on the Rights of the Child. In relation to people with disabilities, this right is reflected in Article 22 of the Convention on the Rights of Persons with Disabilities.
**Article 17**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

• the right to free movement. This right is defined in Article 12 of the *International Covenant on Civil and Political Rights*\(^\text{362}\) as follows:

**Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

...

3.159 If the exercise of the proposed powers discriminates against certain groups of people (see paragraphs 3.172 to 3.185 in this Report) or is targeted at certain gatherings of people, such as peaceful protests and music festivals, as was the concern of some submitters,\(^\text{363}\) the following human rights may also be affected:

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\(^{362}\) In relation to people with disabilities, this right is reflected in Article 18 of the *Convention on the Rights of Persons with Disabilities*.

\(^{363}\) For example, Submission No 11 from The Law Society of Western Australia, January 2010, p8; Submission No 13 from the SCALES Community Legal Centre, January 2010, p2; Submission No 15 from Mr Johnson Kitto, 15 January 2010, p4; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p9 and Recommendation 20; Submission No 24 from Ms Gabrielle Jane Walker, received 10 February 2010, p1; and Submission No 26 from Mr Simon Woodings, 24 February 2010, p1.
• The right against discrimination. This right is defined in Article 26 of the *International Covenant on Civil and Political Rights*\(^ {364}\) as follows:

**Article 26**

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

• The right to peaceful assembly. This right is defined in Article 21 of the *International Covenant on Civil and Political Rights*\(^ {365}\) as follows:

**Article 21**

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

• The right to freedom of association. This right is defined in Article 22 of the *International Covenant on Civil and Political Rights*\(^ {366}\) as follows:

**Article 22**

1. *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*

2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the*

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\(^{364}\) In relation to children, this right is reflected in Article 2 of the *Convention on the Rights of the Child*. In relation to people with disabilities, this right is reflected in Article 5 of the *Convention on the Rights of Persons with Disabilities*.

\(^{365}\) In relation to children, this right is reflected in Article 15 of the *Convention on the Rights of the Child*.

\(^{366}\) In relation to children, this right is reflected in Article 15 of the *Convention on the Rights of the Child*. In relation to people with disabilities, this right is reflected in Article 29 of the *Convention on the Rights of Persons with Disabilities*. 
rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

3.160 Some of the concerns about gatherings of people being interrupted by the proposed stops and searches included the following:

- The SCALES Community Legal Centre argued that:

  Western Australian Police could potentially publicly declare an area where they know a protest is to occur and would then have powers to search anybody in that area, including peaceful protesters and bystanders, without a warrant or reasonable suspicion. The exercise of these powers, and indeed even foreshadowing prior to a protest that they will be used, could significantly deter people from attending a protest, given the risk they will be arbitrarily searched by police.\(^\text{367}\)

- Ms Gaibrielle Walker was concerned that if she happens to be walking past a rally in a designated area, the police could search her even if she had no association with the people at the rally and the police officer had no reason to suspect her of any criminal activity:

  *I could see how this could escalate into an argument and the potential for arrests to happen with charges of hindering and others made. I would certainly attempt to assert my rights.*\(^\text{368}\)

- The Aboriginal Legal Service of Western Australia (ALS) had similar concerns to the SCALES Community Legal Centre and recommended that, if the Bill is to be passed, it should be amended to preclude the use of the proposed powers in response to public demonstrations or protests.\(^\text{369}\)

3.161 As a signatory to the *International Covenant on Civil and Political Rights*, Australia has:

\(^{367}\) Submission No 13 from the SCALES Community Legal Centre, January 2010, p2.

\(^{368}\) Submission No 24 from Ms Gaibrielle Jane Walker, received 10 February 2010, p1.

\(^{369}\) Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p9.
An absolute and immediate obligation ... to respect and ensure the rights and freedoms [defined in the treaty are enjoyed by] ... all individuals subject to its jurisdiction.\textsuperscript{370}

3.162 Australia is also a signatory to, and has obligations under, the \textit{Convention on the Rights of the Child} and the \textit{Convention on the Rights of Persons with Disabilities}. Most of the human rights which are discussed above and defined in the \textit{International Covenant on Civil and Political Rights} are also reflected in each of these two conventions. Two submitters argued that the Bill has the potential to breach some of Australia’s international treaty obligations.\textsuperscript{371}

3.163 One of the main objections raised in relation to the Bill was that the proposed stop and search powers will be able to be exercised without the requirement for reasonable suspicion.\textsuperscript{372} The submissions indicated that people’s human rights will be infringed because a police officer will not be required to have grounds for reasonable suspicion to carry out a stop and search under the Bill. In addition, the people who are chosen for a stop and search under the Bill will be searched without their consent and without the choice to leave the area.

3.164 As already indicated above,\textsuperscript{373} the exercise of Section 44 Powers in the United Kingdom has been recognised as an infringement of people’s human rights. In the \textit{Gillan} case, the European Court of Human Rights described the indignity associated with a police stop and search under Section 44 Powers:

\textit{Irrespective of whether in any particular case correspondence or diaries or other private documents are discovered and read or other intimate items are revealed in the search, the Court considers that the use of the coercive powers conferred by the legislation to require an individual to submit to a detailed search of his person, his clothing and his personal belongings amounts to a clear interference with the right to respect for private life. Although the search is undertaken in a public place, this does not mean that Article 8 [of the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms - the right to respect for private and family life] is inapplicable. Indeed, in the Court’s view, the public nature of the search may, in certain cases, compound the seriousness of the interference because of an element of humiliation and}


\textsuperscript{371} Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p9; and Submission No 25 from Street Law Centre WA Inc, received 23 February 2010, pp4 and 6.

\textsuperscript{372} Refer to paragraphs 3.120 to 3.125 in this Report.

\textsuperscript{373} Refer to paragraphs 3.40 to 3.70 in this Report, particularly paragraphs 3.63 and 3.69.
embarrassment. Items such as bags, wallets, notebooks and diaries may, moreover, contain personal information which the owner may feel uncomfortable about having exposed to the view of his companions or the wider public.\(^{374}\)

3.165 When the amendment and insertion of the relevant provisions of Victoria’s Control of Weapons Act 1990 was debated in Parliament, the Government was required, under the Charter of Human Rights and Responsibilities, to provide a statement of the amendment bill’s compatibility with the charter. The Government acknowledged that the amendment bill (specifically, the provisions inserting sections 10G and 10H into the Control of Weapons Act 1990) is incompatible with sections 13(a)\(^{375}\) and 17(2)\(^{376}\) of the charter:

\[\text{in providing powers for police to randomly search persons (including children) and vehicles in public places within designated areas, even if the police have not formed a reasonable suspicion that the person or vehicle is carrying a weapon. [However,] The government intends to proceed with the legislation in its current form as there is considerable concern in the community about the pattern of weapons-related offending with which this legislation is concerned.}^{377}\]

(underlining added)

3.166 The Committee acknowledged that, at the very least, people who are stopped and searched under the proposed powers may be humiliated or embarrassed for being singled out in a prescribed or declared area. This was observed by researchers for the United Kingdom’s Home Office.\(^{378}\)

3.167 When the Committee queried how the WA Police would minimise the level of interference with people’s human rights when exercising the proposed powers, the WA Police argued that the Bill strikes an appropriate balance between breaching the personal freedoms of individuals and ensuring public safety:

\[^{374}\text{Case of Gillan and Quinton v The United Kingdom, European Court of Human Rights, Application No 4158/05, 12 January 2010, paragraph 63.}\]

\[^{375}\text{‘Right to privacy’. “A person has the right—(a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with”: section 13 of the Charter of Human Rights and Responsibilities (Vic).}\]

\[^{376}\text{‘Protection of children’. “(2) Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child”: section 17 of the Charter of Human Rights and Responsibilities (Vic).}\]

\[^{377}\text{Hon Robert Cameron MP, Minister for Police and Emergency Services, Parliament of Victoria, Legislative Assembly, Parliamentary Debates (Hansard), 12 November 2009, p4024.}\]

\[^{378}\text{J Miller, P Quinton & N Bland, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Briefing Note, Police Stops and Searches: Lessons from a Programme of Research, United Kingdom, September 2000, p5.}\]
I think there is also the question here in terms of the right of, I suppose, the law-abiding citizens who are going into these areas to not feel apprehensive that they may come into contact with somebody who is exhibiting signs of violence, that they are not going to be going into an area where they might be exposing their children to seeing people doing drug trafficking et cetera. What the legislation tries to achieve is to provide some enhanced powers for police officers, but there are some measures to try to also balance up in terms of the people that are being searched. For example, one of the things in there is that it does not allow a strip search to take place.\(^{379}\)

3.168 Further, the WA Police contended that police officers will be well-trained in the proposed powers:

WA Police does not believe that these alleged concerns [about the potential for human rights breaches, among other things] 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.\(^{380}\) 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.\(^{381}\)

3.169 The WA Police also assured the Committee that legitimate and peaceful gatherings of people in prescribed or declared areas will not automatically be interrupted by the proposed stops and searches:

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.\(^{382}\)

\(^{379}\) Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 2 February 2010, p28.

\(^{380}\) Refer to paragraphs 2.12 to 2.21 in this Report for a discussion of these prescribed rules.

\(^{381}\) Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p3.

\(^{382}\) Ibid, p4.
In the Committee’s view, it is clear that people’s human rights will be infringed when they are stopped and searched under the proposed powers. Further, the Committee is not convinced that the Bill strikes an acceptable balance between ensuring public safety and infringing personal liberties.

The Committee is of the view that, despite the assurance given by the WA Police that legitimate and peaceful gatherings of people in designated areas will not necessarily be interrupted by the proposed stops and searches, the Bill does not preclude this. The Committee was concerned that the proposed powers may be used against people who are attending a lawful event, protest or rally or taking industrial action. Hons Dr Sally Talbot and Alison Xamon were also particularly concerned that this would constitute a breach of international convention.

Concerns that the Bill will increase the potential for police officers to act in a discriminatory manner are directly related to the fact that they will not be required to hold a reasonable suspicion before conducting a stop and search under proposed section 70A of the Act. Many submissions suggested that, as a result, police officers would be selecting people to stop and search based on their own preconceptions, prejudices or some other irrational ground. Some of their comments were as follows:

- “Within our society some racist ideologies still exist, therefore as the police force represents a cross-section of the community, it can be expected that some officers will be racially prejudiced. Searches based on stereotype rather than suspicion are unlawful and furthermore groups who are continually

Refer to paragraphs 3.120 to 3.125 of this Report for a discussion about the importance of the reasonable suspicion test.

For example, Submission No 5 from Hon Giz Watson MLC, 13 January 2010, pp7 and 8; Submission No 6 from Search for Your Rights, 16 January 2010, p6; Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, pp1, 3, 4 and 7; Submission No 8 from the Australian Association of Social Workers, Western Australia Branch, 15 January 2010, p2; Submission No 9 from Ms Adele Carles MLA, 18 January 2010, pp2 and 3; Submission No 11 from The Law Society of Western Australia, January 2010, pp7-8; Submission No 12 from the Commissioner for Equal Opportunity, 18 January 2010, pp3-5, 7 and 13; Submission No 13 from the SCALES Community Legal Centre, January 2010, pp4 and 7; Submission No 14 from Youth Legal Service Inc Western Australia, received 19 January 2010, p2; Submission No 16 from South Coastal Women’s Health Services, 18 January 2010, p1; Submission No 17 from the Pilbara Community Legal Service, 18 January 2010, p1; Submission No 18 from Ms Catherine Hall, 18 January 2010, p1; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, pp6 and 7 and Recommendations 16 and 18; Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, pp2, 3 and 6; Submission No 24 from Ms Gabrielle Jane Walker, received 10 February 2010, p1; Submission No 25 from Street Law Centre WA Inc, received 23 February 2010; and Submission No 26 from Mr Simon Woodings, 24 February 2010, p1.
targeted by law enforc[e] will respond negatively and will undermine social order, regardless of whether this group is age, race or belief based.”³⁸⁵

- “Providing an individual, be it a police officer or anyone else for that matter, with an unqualified or unchecked power of search of a person or their vehicle lends itself to arbitrary application and would be open to abuse.”³⁸⁶

- “There is no question that young people and Aboriginal people occupy public places in disproportionate numbers to their numbers in the population.

Stop and Search laws will impact disproportionately on those most likely to be on the streets - areas designated for stop and search purposes.”³⁸⁷

- “The Bill smells suspiciously of discrimination against particular groups, namely Aboriginal Persons and Young People … ”³⁸⁸

- “Aboriginal peoples are more likely to be on the streets and occupying public spaces in a different and more visible way to the rest of society … ” [They are] “therefore more likely to be targeted by police in designated or declared areas and feel the effects of these oppressive laws more than mainstream society.”³⁸⁹

- “The best interests of the child should always be the primary consideration in all actions concerning children. There is no justification for police officers having the power to stop and search children where there is no reasonable suspicion they may be a threat to community safety. This type of contact with police can be traumatising for children and damage their perception of public authority. Children are afforded special protection of their right to privacy and freedom from arbitrary interference under international law, which is gravely breached by the proposed new powers.”³⁹⁰

- “there is an unacceptable degree of police discretion granted under this amendment … . … Removing the requirement for reasonable suspicion legalises any potential discriminatory practices within the police force.

³⁸⁵ Submission No 6 from Search for Your Rights, 16 January 2010, p6.
³⁸⁶ Submission No 11 from The Law Society of Western Australia, January 2010, p7.
³⁸⁷ Submission No 12 from the Commissioner for Equal Opportunity, 18 January 2010, p7.
³⁸⁸ Submission No 14 from Youth Legal Service Inc Western Australia, received 19 January 2010, p2.
³⁸⁹ Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p6.
Further, it effectively circumvents anti-discrimination laws that currently exist in Australia, thereby suspending the rights of these people."^{391}

- “It is probable that Street Law clients [that is, homeless people] who spend their time in these areas [prescribed or declared public places] will be subject to police searches more so than other Perth residents, and will be forced to avoid these locations to avoid potential searches. The proposed Stop and Search Bill may have an indirectly discriminatory effect on Street Law clients in that their freedom of movement and freedom of association will be hindered.”^{392}

3.173 The Commissioner for Children and Young People offered the following reasons why children and young people are generally more visible to the police, and therefore, at greater risk of becoming subject to the proposed stop and search powers:

Children and young people—young people particularly—gather in public places. We did as young people ourselves. They gather at beaches, shopping centres. They are more visible just generally. Some Aboriginal children, because they are vulnerable—and we have seen some articles in the press recently about a regional area in the state where children are not safe in their own homes and might be on the streets—come to the attention of the police."^{393}

3.174 Similarly, the SCALES Community Legal Centre explained that:

Some people, including those groups mentioned above are very visible within public space, they use public space because they do not own or have access to more private spaces in which to congregate, or because of cultural reasons or (in the case of the homeless) simply because they have no choice. Because they are highly visible within public space they are more likely to be approached by police."^{394}

3.175 The submitters were of the view that vulnerable members of our society may be susceptible to the potentially discriminatory operation of the Bill. These people include children and young people, Aboriginal people, people with a disability, people with a mental illness, people from ethnic minorities, gay and lesbian people and homeless people. Criminologists, Dr Frank Morgan and Associate Professor David

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^{391} Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p3.
^{392} Submission No 25 from Street Law Centre WA Inc, received 23 February 2010, p4.
^{393} Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, pp9-10.
^{394} Submission No 13 from the SCALES Community Legal Centre, January 2010, p4.
Indermaur expressed similar concerns. Research into the ways in which these groups are policed in public spaces suggests that:

Young people, particularly those from Indigenous, migrant and ethnic minority backgrounds, those deemed to be street present, homeless or in some way marginal to society, have disproportionately higher levels of contact with the police than other social groups.

As already mentioned above, it is well-established that similar police stop and search powers in the United Kingdom have been used disproportionately against people in the black and other ethnic minority communities. In Western Australia, there is already a disproportionate number of Aboriginal people in our justice system, particularly young Aboriginal people. The Commissioner for Children and Young People and the SCALES Community Legal Centre were concerned that the Bill will have the potential to increase the number of children and young people who come into contact with the justice system in a negative context.

The SCALES Community Legal Centre alerted the Committee to an Australian report which has concluded that many young people who have committed no crime are stopped, questioned and often searched by the police, frequently resulting in an escalation of the situation. The centre’s experience is consistent with these findings. The Commissioner for Children and Young People provided the following extract from the Director of Public Prosecution’s own guidelines:

Police contacts with children and young people which are not based on reasonable grounds for suspecting wrongdoing are arbitrary. The explanation for such unsupported contacts is too often that police “single out” young people as “more likely” to be “up to something” or that police desire to prevent in advance some feared behaviour.

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395 Associate Professor Dr Frank Morgan, Director, and Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, pp2, 11 and 13.


397 Refer to paragraphs 3.40 to 3.70 in this Report, particularly paragraphs 3.44 to 3.50 and 3.64.

398 For example, see Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, p2.

399 Ibid; and Submission No 13 from the SCALES Community Legal Centre, January 2010, pp4-5.


401 Submission No 13 from the SCALES Community Legal Centre, January 2010, pp4-5.
Such explanations amount to arbitrariness, discrimination and harassment.\textsuperscript{402}

3.178 Given that children and young people often have not developed the skills which are used by adults to rationalise difficult situations, interactions with the police, particularly those which have no reasonable basis, can sometimes escalate (see below at paragraphs 3.198 to 3.207 in this Report). The Committee draws the attention of the House to the following comments made by the Commissioner for Children and Young People, which highlight the reasons why the proposed stop and search powers may have a particularly detrimental effect on children and young people:

\begin{quote}
The possible effect of the Bill—that more children and young people will come into contact with the justice system—is not insignificant. Research shows that the likelihood of a young person’s progression to detention increases with the severity of the initial contact with the criminal justice system.
\end{quote}

\ldots

Children and young people constitute a distinct and vulnerable group and differ from adults in their psychological and physical development, and their emotional and educational needs.

An important element of this difference is the acknowledgement that children and young people require special assistance to exercise their basic human rights, whereas adults are assumed to have the capacity to assert their rights for themselves. This is particularly salient in terms of police contact with children and young people, where police hold extremely high-level powers that can have extraordinary impact on children and young people.

\ldots in any contact with a police officer, the child depends on the conduct of the officer for the enjoyment of their rights, relies on the officer to fully respect those rights and is at the mercy of any officer who chooses to infringe or violate those rights. We therefore place the full burden for respecting the child’s rights and for protecting the

child from rights violations on the officer dealing with the child[403, 404].

3.179 The ALS opposed the Bill in principle. However, the ALS recommended that if the Bill is passed, it should be amended to include a statement of intent that the proposed stop and search powers must not be used in a discriminatory manner, as follows:

*It is unlawful for the powers in this Act to be exercised in a manner that directly or indirectly discriminates against a person on the basis of their race, religion, age, poverty, disability, homelessness, gender or sexual preference.*

The ALS recommended that if the proposed powers are used in a discriminatory way, any fines or charges resulting from that use of power should be void.406

3.180 The ALS further recommended that the Bill should be amended to prevent its application to persons under the age of 18 years.407 The Commissioner for Children and Young People was of the same view.408

3.181 As discussed earlier in this Report, research in the United Kingdom indicates that the people who are disproportionately stopped and searched can be severely affected by the experience.409

3.182 In response to the above concerns, the WA Police reiterated that police officers will be well-trained in the proposed stop and search powers and will be well-guided by the existing rules prescribed in the Act410 and the guidelines in the police manual.411 The Police Union provided the following assurance:

*We are not about searching minority groups; that has been suggested. I have heard all these ridiculous, outlandish comments from people, including commentators and the like, that we are going to pick on Indigenous people, ethnic groups and husbands and wives, and that*

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404 Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, pp3 and 5.
405 Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p7.
409 Refer to paragraphs 3.58 and 3.66 in this Report.
410 Refer to paragraphs 2.12 to 2.21 in this Report for a discussion of these prescribed rules.
we will pat search the wife because she is good-looking. These are absolutely ridiculous comments and scaremongering.\footnote{Mr Russell Armstrong, General President, WA Police Union of Workers, \textit{Transcript of Evidence}, 9 February 2010, p15.}

## Committee Comment

3.183 The Committee agreed that reducing the illegal carriage, concealment and use of weapons and prohibited drugs in our community is an important objective. However, the Committee recognised that it is equally important to ensure that the means of achieving this objective are effective, non-discriminatory and do not leave the more vulnerable members of our community exposed to unjustified police attention or potential misconduct.

3.184 In the Committee’s view, certain groups of people may be susceptible to discrimination under the Bill. Further, the Committee was not convinced that the Bill will provide sufficient safeguards against this potential discrimination.

3.185 The Committee noted that particular concerns have been raised about the application of the Bill to children and young people.

### CONCERNS ABOUT INCREASED MISUSE OF POLICE POWERS

3.186 Another concern raised in the submissions was that the Bill will increase the possibility that police may misuse their powers when performing stops and searches because the Bill does not require the reasonable suspicion test.\footnote{Refer to paragraphs 3.120 to 3.125 of this Report for a discussion about the importance of the reasonable suspicion test.} For example, a police officer might be moved to stop someone and search them out of “pride, lust, revenge”,\footnote{Submission No 26 from Mr Simon Woodings, 24 February 2010, p3.} their own preconceptions, prejudices or some other irrational ground.\footnote{For example, Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p7; Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, p4; Submission No 13 from the SCALES Community Legal Centre, January 2010, p3; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p5; Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p3; Submission No 24 from Ms Gabrielle Jane Walker, received 10 February 2010, p1; and Submission No 26 from Mr Simon Woodings, 24 February 2010, p3.} Police officers might also harass a particular person by repeatedly stopping and
The experience in the United Kingdom has indicated that similar powers have been misused in this way.\textsuperscript{417}

3.187 This issue was raised with the Commissioner of Police, who offered the following response:

\textit{\textbf{The idea of the law is to enforce compliance with a stop-and-search process. In other words, if it is a declared area you have to submit to a stop and search otherwise you are committing an offence. You do not have any recourse there} [that is, a person could not complain that the searching police officer did not sufficient grounds for the search]. But if you believe that the police have acted inappropriately or they have not conducted the search properly or whatever—you have a female on a male or whatever—then complaints can be made and they would be followed up.}\textsuperscript{419}

3.188 The Commissioner of Police indicated that he would not object to the Bill being amended to require the issue of a notice during a search (refer to paragraphs 5.12 to 5.26 in this Report) informing the person being searched of his or her rights, including how the person may complain about a stop and search.\textsuperscript{420}

3.189 The Committee noted that, according to the available WA Police records, there have been 121 complaints made about the way in which a person had been searched in the ten years between 1 January 2000 and 31 December 2009. Four of these complaints have been substantiated. None of them related to a lack of reasonable suspicion.\textsuperscript{421} The number of these complaints appeared to the Committee to be relatively low, but it is impossible to determine whether this is due to a low incidence or whether complainants are reluctant to come forward.

\textsuperscript{416} For example, Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p7; Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, p4; Submission No 13 from the SCALES Community Legal Centre, January 2010, p3; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, pp4 and 5; and Submission No 24 from Ms Gabrielle Jane Walker, received 10 February 2010, p1.

\textsuperscript{417} Refer to paragraphs 3.40 to 3.70 and 3.140 to 3.150 in this Report.

\textsuperscript{418} Refer to paragraphs 2.12 to 2.21 in this Report for a discussion of the prescribed rules for a basic search.

\textsuperscript{419} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p48.

\textsuperscript{420} \textit{Ibid.}

\textsuperscript{421} Document entitled, ‘Background’, tabled during a hearing with the Western Australia Police on 10 March 2010, pp1-3.
Committee Comment

3.190 Based on the United Kingdom experience of powers to stop and search without reasonable suspicion, the Committee did not dismiss concerns about the Bill increasing the possibility that police may misuse their powers when performing stops and searches.

CONCERNS ABOUT POTENTIAL FOR INCREASED PUBLIC DISTRUST OF POLICE

3.191 Some submitters contended that subjecting people who are not carrying anything unlawful to a basic search without reasonable suspicion of any wrongdoing will cause members of the public to be less trustful of the police. As a consequence, they may also be less willing to cooperate with the police, for example, by providing intelligence to the police for crime prevention and investigation. Some of their comments are reproduced here:

- “I believe these laws would create an even greater divide between community and police and gives police an untouchable amount of power ...”
- “Bowling and Phillips[424] state that suspicion-less stop and searches damage the relationship between police and community, and undermine the legitimacy of, and respect for, the police. At a time when Western Australia is trying to introduce measures to reduce our crime rates, damaging the relationship between police and the public is the most counter-productive thing we can do to our justice system.”

3.192 Reports from the United Kingdom indicate that police powers of stop and search may have a detrimental effect on police-community relations. Some say that this damage may arise from the inappropriate use of the powers. Others submit that the fact of the possession of the powers alone may damage police-community relations.

3.193 As recognised by the MPA, public faith in the police is vital to the success of policing initiatives:

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422 For example, Submission No 3 from Mr Aiden Marsh, 12 December 2009, p1; Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p8; and Submission No 6 from Search for Your Rights, 16 January 2010, p6.

423 Submission No 3 from Mr Aiden Marsh, 12 December 2009, p1.

424 Ben Bowling and Coretta Phillips are United Kingdom academics who have researched the effects of police stop and search powers.


426 Refer to paragraphs 3.51, 3.58, and 3.66 in this Report.
Whether valid or not, public perception is the major determinant of public trust and confidence in the police. That is what is of critical importance and needs to be addressed.

...

Public faith in all public institutions, including the police is a fundamental cornerstone of our civic society. Community policing relies on individuals trusting the police and being willing to work with them.

...

Ultimately it is society as a whole that is most harmed if biased and discriminatory decision making results in the loss of confidence in the police. The social cost of creating mistrust of the police includes a lack of respect shown to people associated with the Met [Metropolitan Police Service in London], a greater acting out against the police and the law, and an unwillingness to work with the police, for example by not reporting crime, acting as witnesses, etc.

And as the Scrutiny Panel was told, because the police represent the guardians of liberty and are the gatekeepers of the criminal justice process, discriminatory policing has the affect [sic] of denying whole communities justice.427

3.194 Similarly, Dr Frank Morgan, a criminologist, stated that there is:

a great need for the police to have good relations with the public as a whole, and that policing is reliant on that goodwill, particularly amongst the most marginalised groups because they probably have the most to tell police about how to prevent crime.428

3.195 Associate Professor David Indermaur, a criminologist, was of the opinion that the use of the proposed stop and search powers will lead to an increased alienation of minority groups from the police:

they will have less and less respect for the police and more and more fear, if you like, of the police, and less cooperation with the police.429

427 Equal Opportunity and Diversity Board, Metropolitan Police Authority, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, pp35, 43 and 44.
428 Associate Professor Dr Frank Morgan, Director, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, p2.
429 Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, p14.
3.196 The Commissioner of Police acknowledged the importance of the community’s support for the Bill and the police in general.\textsuperscript{430} However, the WA Police did not believe that these concerns about an increase in public distrust of the police, should the bill be passed, are well-founded. The WA Police reiterated that police officers will be well-trained in the proposed stop and search powers and will be well-guided by the existing rules prescribed in the Act\textsuperscript{431} and the guidelines in the police manual.\textsuperscript{432}

\textbf{Committee Comment}

3.197 The Committee noted that a potential unintended and undesirable consequence of the proposed stop and search powers could be to damage police-community relations, by way of creating a lack of trust and respect for the police, an unwillingness to cooperate with the police and a potential for an increase in resistance to, and violence against, police.

\textbf{CLAIMS THE BILL MAY CAUSE MORE PROBLEMS THAN IT SEEKS TO SOLVE}

3.198 Several submissions claimed that the power to stop and search without reasonable suspicion may aggravate otherwise innocuous situations.\textsuperscript{433} For example, a person who is simply going about his or her business, not carrying weapons or engaged in any illegal activity, and finds himself or herself the subject of a compulsory stop and search conducted under the proposed powers may react in a negative way,\textsuperscript{434} possibly attracting a criminal penalty as a result. If the person resists being searched, he or she may be charged with obstructing the functions of a police officer.\textsuperscript{435} More serious

\begin{footnotesize}
\begin{enumerate}
\item Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, pp19 and 35.
\item Refer to paragraphs 2.12 to 2.21 in this Report for a discussion of these prescribed rules.
\item Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p3.
\item For example, Submission No 5 from Hon Giz Watson MLA, 13 January 2010, pp8-9; Submission No 6 from Search for Your Rights, 16 January 2010, pp6 and 7; Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, p4; Submission No 9 from Ms Adele Carles MLA, 18 January 2010, p2; Submission No 12 from the Commissioner for Equal Opportunity, 18 January 2010, p9; Submission No 13 from the SCALES Community Legal Centre, January 2010, pp3, 4 and 4-5; Submission No 14 from Youth Legal Service Inc Western Australia, received 19 January 2010, p2; Submission No 16 from South Coastal Women’s Health Services, 18 January 2010, p1; Submission No 17 from the Pilbara Community Legal Service, 18 January 2010, p1; Submission No 18 from Ms Catherine Hall, 18 January 2010, p1; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p7; and Submission No 24 from Ms Gabrielle Jane Walker, received 10 February 2010, p1.
\item The negative reaction may be prompted by humiliation or embarrassment for being singled out in a prescribed or declared area for a stop and search. These feelings were observed in people who were interviewed by researchers for the United Kingdom’s Home Office: J Miller, P Quinton & N Bland, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Briefing Note, \textit{Police Stops and Searches: Lessons from a Programme of Research}, United Kingdom, September 2000, p5.
\item Refer to paragraphs 2.19 to 2.20 in this Report for a discussion about how non-compliance with a search may be handled by a police officer in Western Australia.
\end{enumerate}
\end{footnotesize}
consequences may flow from this interaction if the person reacts violently. This potential, unintended consequence of the Bill is known to criminologists as the “net-widening effect”.  

3.199 Some of the comments made in the submissions were as follows:

- The Bill “could lead to offences arising through people who possess nothing unlawful nonetheless refusing to cooperate with being searched. This would impact negatively on the safety of police. Prosecuting offences arising from resisting a search would take up public resources allocated to prosecution, publicly funded defence, courts and our already overcrowded prisons. If resisting a search escalates to assault and injury to a police officer, the consequence could be a mandatory prison sentence”.

- “The combination of the ‘stop and search’ laws with the mandatory sentencing for assaults against public officers legislation is a recipe for disaster. Police officers searching people without a reason may incite persons to the point of assault.

  ... [Young people may react badly to a stop and search under the Bill because] ... young people have a lower level of self-control in terms of provocation, they know less about the law and are often under the influence of alcohol in these social situations.

  ...

  ... ‘searching people is confrontational, and it is no wonder that some young people offer mild resistance to being searched.’

- “It is not a stretch to see how a young person who was not engaging in criminal activity could react against being searched (especially if it happened several times in one evening), become aggressive and therefore cause an escalation of conflict that resulted in a crime. A legislative process that creates crime from otherwise innocuous situations should be avoided at all
costs, and it must be remembered that children … [do not have the same rational responses or restraint as adults].\(^{441}\)

- “Alcohol affected young people are notoriously more likely to engage in behavior [sic] they would otherwise not do including challenging the directions of authority figures including police officers. This combination of circumstances is likely to lead to more young people being arrested for refusing to co-operate with officers seeking to search them and consequently resisting arrest etc.”\(^{442}\)

- “A report written in 1995 on the interaction between police and young people found that many young people who have committed no crime are stopped and spoken to by police. This can then result in a search taking place, and often in conflict resulting in the young person being charged with offences such as hindering police, disorderly conduct, obscene language and finally resisting arrest.”\(^{443}\)

- “Of further concern to ALSWA is the impact of the operation of the proposed laws with new mandatory sentencing laws for assaults on public officers causing injury. Aboriginal peoples may feel justifiably aggrieved if they are approached by police and searched for no reason. Some may react violently and lash out causing injury to a public officer bringing them within the scope of mandatory sentencing and increasing already high rates of imprisonment.”\(^{444}\)

- One of the submitters was concerned that a person walking past a rally in a designated area could be searched by the police even if that person has no association with the people at the rally and the officer has no reason to suspect him or her of any criminal activity:

  I could see how this could escalate into an argument and the potential for arrests to happen with charges of hindering and others made. I would certainly attempt to assert my rights.\(^{445}\)

### 3.200

Associate Professor Indermaur described the predicted escalation of stops and searches under the Bill as a “trifecta” of criminal consequences:

\(^{441}\) Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, p4.

\(^{442}\) Submission No 12 from the Commissioner for Equal Opportunity, 18 January 2010, p9.

\(^{443}\) Submission No 13 from the SCALES Community Legal Centre, January 2010, pp4-5.

\(^{444}\) Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p7.

\(^{445}\) Submission No 24 from Ms Gabrielle Jane Walker, received 10 February 2010, p1.
as Professor Morgan said—my expectation is that it will bring the police into confrontational contact with those individuals more. From what we know from previous research, many of those individuals will resist being stopped and searched. This will lead to resisting arrest, assaulting police and obscene language, which is sometimes called the “trifecta” in criminological literature. It usually starts with a simple stop—“What’s your name?”—and the person who has been asked for their name will abuse the police, then the police will attempt to arrest the person, there will be a “resist arrest”, and with the “resist arrest” there will be an “assault police officer” as well. That is called the trifecta. These are the kind of charges that are commonly brought up against Indigenous Australians, especially in remote areas. I would anticipate there will be a large increase in these number of charges, and they will occupy, I suspect, a lot more police time. It will take police away from other duties while they are processing these individuals. These individuals will be processed prior to whether or not there has actually been any weapons found on them—perhaps even before a search is conducted—because the procedures will kick into place because there will be more and more contact between the police officer and the minority group ... .

3.201 Associate Professor Indermaur alluded to a Victorian study into knife carriage by young people and explained that a person carrying a weapon may do so for reasons other than an intent to use the weapon:

many young men, for example, will conceal a pocket-knife or a small knife on them because they have had a difficult interpersonal situation in the past and they feel like they need a little bit more defence, if you like. A lot of young men perhaps carry around a weapon like this—we are talking about young men between the ages of about 13 and 16—and they might carry this so-called weapon on them for a kind of comfort and reassurance and never use it. In fact, I suspect most young men who carry weapons like this for those purposes would never use that weapon. Again, if you enact this legislation, it is quite possible that a large proportion of those young men who would not otherwise have come to the attention of the police will come to the attention of the police, could well be arrested, and you have what we called in criminology a net-widening effect and you drag a whole lot

446 Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, p14.

of individuals into the criminal justice system who would not otherwise have come there.\textsuperscript{448}

3.202 In addition to the likelihood that the Bill will capture these young men aged 13 to 16 years of age, Associate Professor Indermaur suggested that the Bill may have no effect in deterring the criminal activities of the slightly older young men who tend to commit violent crimes:

\textit{the offenders who really commit the really violent crime tend to be older males aged 19 to 25 and so forth. That is where the specific targeting should be, at those individuals, rather than at this large number of younger males who carry weapons but do not use them. It is likely that those younger males are going to get caught up in the criminal justice system.}

\textit{... There is the idea that this legislation will have the deterrent effect on those offenders who are higher risk; you need to examine that closely because I do not think there is a lot of evidence for that. The really violent offenders out there in the community are not likely to be deterred by these measures because they, first of all, either do not see that they will get caught or do not care. That is typical of very violent offenders.}\textsuperscript{449}

3.203 In contrast, the Commissioner of Police could not “\textit{think of one altruistic reason or reasonable excuse for carrying a weapon in a public place}”.\textsuperscript{450}

3.204 The WA Police did not believe that the above concerns about the escalation of innocuous situations, among others, are well-founded. The WA Police reiterated that police officers will be well-trained in the proposed stop and search powers and will be well-guided by the existing rules prescribed in the Act\textsuperscript{451} and the guidelines in the police manual.\textsuperscript{452}

3.205 According to the Police Union, the key to ensuring that the community is accepting of the proposed powers, and the possibility of these powers being applied to every member of the public, is education:

\begin{itemize}
\item \textsuperscript{448} Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, \textit{Transcript of Evidence}, 5 May 2010, pp15-16.
\item \textsuperscript{449} \textit{Ibid}, p16.
\item \textsuperscript{450} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p55.
\item \textsuperscript{451} Refer to paragraphs 2.12 to 2.21 in this Report for a discussion of these prescribed rules.
\item \textsuperscript{452} Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p3.
\end{itemize}
The CHAIRMAN: I am not arguing with the policy behind the proposed powers. What I am asking is: do you believe, does your union believe—does it even see a potential for increasing friction between police officers and those who have been stopped and searched and found not to be committing an offence and the potential for increasing acts of resistance and the chance of violence against police officers from people who would not otherwise have been committing an offence? Do you see that?

Mr Armstrong: I do not know about an increase. There may be a small increase, but with education of people going into these prescribed areas, everyone will be very, very satisfied and feel safe.

The CHAIRMAN: What sort of education do you have in mind?

Mr Armstrong: I think very similar to the mandatory sentencing, with the advertising the government put out. We have seen full-page adverts, and we have seen those serious assaults decrease. You have to educate people, and if you put an act into place and you do not advertise as the government or the police or whoever, that is when people do get upset. I think with the advertising, if this legislation was to go through, you would find very little resistance, except people would be extremely happy with those who passed it.  

3.206 As previously noted in this Report, the United Kingdom’s experience is that people sometimes react negatively to being stopped and searched by the police.  

Committee Comment

3.207 The Committee noted that a further potential unintended and undesirable consequence of the Bill could be the risk that individuals or particular groups of people may be more likely to be caught up in an escalation of negative police interaction.

CONCERNS ABOUT NEGATIVE ECONOMIC/SOCIAL IMPACT ON DESIGNATED AREAS

3.208 A number of submitters predicted that, if the Bill is passed, some members of the public will avoid the areas which are prescribed under proposed section 70A or declared under proposed section 70B of the Act to minimise their chances of being stopped and searched without cause. It was said that this would have a negative effect

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453 Hon Michael Mischin MLC, Chair, Standing Committee on Legislation, and Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, p27.

454 For example, refer to paragraphs 3.51, 3.58, 3.66, 3.192 and 3.193 in this Report.
on business patronage in the designated areas. For example, Search for Your Rights was of the view that:

young people who utilise the nightlife, clubs and bars will not enter these areas [Perth and Northbridge, if they are prescribed or declared] for fear of unreasonable searches by the police. ... families and people using the surrounding businesses will not enter these prescribed areas because of the connotations and safety ideas that are associated with areas of high security and law enforcement.

3.209 The President of the Law Society explained the nature of this concern in the following way:

This bill, if it becomes law, will in fact remove many of the traditional safeguards that people who live in a western society hold dear. In fact we would think that this bill, if it were to become law, would kill stone-dead any area that were to be declared to be subject to this law for the purposes of stop and search.

... What that would mean is that if you were in that area you would be subject to a mandatory search; a search which would be intrusive, perhaps require the removal of the outer garments of your clothing, and it would subject you to a frisk search. If you refused to participate or allow that search to take place, you would be charged with the offence of obstruction and you would be guilty of a crime punishable by a maximum of three years’ imprisonment or, if dealt with summarily, 18 months’ imprisonment and an $18 000 fine. It seems to the society, with those sorts of sanctions hanging over your head, any person who is contemplating going out for an evening meal—particularly if they were going to be taking their grandmother out for her eightieth birthday or taking their children with them—would not choose to go to an area that was subject to a declared area for the purposes of section 70A of the act. No-one is going to go out to Northbridge [if it is prescribed or declared under proposed section 70A or 70B, respectively] and stand in a queue, subject themselves to a mandatory, humiliating and intrusive personal search when they

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455 For example, Submission No 4 from Mr Anthony Watkin, 5 January 2010, p1; Submission No 6 from Search for Your Rights, 16 January 2010, p7; and Submission No 14 from Youth Legal Service Inc Western Australia, received 19 January 2010, p2.

456 Submission No 6 from Search for Your Rights, 16 January 2010, p7.
could go to a non-declared area. So the legislation, we would say, will be self-defeating.  

3.210 However, the Commissioner of Police gave evidence that:

There is a suburb in London—for want of a better use of the word “suburb”—called Peckham. Peckham has a very large volume of knife crime and gang-related activity. It is largely confined to the main street of Peckham, because that is where all the fast-food outlets are and that is where some of these gangs go in and take over and exclude everyone else from the restaurants. They applied stop and search there on several weekends in a defined period of time and they stopped the problem.

3.211 At the commencement of this inquiry, the Committee wrote to the Business Improvement Group of Northbridge inviting it to make a submission. It received no response.

Committee Comment

3.212 The Second Reading Speech stated that one of the objectives of the Bill is to deter the carriage of weapons and discourage violent and anti-social behaviour in certain designated areas by allowing people to be stopped and searched without reasonable suspicion or consent (and in the absence of a requirement for a search warrant or arrest). It is arguable that the fulfilment of this objective may encourage law-abiding members of the public to patronise the areas. It is also arguable that the designation of an area under the Bill may serve to deter law-abiding citizens from entering that area out of reluctance to be stopped and searched without reason or consent. The Committee is unable to make any finding as to whether the Bill will have any economic or social impact on designated areas.

COMPARISON TO AIRPORT SEARCHES

3.213 Community debate on the Bill had resulted in some people likening the proposed stop and search powers to those exercised by airport staff. For example, the Police Union submitted that the basic searches which will be conducted as a result of the proposed powers “will arguably be no more intrusive than what we have become accustomed to when flying domestic and international air routes.” The Premier and

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457 Mr Hylton Quail, President, The Law Society of Western Australia, Transcript of Evidence, 9 February 2010, pp2-3.
458 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p19.
459 Refer to paragraphs 2.12 to 2.21 in this Report for a discussion of what is involved in a basic search.
460 Submission No 10 from the WA Police Union of Workers, 18 January 2010, p2.
Minister for Police have also compared the manner in which searches will be conducted under the Bill with the nature of airport searches.461

3.214 On the contrary, the European Court of Human Rights in the Gillan Case found the comparison between searches conducted under Section 44 Powers and airport searches to be tenuous:

The Court is also unpersuaded by the analogy drawn with the search to which passengers uncomplainingly submit at airports or at the entrance of a public building. It does not need to decide whether the search of the person and of his bags in such circumstances amounts to an interference with an individual’s Article 8 [of the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms] rights, albeit one which is clearly justified on security grounds, since for the reasons given by the applicants the situations cannot be compared. An air traveller may be seen as consenting to such a search by choosing to travel. He knows that he and his bags are liable to be searched before boarding the aeroplane and has a freedom of choice, since he can leave personal items behind and walk away without being subjected to a search. The search powers under section 44 are qualitatively different. The individual can be stopped anywhere and at any time, without notice [without reasonable suspicion] and without any choice as to whether or not to submit to a search.462

3.215 Similarly, the Law Society was of the view that the proposed searches cannot be compared to airport searches because the latter form of search will still involve an element of choice and is less intrusive:

Two things: there is still an element of consent there. If one does not want to go through the metal detector at the airport, one does not go through it; sure, one might not be able to catch the aeroplane, but one still has a choice to make. If proposed section 70A goes through, one will not have the ability to make a choice, and that is the fundamental difference between section 69 and proposed section 70A—the removal of consent. If a police officer says that one is going to be searched, one cannot say, “Oh, hang on; I’ll leave Northbridge. I don’t want to be searched, I’ll leave.” Once the requirement has been placed upon one to be searched, one has to cooperate with that search or one will

461 For example, refer to paragraph 2.52 in this Report; and Hon Colin Barnett MLA, Premier, and Hon Robert Johnson MLA, Minister for Police, Media Statement: Greater police search powers to fight drugs and violence, 11 October 2009, p2.

462 Case of Gillan and Quinton v The United Kingdom, European Court of Human Rights, Application No 4158/05, 12 January 2010, paragraph 64.
be committing the criminal offence of obstruction. That is the first point. The second point I would make is that section 70A will authorise a basic search to be conducted on any person. That is a far wider and more intrusive search than a metal detector search at an airport. A basic search will allow a police officer to do not only the scanning or wanding entailed in an airport search, but also require a person to remove the outer layers of his clothing and subject himself to a frisk search as well.

... The only way that [frisk searches] could be done efficiently, if the police wanted to get through a lot of people in Northbridge, would be for it to be on the side of the road. Otherwise, the police would have to pay for enormous vans through which people would have to walk so that there is some level of privacy while they are searched.

3.216 Hon Giz Watson and the Australian Association of Social Workers, Western Australia Branch also disagreed with the similarities being drawn between airport searches and the proposed powers. For example, Hon Giz Watson contended that:

At the airport, everyone has to submit to the tests [metal detectors and the x-ray scanning of bags]. Flying is also a situation where one person’s actions can have large scale catastrophic effects, endangering the lives of hundreds of people simultaneously. ... The proposal in the Bill is not like this at all. The Bill is not aimed at large scale catastrophe, it authorises a variety of types of search and for practical reasons it is highly unlikely that everyone in a prescribed/declared area will be searched.

3.217 The Committee compared airport searches with the searches proposed under the Bill in four respects:

- The uniformity of liability to be searched:

At an airport, every person wishing to enter the departure area is required to submit to a search. Under the Bill, anyone in a designated area may be required to submit to a search.

463 Mr Hylton Quail, President, The Law Society of Western Australia, Transcript of Evidence, 9 February 2010, pp7-8.

464 Submission No 5 from Hon Giz Watson MLC, 13 January 2010, pp7-8; and Submission No 8 from the Australian Association of Social Workers, Western Australia Branch, 15 January 2010, p2.

465 Submission No 5 from Hon Giz Watson MLC, 13 January 2010, pp7-8.
• The arbitrariness of the selection of people to be searched:

At an airport, every person seeking to enter the departure area is subjected to a search. Under the Bill, a police officer has discretion as to whom to search within a designated area.

• How people can avoid the search area:

At an airport, a person can avoid liability to be searched by not seeking to enter the departure area. Under the Bill a person can avoid liability to be searched by not seeking to enter a designated area, if they are aware that it is a designated area. However, they will not be able to avoid being liable for a search if they are already within that area.

• The manner in which the search is conducted:

At an airport, those seeking to enter the departure area will, at a minimum, be scanned by a metal detector. They will also be required to divest themselves of some portable metallic objects and may be required to remove outer clothing, footwear, headress and belts. They may be required to submit to a frisk search or be scanned for the presence of chemicals. Under the Bill, anyone within a designated area may be subject to a basic search 466 but the degree of search will be at the discretion of the police officer, which could range from scanning by a metal detector to a frisk search, which may require the removal of outer clothing.

Committee Comment

3.218 Proponents for and against the Bill compared the proposed powers to airport searches. As illustrated above, there are similarities and differences, but there is no significant difference in the manner of search available. The main differences between an airport-type search and the powers exercisable under the Bill are the manner in which people are selected to be searched (there is a perception of fairness where everyone is treated uniformly), a person’s awareness that he or she is in or entering an area where they may be searched and a person’s opportunity to leave or avoid the area without being searched.

3.219 The Committee noted that people seem to be prepared to sacrifice some personal liberties when they perceive that the potential danger to public or personal safety is significant enough to justify it.

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466 Refer to paragraphs 2.12 to 2.21 in this Report for a discussion about what a basic search under the Criminal Investigation Act 2006 can involve.
ARE THERE BETTER WAYS?

3.220 While all submitters agreed that violent and anti-social behaviour in public places needs to be addressed, several submitters argued that the Bill alone is not the answer because it does not deal with the root causes of this type of problem. Some of their comments are extracted here:

- “Whilst appreciating that search powers offer one strategy to reduce violence in public venues, we would suggest that rather than further extending these powers, more focus be placed on preventative measures such as restricting the opening hours of licensed premises. ... longer term solutions are more likely to rest with earlier prevention measures including increased support to vulnerable families and young people.”

- “If the behavior [sic] to be tackled is alcohol fuelled anti-social behavior [sic] or the use of weapons in nightclubs etc then it would appear that enforcement of laws to require better observance of the requirement not to serve alcohol to those who are intoxicated would be more effective. Similarly if the carrying of weapons in clubs and pubs is of concern a requirement of such venues to search their clients by means of metal detectors would be a more appropriate and targeted response.”

- “the Bill has nothing to do with antisocial behaviour, and it will probably have no effect on such behaviour which is often (but not always) fuelled by drug and alcohol abuse. ...

... [If the Bill becomes legislation] ... absolutely nothing would change the root causes of violence and antisocial behaviour in entertainment precincts and elsewhere. ...

... It [the Bill] is observably useless in that regard.”

- “Antisocial behaviour and violence in the community are community issues requiring community solutions ... [and community consultation] ...”

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467 For example, Submission No 4 from Mr Anthony Watkin, 5 January 2010, p1; Submission No 8 from the Australian Association of Social Workers, Western Australia Branch, 15 January 2010, pp2-3; Submission No 12 from the Commissioner for Equal Opportunity, 18 January 2010, p9; Submission No 15 from Mr Johnson Kitto, 15 January 2010, p1; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p4; Submission No 24 from Ms Gaibrielle Jane Walker, received 10 February 2010, p1; and Submission No 26 from Mr Simon Woodings, 24 February 2010, pp1 and 3.

468 Submission No 8 from the Australian Association of Social Workers, Western Australia Branch, 15 January 2010, pp2-3.


470 Submission No 15 from Mr Johnson Kitto, 15 January 2010, p1.

471 Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p4.
“Proponents of the laws must concede that regardless of Police searches, weapons will still exist within designated areas. So it is not reasonable for proponents to argue that these laws will prevent violent crime. Most violent crime within entertainment areas is driven by emotion and fuelled by alcohol, and since weapons are easily to hand (brick, chef’s knife, bottle, glass etc), the proposed laws may not even reduce violent crime.”

3.221 The Committee noted that the Bill appears to be part of a package of initiatives designed to make Northbridge a safer environment. Some of the Police initiatives, which have been in place since December 2008, have already been addressed in this Report (refer to paragraph 3.12).

3.222 In a media statement released on 24 October 2009, the Premier announced the introduction of the following measures over the 2009/2010 summer:

**Strengthened Policing**

- Increasing the visibility of police - including the use of drug dogs, police teams, booze buses and horses
- Amending the Liquor Control Act 1988 to provide a streamlined process to allow police and licensees to ban troublemakers
- Using Prohibited Behaviour Orders to restrict persons from Northbridge entirely
- Declaring Northbridge a designated public area to enable police officers [to] fight antisocial behaviour and drug offences with the new authority to stop and search people [this Bill]

**Better regulation**

- Increased and targeted liquor licensing inspections and enforcement of responsible service breaches of the Liquor Control Act
- A reduction in nightclub trading hours - lockouts would apply at 3.30am with a closing time of 5am instead of 6am
- Venues with a Special Facility Licence (The Elephant and the Wheelbarrow and The Mustang Bar) will operate a lockout at 2am with a closing time of 3am
• Launch an education campaign to increase the awareness of the responsible serving of alcohol

*Increased Security*

• Develop and implement standards for ID Scanners at entertainment venues to supplement CCTV requirements

• Investigate and implement options to improve security at Perth train station

*Improved amenity*

• Expanding the Milligan Street taxi rank including extra lighting, CCTV, queue barrier and traffic management to ensure Northbridge patrons get home quickly and safely

• Last train departure pushed back to 2.15am and made free of charge

• Revitalising the Cultural Centre area. The changes will include improved landscaping and lighting, an urban orchard, colourful signage, free wireless internet access and improved security

• Providing a number of alternative entertainment options including street buskers, dance, arts and cafes

• Redeveloping the eastern side of William Street

*Working with the community*

• Providing alternative activities for children on Friday and Saturday nights including night basketball competitions in Midland and Armadale

• Maintaining the curfew in Northbridge - after sunset all children under 12 must be accompanied by a sober, responsible guardian. After 10pm all young people aged 13-15 years are under the same provisions. These groups must not be in Northbridge after the specified times
• Continuing to support services provided by the Noongar Patrol, Nillara Youth Services and Mission Australia473

3.223 The Commissioner for Children and Young People confirmed that a community-wide, integrated approach is required to curb violence and anti-social behaviour in public places:

The analysis that I have done is that there is no conclusive evidence that this type of legislation will be effective in terms of the objective that it is trying to achieve.

... All of the research shows that legislation is low on the priority in terms of effectiveness. That is the extent of my analysis. I would be very happy to see any research that indicates that this would be of benefit to the community more broadly, but would have a positive impact on children and young people. To date I have not seen that.474

... [For example, the Geraldton Youth Justice Service] ... is an outstanding program that is achieving positive outcomes, and it involves all of the agencies working very well, including the police. It involves cautioning children and young people for minor offences; it involves supporting the parents; it involves diverting children and young people into positive programs. Since the introduction of that youth justice service in Geraldton, no children have been transported to Perth to the juvenile justice facilities in Rangeview and also Banksia Hill. I think that is a very fine example where the research shows where agencies can work together to achieve a better model. It involves the local council, it involves community members, it involves agencies.475

... I was very pleased to hear from the police the other day that there is a range of initiatives that are starting to work in Northbridge around referral to appropriate agencies and getting kids to a safe place. There are some very positive initiatives now in Midland—midnight basketball, and those sorts of initiatives—which are all

474 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p7.
about giving young kids who are marginalised access to positive programs, and that is having an effect on whether kids come into Northbridge or not. I think that legislation alone should not be looked at in isolation; we need a range of comprehensive measures.\textsuperscript{476}

\begin{center}
\textbf{Committee Comment}
\end{center}

3.224 The Committee noted that there seems to be broad agreement that multiple strategies need to be employed in order to address the issues of violence and anti-social behaviour in public places. The Committee noted that a multi-faceted approach to these issues is being implemented.

\textbf{IS SECTION 69 OF THE ACT ADEQUATE?}

3.225 While the WA Police considered that current police stop and search powers in the Act (that is, sections 68 and 69) are effective in detecting offenders, it was of the view that the existing powers “\textit{have some limitations}” which can be rectified by the Bill.\textsuperscript{477} The elements of section 68 of the Act, which contains the usual reasonable suspicion test, are discussed in paragraph 2.5 in this Report, while the issues surrounding the reasonable suspicion test are canvassed in paragraphs 3.97 to 3.156. The features of section 69 of the Act are discussed in paragraphs 2.7 to 2.11 in this Report.

\textbf{Past Uses of Section 69}

3.226 Given that section 69 of the Act already authorises police officers to stop and search people and vehicles without the requirement of a reasonable suspicion, which is similar to the powers proposed by the Bill, the Committee investigated whether the power had been used since its introduction on 1 July 2007, and if so, how successful it had been.

3.227 The initial responses from representatives of the WA Police and the Police Union were that, to the best of their knowledge, section 69 had never been used.\textsuperscript{478} However, the Commissioner of Police later advised that the declaratory power under section 69(2) had, to the knowledge of the WA Police, been used ten times (a list of the details of each of these declarations and a copy of each of the declarations are attached as \textit{Appendix 12} and commentary on the outcomes of the declarations is attached as

\textsuperscript{476}\textit{Ibid}, pp21-22.

\textsuperscript{477} Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p1.

\textsuperscript{478} Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, \textit{Transcript of Evidence}, 2 February 2010, pp3, 23; and Superintendent Gary Budge, Western Australia Police, \textit{Transcript of Evidence}, 2 February 2010, p23; and Mr Russell Armstrong, General President, WA Police Union of Workers, \textit{Transcript of Evidence}, 9 February 2010, p5.
Appendix 13). Since then, an 11th declaration, relating to the Challenge Stadium, had been made, a copy of which is also contained in Appendix 12. No public places have been prescribed under section 69(1)(a) and the WA Police was not aware of any use of section 69(1)(c) to date.

3.228 The Committee noted that, of the copies of the 11 declarations received from the WA Police, three of them were unsigned. These declarations related to the Craigie Sports and Leisure Centre, the Arena and the Public Transport Authority Land in Claremont. The WA Police told the Committee that it was unable to locate the signed copies of the three declarations and was unable to explain why the signed copies were lost, other than to say that there were no protocols or procedures in place for the filing and storage of declarations. Despite this, the WA Police assured the Committee that all of the declarations had been duly issued:

Mr Penn: I have spoken to a number of them [the police officers who made the declarations], yes, and they said yes, these were all the declarations that were issued. But, as I say, they have not been able to provide me with a signed copy of three of those but they have said, “Yes, we did issue these declarations.”

Dr O’Callaghan: ... But the bottom line is that we cannot confirm 100 per cent that they have been signed.

3.229 There was a delay in providing the Committee with copies of eight of the first ten declarations, a delay which was attributed to the access protocols for the WA Police’s information technology system and the unavailability of the police officers with access to the declarations:

Mr Penn: There was some delay in getting hold of the information; partly it is in relation to the IT systems in the Western Australia Police, where they have an audit trail in relation to the declarations that only the officers who have been involved in authorising the declaration can access the system and actually print out the source.

479 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p7, and see generally, pp7-11.
480 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 10 March 2010, p11.
481 Mr Christopher Dawson, Deputy Commissioner, Western Australia Police, Transcript of Evidence, 10 March 2010, p10.
482 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 19 May 2010, p6.
483 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 19 May 2010, p14.
documents. The information we gave to the committee on 10 March in terms of the general information, we could provide that general information, but we could not access the actual source documents without the officers involved. A number of those officers were off on leave; some had moved to other districts, so we had difficulty locating them because they were on different shifts.\textsuperscript{484}

...  

\textbf{Dr O’Callaghan}: It is an IT issue. Police have been moving away from paper-based systems because of that problem—because you get recording issues, because you get officers moving on, because people often cannot locate pieces of paper. For the past 10 years we have been moving to centralised control through IT systems so all the information is there and available to anyone who wants to access it, including auditors that would come along.\textsuperscript{485}

3.230 Of the first ten section 69(2) declarations made, there were two occasions when the resulting stop and search powers were not actually used by the police:

I can further add, while we are providing records of when those declarations have been made, that not all of them have actually been exercised. I will cite one example: the declaration at Challenge Stadium in Mt Claremont was made, but it involved a boxing match. We made an application, and the declaration was made by a senior officer, but concurrent with that was a requirement placed on the liquor licence that the conditions of entry would involve screening and searching. However, the police made an additional declaration at a senior level in case they needed to exercise it, but they chose not to exercise it.\textsuperscript{486}

...  

\textit{In regard to} ... [the second example of the declaration of the Narrogin Eagles Sporting Complex, on 13 November 2009] ..., \textit{I can advise that there was a matter involving two feuding groups; there had been some shots fired from a firearm. Two persons were subsequently charged with shooting offences. A person was wounded, so it was}

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\textsuperscript{484} Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, \textit{Transcript of Evidence}, 19 May 2010, p5.

\textsuperscript{485} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 19 May 2010, p9.

\textsuperscript{486} Mr Christopher Dawson, Deputy Commissioner, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p8.
quite a critical situation. A senior officer made a declaration then and there. The commissioner has responded in terms of the general deterrence, but another way in which these sorts of powers are used are to respond to quite critical operational matters where greater powers need to be exercised than are ordinarily used.

... In that particular incident, there was a firearm offence between two feuding factions—two general family groups in Narrogin—and the weapon was fired into a crowd and persons were wounded. We had, over a period of days, a number of very violent confrontations. The police in that district chose to exercise this power in order to try to prevent anything further. There was a lot of mediation taking place, but if the groups were to come together, the police wanted to be able to exercise some powers, if necessary.487

3.231 The WA Police informed the Committee that the section 69 powers were also not used during the 11th and final declaration made to date.488

3.232 The Committee was advised that at least one section 69(2) declaration had been effective, albeit with what appeared to be other early initiatives which had been undertaken by the police and the local government to help avoid any anti-social behaviour:

_The CHAIRMAN_: At the [Stirling] Civic Gardens one [on 23 February 2008], for example, with the potential of an antisocial party taking place, where police were going to be the target of some form of thuggery, the declaration of that area took place, and police officers turned out there, presumably in larger than usual numbers, in order to anticipate any problems. Are you able to say whether in fact trouble was avoided by the exercise of that power?

_Mr Brown_: I can advise that in fact the party did not take place. A declaration was produced. But through the police working with local government, and through some of the early interventions we put in, that precluded the party from actually taking place at all.489

487 _Ibid._

488 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, _Transcript of Evidence_, 19 May 2010, p21.

489 Hon Michael Mischin MLC, Chair, Standing Committee on Legislation, and Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, Western Australia Police, _Transcript of Evidence_, 10 March 2010, p10.
3.233 The outcomes of the eight section 69(2) declarations where the stop and search powers had been used are summarised in Table 9 below.

**Table 9: Summary of Outcomes of the Eight Section 69(2) Declarations when Stop and Search Powers Used**

<table>
<thead>
<tr>
<th>Locality</th>
<th>Public Place</th>
<th>Start Date</th>
<th>Duration</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perth</td>
<td>Train Station</td>
<td>31/10/07</td>
<td>16 hours</td>
<td>• 0 offences</td>
</tr>
<tr>
<td>Stirling</td>
<td>Civic Gardens and Train Station</td>
<td>23/02/08</td>
<td>4 hours</td>
<td>• 0 arrests • 1 gram cannabis seized, infringement notice • 3 move-on notices • 3 liquor infringement notices • 80 vehicle stops resulting in the issue of various traffic infringement notices and cautions</td>
</tr>
<tr>
<td>Perth</td>
<td>Cultural Centre</td>
<td>16/05/08</td>
<td>4 hours</td>
<td>• 2 persons charged with possession of a weapon • 1 person charged with possession of prohibited drug • 2 persons found in possession of knives legally • 1 person found carrying a plastic replica hand gun to a fancy dress party</td>
</tr>
<tr>
<td>Craigie</td>
<td>Craigie Sports and Leisure Centre</td>
<td>18/10/08</td>
<td>12 hours</td>
<td>• No unlawful items located</td>
</tr>
<tr>
<td>Narrogin</td>
<td>Narrogin Eagles Sporting Complex</td>
<td>14/11/08</td>
<td>48 hours</td>
<td>• 12 searches • 1 person charged with possession of an offensive weapon (knife)</td>
</tr>
<tr>
<td>Joondalup</td>
<td>The Arena</td>
<td>08/03/09</td>
<td>24 hours</td>
<td>• 164 searches • 1 liquor infringement • 2 persons charged with possession of a prohibited drug (ecstasy) • 4 persons charged with possession of a prohibited drug (dexamphetamine) • 3 persons charged with possession of a prohibited drug (cannabis), cannabis infringement notice issued</td>
</tr>
<tr>
<td>Locality</td>
<td>Public Place</td>
<td>Start Date</td>
<td>Duration</td>
<td>Outcomes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------</td>
<td>------------</td>
<td>----------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Subiaco</td>
<td>Subiaco Square</td>
<td>14/08/09</td>
<td>4 hours</td>
<td>• 1 person charged with possession of a prohibited drug with intent to sell or supply (ecstasy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• No weapons discovered</td>
</tr>
<tr>
<td>Claremont</td>
<td>Public Transport Authority Land</td>
<td>29/11/09</td>
<td>24 hours</td>
<td>• 27 tablets of MDMA (ecstasy) seized</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• 2.5 grams of cannabis seized</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• 1 person charged with possession of MDMA (ecstasy) with intent to sell or supply</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• 6 persons charged with possession of MDMA (ecstasy)</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>• 2 persons received cannabis infringement notices</td>
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<td></td>
<td></td>
<td></td>
<td>• 33 name checks</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>• 8 move-on notices</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• 2 liquor cautions</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• 20 negative searches</td>
</tr>
</tbody>
</table>

3.234 Police officers in the WA Police do not, nor are they required to, routinely take records of each stop and search they conduct. Therefore, it was not possible for the Committee to assess the effectiveness of the above declarations. There appeared to be a number of weapons and other prohibited items detected, but the police could not say which of the outcomes listed above resulted from the performance of a section 69 stop and search, as opposed to, for example, a section 68 stop and search, which requires reasonable suspicion. The WA Police advised that, at least in relation to the declaration of the Public Transport Authority Land in Claremont, searches requiring reasonable suspicion were carried out. Other than this information, the WA Police could not:

Mr Penn: … say with any certainty as to whether all of the outcomes that we have provided here were necessarily as a result of the reasonable suspicion power under section 68 or whether some of those came about because the person consented to being searched

490 Email from Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, 27 April 2010, p1.

491 The object of searches conducted under section 69 of the Criminal Investigation Act 2006 is “any thing that the officer reasonably suspects does or may endanger the place or people who are in or may enter it”: section 69(6).
and going into this area and as a result of that search was found in possession of those weapons or drugs.

**Dr O’Callaghan:** I think the answer to the question is: no, we cannot tell you which ones were just section 69 without any suspicion or with reasonable suspicion, because we do not break it down into that category, nor have we ever been asked to record that information like that. You have here a crossover of a whole range of things [police stop and search powers] going on and, ... you have got the drug dogs in there. You do have a reasonable suspicion if they sit down and indicate drugs.  

3.235 The WA Police was of the view that one positive result of the making of the declarations - for example, those relating to the Perth Train Station, Stirling Civic Gardens and Craigie Sports and Leisure Centre - was to deter potential offenders from a particular area or event, albeit a result that the WA Police could not demonstrate quantitatively. In none of these cases of section 69(2) declarations did the police indicate the law enforcement outcome would have been more effective had they been able to utilise the provisions contained in the Bill.

3.236 Five of the nine public places which have been declared under section 69(2) to date have been or included open public areas such as train stations. However, the WA Police was of the view that section 69 powers are more effective for events in enclosed areas than for open public areas:

> I guess our view of 69 is that it is a useful tool for events where you want to exclude people from getting into an event and creating danger to other people. So, if you have intel that a particular event is likely to result in a number of people turning up with weapons, you want to use the section 69 powers as a way of excluding people from that event. The issue about public places is different because wherever you exclude them from, they are going to be somewhere else in that public place. As I said, at the railway station they have to end up back on the train or in Perth—Northbridge or the Perth area—so it does not really solve our problem. Our view is it is not necessarily an effective deterrent; that is why we have not used it so much in open public places. I think if you look at all of these, they have been very specific areas always to do with access to a particular location.  

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492 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, and Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 19 May 2010, p7.

493 Refer to the commentary for the outcomes of the declarations in Appendix 13.

494 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p16.
Committee Comment

3.237 The Committee noted the WA Police’s view that the most effective use of powers under section 69 of the Act is to designate particular public places in order to exclude trouble makers from particular events rather than to designate open public places. The WA Police believes it has achieved generally positive policing outcomes in those circumstances. However, the WA Police’s limited use of the powers under section 69 to date, and the lack of records for each stop and search conducted under those powers, made it difficult for the Committee to assess how effective the powers have been to date and their potential effectiveness.

3.238 Given that the impact of the current section 69 powers on people’s human rights is expected to be less than that of the proposed powers, the Committee considered that the section 69 powers should be used in preference to the proposed powers unless they are demonstrably unable to achieve the required policing objective in each case. On this issue, refer to paragraphs 4.17 to 4.28 and Recommendation 5 in this Report.

3.239 A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) considered that section 69 powers have not been tested fully and no sound evidence was produced to support the contention that the existing powers would inevitably fail if exercised. A minority of the Committee considered that, given that the potential of the existing section 69 powers has not been fully explored, it is possible that they could meet many of the policing objectives sought to be achieved by the proposed powers.

3.240 The WA Police initially gave evidence that no declarations had been obtained. This proved to be wrong, however the details of those declarations were not accessible for some months or could not be found. That the senior members of the WA Police were unaware of those declarations and that the Commissioner of Police was unable to retrieve all relevant records and information when required to do so is of concern to the Committee and reflects poorly on the WA Police’s capacity to provide comprehensive and timely information to the Government or Parliament.

Limitations of Section 69

3.241 The two concerns about the existing section 69 powers to stop and search people and vehicles appear to be:

- the requirement that a person consent to being searched; and

- the displacement of crime to areas outside of the designated public place. This displacement may arise by people not consenting to searches and leaving the place, or through people avoiding entering a designated public place.
3.242 Evidence from the WA Police and Police Union was that the main limitation of section 69 powers is the requirement that a person consent to being searched because people who are carrying illegal items could simply avoid a section 69 search by not consenting to the search and taking those items elsewhere, outside of the designated public place where section 69 is operating. Some of their comments are reproduced here:

- “Certainly section 69 of the act could be used in the Northbridge scenario mentioned by the member, but, as I mentioned earlier, there is a limitation on the powers that can be exercised. The person has to consent to the search taking place, so if the person might be in possession of weapons or drugs et cetera, unless the police officer has separately formed a reasonable suspicion to search that person, all that can theoretically happen [if the person does not consent to the search] is that the person could either leave the area or be refused entry. The person could still be in possession of the weapons, drugs or other dangerous implements, but there would be no grounds for search unless the police officer separately had a reasonable suspicion to search the person. Certainly, the powers under section 69 could be used in the Northbridge context—in the context of the limitations that are contained.”

- “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.”

... 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.

- “… our members are concerned that if they have a reasonable suspicion and the person says no, we have to let them leave the area.”

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495 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 2 February 2010, p4.

496 For the Committee’s comments in relation to this evidence, refer to paragraph 3.247 in this Report.

497 For the Committee’s comments in relation to this evidence, refer to paragraph 3.249 in this Report.

498 Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p2. For the Committee’s comments in relation to this evidence, refer to paragraph 3.248 in this Report.

499 For the Committee’s comments in relation to this evidence, refer to paragraph 3.250 in this Report.
If that person has a weapon on them and they do not consent to the basic search, we have to tell them to leave. If they go down the road and stab someone, or are carrying knuckledusters and break someone’s nose and jaw, that is not a deterrent. What we are trying to do—we support the new legislation because it is a deterrent for people who will be searched and patted down; and if you are carrying knuckledusters or a knife or a machete, you will be charged. This is not about turning them away to commit a crime somewhere else.  

“The fundamental inadequacy with this is that if a person chooses not to consent to a search, they may simply leave the area, and if the police do not have grounds to form a reasonable suspicion that a person is carrying an object—a weapon, drugs or any other unlawful object—there is no capacity under section 69 for the police to require a person to be searched, unless they have reasonable grounds to suspect. The main issue here is that under section 69, a person may simply leave the area and we may not be able to exercise that power if they are outside that area.”

“We do not use it [section 69] because we do not believe it is effective. We believe that what it simply does is enable people to refuse to be searched and to move back into a public place, potentially with weapons.”

3.243 There was evidence that designating discrete areas for the exercise of police stop and search powers may result in the displacement of criminal activity into other public places. The Committee observed that the same effect could occur under the Bill, for example, if offenders strategically and actively avoid areas which are, or are likely to be, prescribed or declared.

500 Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, pp5 and 9.
501 Mr Christopher Dawson, Deputy Commissioner, Western Australia Police, Transcript of Evidence, 10 March 2010, p9.
502 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p27.
503 Researchers for the United Kingdom’s Home Office indicated that the intense use of searches in particular areas may have a localised deterrent or displacement effect: J Miller, N Bland & P Quinton, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Police Research Series Paper 127: The Impact of Stops and Searches on Crime and the Community, United Kingdom, September 2000, p(vi) and see generally, pp32-36.
504 There is greater likelihood of people knowing which areas are prescribed by regulations than those subject to a declaration, because the former must be gazetted before taking effect (refer to paragraphs 2.61 to 2.63 in this Report for a discussion about the respective publication requirements of regulations and declarations).
3.244 This was acknowledged by the WA Police, but they suggested that displacement is not an entirely negative outcome:

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,[505] 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.506

3.245 The WA Police offered the following further evidence that the displacement of crime may have some positive outcomes:

Dr O’Callaghan: ... The response from the London Met—again, this is not really underpinned by any empirical research; it is just their response—was that there is some displacement. But because a lot of their knife crime is gang related—it usually is groups of people travelling together with a common intent—the displacement actually also has the effect of dispersing the gangs themselves, so you do not get that intensity of gang activity in the corresponding suburbs. They say that even though there has been some displacement, there has been a positive effect of that displacement, if you can see what I am talking about. That is not necessarily transferable to Perth because the sorts of issues that they face in suburbs of London, for argument’s sake, and the sorts of make-up of their suburbs by ethnic groups et cetera, is quite different from what we would experience in Perth.507

... 

Dr O’Callaghan: I guess that most of the types of people that commit weapons-type offences in entertainment precincts or in the street are not the types of people who would seek a lot of information about where these operations are going to be. So I am not sure that they would consciously try to avoid the area unless you were running operations night after night after night. The chances are that they are going to wander into those areas. If you have got the power to make them submit themselves to a search, you are going to get people in

505 The Committee was not provided with any details of this research. The Committee noted the Commissioner’s comments quoted in paragraph 3.245 of this Report that there “is not really” any underpinning “empirical research” on this matter.
507 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p15.
possession of weapons and you are going to be able to put them into the justice system.\textsuperscript{508} That is different from the section 69 powers where they just turn up, see the police, we say we want to search them, and they go. It is just another level. As I have said several times in this discussion today, we think that aspect of the legislation is valuable.\textsuperscript{509}

\textbf{Mr Brown:} I think the bright lights—we talked specifically about Northbridge—are a great attractor for many of the masses out there to come in, and some of them who do come in with weapons, or the vast majority of them, do not have the intention at the beginning of the night when they travel to Northbridge to actually stab anybody else or commit a criminal act, but they bring those weapons in. Then when things turn bad at two or three in the morning, or whatever the time is, the fact that they have that weapon on them means that the injuries to the victim are far, far worse than they would have been if we were talking about a fist fight in the street.\textsuperscript{510}

... 

\textbf{Dr O'Callaghan:} The other thing is that in the Peckham\textsuperscript{511} example a lot of people were already in the area when the declaration went up, so those people had not read any of the advance publications. They went in with weapons, they got themselves into restaurants and then the police put up the operation, so they were in the operation and when they came out of the restaurant, they were subject to stop-and-search. Because they were in the area, they were not able to say, “I am not going to submit to a search and I will walk out of the area”—they were in it, they were in possession of a weapon and the operation became live. So there are subtle differences, and quite significant differences for us, between section 69 and what is being proposed.\textsuperscript{512}

\textsuperscript{508} The Committee noted that, conditional upon the police having reasonable suspicion, this power already exists under section 68 of the \textit{Criminal Investigation Act 2006}.

\textsuperscript{509} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, pp32-33.

\textsuperscript{510} Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p33.

\textsuperscript{511} Peckham is an area in the Borough of Southwark, London. “Peckham has a very large volume of knife crime and gang-related activity. It is largely confined to the main street of Peckham, because that is where all the fast-food outlets are and that is where some of these gangs go in and take over and exclude everyone else from the restaurants”: Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p19.

\textsuperscript{512} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p33.
3.246 The Police Union acknowledged that one effect of the Bill may be to move some of
the anti-social and violence problems away from designated areas into other areas.513

**Committee Comment**

3.247 The Committee agreed with the WA Police’s evidence that merely exercising the right
not to submit to a search cannot give rise to grounds for a reasonable suspicion. However, the Committee was of the view that the manner and circumstances of the refusal may well do so.

3.248 The Committee noted that it could be said of any policing power that people may
adjust their unlawful conduct on the basis of a known limitation of that power. The
section 69 powers are not unique in this respect.

3.249 The Committee noted that the 48-hour limit referred to by the WA Police as an
impediment only applies to declarations issued under section 69(2) of the Act. There
is no such time limit for regulations made under section 69(1)(a) or in circumstances
where a police officer exercises section 69 powers because he or she reasonably
suspects that it is necessary to do so, pursuant to section 69(1)(c).

3.250 Contrary to the evidence of the Police Union, if a police officer formed a reasonable
suspicion within an area designated under section 69, the officer could stop and search
a person pursuant to section 68 of the Act without first obtaining the person’s consent.

3.251 Although the WA Police and Police Union expressed concern about the displacement
of crime under section 69 of the Act,514 they appeared to be less concerned about the
possible displacement of crime under the Bill. The Committee recognised that the
displacement effect can arise in two ways:

- First, if an offender or a potential offender is aware that an area has been
designated, that person may choose to avoid the area. This possibility will
arise both under the existing section 69 powers and under those proposed by
the Bill.

- Second, under section 69, an offender or a potential offender within a
designated area whom the police choose to search may decline to consent to
the search and leave that area. This potential displacement would not occur
under the Bill as the person would be liable to be searched without his or her
consent.

3.252 It is this second type of displacement that appears to be more undesirable for the WA

513 Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence,

514 Refer to paragraphs 3.241 to 3.242 in this Report.
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Police and the Police Union. The Bill seeks to prevent this type of displacement. A major question is whether the Bill would be effective at achieving this and whether that advantage would be outweighed by the negative effects on personal liberties.

3.253 A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) was of the view that the evidence presented by the WA Police and the Police Union exaggerated the extent to which this type of displacement occurs. The majority regarded the key concept here to be that of reasonable suspicion. If the manner and circumstances of a refusal to be searched does not lead a police officer to form a reasonable suspicion, thus enabling a section 68 search, it must be asked why the officer should be empowered to conduct the search; that is, why someone about whom no reasonable suspicion has been formed should be subjected to a search to which they have not consented. Accordingly, the majority considered that the negative effects on personal liberties resulting from giving police the power to stop and search without either consent or reasonable suspicion (and in the absence of a requirement for a search warrant or arrest) would far outweigh any possible advantage in terms of increasing policing effectiveness.

**FINDINGS AND RECOMMENDATIONS ABOUT THE POLICY OF THE BILL**

Finding 9: The Committee was divided as to whether the Criminal Investigation Amendment Bill 2009 ought to proceed. A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCs) believes that the bill ought not to proceed because there is no justification for the proposed powers. However, a minority of the Committee finds that the proposed powers would be justified to address certain policing objectives.

Finding 10: The Committee finds that, based on the evidence of the experience of other jurisdictions available to the Committee, there is a legitimate concern that the purported benefits of such wide-ranging powers as those proposed by the Criminal Investigation Amendment Bill 2009 could be outweighed by the disadvantages of such powers. A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCs) believes that the evidence suggests giving police the power to stop and search without either consent or reasonable suspicion (and in the absence of a requirement for a search warrant or arrest) inevitably results in negative effects on personal liberties.

Finding 11: The Committee finds that the evidence did not conclusively establish that the Criminal Investigation Amendment Bill 2009 would reduce the incidence of the carriage and use of weapons in entertainment areas, which is the policy objective articulated in the Second Reading Speech.
Finding 12: A minority of the Committee finds that the powers contemplated by the Criminal Investigation Amendment Bill 2009 would address circumstances where current police powers may not meet some legitimate security and public safety objectives, as identified by the evidence of the Western Australia Police. However, a majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCS) found that, if there were objectives other than those relating to the reduction of violence and anti-social behaviour in entertainment areas, they were not articulated in the Second Reading Speech.

Recommendation 1: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCS) recommends that the Criminal Investigation Amendment Bill 2009 be opposed.

Recommendation 2: The Committee recommends that, if the Criminal Investigation Amendment Bill 2009 is to proceed, the bill be amended to:

(a) limit the circumstances in which the proposed stop and search powers could be used; and

(b) monitor and control the police use of those powers and guard against their misuse and abuse.

3.254 As the Committee did not agree with the Bill in its current form, and notwithstanding that a majority of the Committee remained opposed to passing the Bill in any form, the following chapters of this Report discuss and contain recommendations as to how the Bill may be improved if it is to proceed.
CHAPTER 4
CLAUSES OF THE BILL

INTRODUCTION

4.1 This Chapter discusses, and contains recommendations about, how the Bill, if passed by the Parliament, may be improved. Reference is made to elements of legislation in other jurisdictions with the following caveat:

There are significant differences between the states, and one of the things that I would like to highlight to the committee is, when we look to adopt legislation, whether it is from overseas or another state, we have to be cognisant of the whole different context in another state, particularly in relation to other legislation, policy, services and programs.  

CLAUSE 4 - SECTION 69 AMENDED

4.2 Clause 4 of the Bill proposes to delete section 69(1)(a) of the Act, that is, the head of power which authorises the making of regulations to prescribe a public place as one in which the section 69 stop and search powers may be exercised by the police. Of the three heads of power available for designating a public place under section 69, subsection (1)(a) provides the greatest level of parliamentary scrutiny. This is because regulations must generally be published in the Western Australian Government Gazette and tabled in Parliament, and are disallowable by the Parliament.

4.3 The WA Police advised the Committee that the reason for the proposed deletion is that the head of power is no longer seen to be required:

we do not feel there is a need to prescribe an area for the purpose of the exercise of the powers that are available under section 69. ... it is the powers that attach to that area that is prescribed that is the issue. We do not feel that there is a need to prescribe an area under section 69 for the purpose of the powers that are available under section 69.

515 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p2.
516 When read in conjunction with the section 3 definition of ‘prescribed’ and section 156 of the Criminal Investigation Act 2006.
517 Refer to paragraphs 4.10 to 4.11 in this Report for a discussion about the parliamentary process of disallowing regulations.
... We have left it [the remaining heads of power for designating public places in sections 69(2) and 69(1)(c)] in for the occasion in the future where there might be some grounds where a senior officer or a police officer may want to make a declaration for those purposes, but does not feel there is any need or justification for seeking a declaration from the commissioner under proposed section 70B.\(^{519}\)

### 4.4
The Law Society reminded the Committee of its initial opposition to the introduction of section 69 of the Act and did not oppose the proposed deletion of section 69(1)(a):

*At the time that section 69 became law, the society was opposed even to the extension of powers to that degree in terms of the requirement of the removal of reasonable suspicion. That was a big concession for the society to make because, again, it eroded a fundamental common law liberty that we all have to be free of arbitrary search. Notwithstanding that, it is water under the bridge from the society’s perspective. And we accept that for section 69 to work in the way it contemplated to address some of the issues which you have raised by way of scenario with me, it is not practical or perhaps even required that it be done by way of regulations. And so we have accepted that the amendment proposed to section 69 could proceed.*\(^{520}\)

### 4.5
Section 69 powers are intended to be used in exceptional circumstances which require speed and flexibility when designating public places. The head of power at section 69(1)(a) has never been utilised.\(^{521}\)

### Committee Comment

#### 4.6
In the Committee’s view, the very broad stop and search powers which are conferred on the police by section 69 should be subject to as much parliamentary scrutiny as is practicable. However, the Committee accepted the explanation that, for practical purposes, section 69(1)(a) should be deleted.

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\(^{519}\) Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, *Transcript of Evidence*, 2 February 2010, pp11 and 14.

\(^{520}\) Mr Hylton Quail, President, The Law Society of Western Australia, *Transcript of Evidence*, 9 February 2010, p4.

\(^{521}\) Refer to paragraphs 3.226 to 3.240 in this Report.
CLAUSE 5 - SECTION 70A AND 70B INSERTED

Proposed Section 70A(1)

4.7 Proposed section 70A(1) provides that an area may be designated (that is, either by prescription in regulations or by declaration of the Commissioner of Police) for the purpose of activating the proposed stop and search powers in that area. As will be evident from the discussion in this Chapter, the process of prescribing an area through regulations will be slower, subject to greater parliamentary scrutiny and less flexible than declaring an area. However, a prescription can be valid for a much longer period than a declaration.

4.8 When the Committee queried the need for both heads of power, the WA Police advised that having the two options would allow it to choose the more appropriate form of designation in each circumstance:

_The CHAIRMAN:_ Section 70A provides two ways to exercise this unlimited and unrestrained power to stop and search. That is, by prescribing an area under regulation or by declaration. Why do you need both? If the declaration is so broad that all that needs to be done is the commissioner recommending to the minister, why would you use regulation power to prescribe an area?

...

_Mr Penn:_ The commissioner’s powers last for only two months, so there might be occasions when we might want to declare an area for a longer period. That may be one of the thresholds for which we would need to go down the process of regulations. That is, if we wanted to have an area declared for longer than the ordinary two-month period.\(^{522}\)

Parliamentary Scrutiny of Designated Areas - Designation by Prescription in Regulations

4.9 As is usually the case with regulations, it is the Governor who makes regulations under the Act.\(^{523}\) In practice, regulations are developed by the relevant government department, in this case, it will be the WA Police, and drafted by the Parliamentary Counsel’s Office. Regulation-making powers are thus a delegation of the Parliament’s legislative powers to the Executive Government. Therefore, the Parliament should consider:

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\(^{522}\) Hon Michael Mischin MLC, Chair, Standing Committee on Legislation, and Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, _Transcript of Evidence_, 2 February 2010, p14.

\(^{523}\) Section 156 of the _Criminal Investigation Act 2006_.

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in the first instance, whether it is appropriate to delegate to the Executive Government the prescription of an area where the proposed stop and search powers can be used; and

if so, what sort of parliamentary oversight should be given to the Executive Government’s prescription of areas under proposed section 70A(1)(a).

4.10 Since the prescription of an area, for the purposes of proposed section 70A(1)(a), is done by way of regulations, the prescription will need to be published in the Western Australian Government Gazette and tabled in Parliament,\(^{524}\) which provides the Parliament with the opportunity of scrutinising the prescribing regulations. The Parliament will also have the power to disallow the prescribing regulations. If either House of Parliament resolves to disallow the prescribing regulations, the regulations will cease to have effect on and from the day of the resolution.\(^{525}\)

4.11 While any Member of the Parliament may move to disallow regulations, the primary responsibility of scrutinising regulations and other delegated legislation lies with the Joint Standing Committee on Delegated Legislation (JSCDL). The JSCDL reports to the Parliament with information about the delegated legislation which breaches its Terms of Reference (these are attached as Appendix 14). Generally, the JSCDL recommends the disallowance of delegated legislation only if it considers that the particular instrument is not authorised by an Act of Parliament or if the subject matter of the instrument would more appropriately be contained in an Act. The JSCDL’s scrutiny of delegated legislation does not usually involve policy considerations. Therefore, if regulations prescribing an area are technically authorised by proposed section 70A(1)(a):

- the JSCDL is unlikely to recommend the disallowance of the regulations even if the regulations breach other Terms of Reference of the JSCDL or are based on tenuous policy. However, the JSCDL may still report to the Parliament on its concerns about the prescribing regulations; and

- it will fall on individual Members of the Parliament to be vigilant about the potential need to disallow the regulations.

4.12 The Commissioner of Police volunteered that:

There are two points where safeguards could be inserted—again without trying to write every scenario into the legislation, because I think that is an impossible task. The first is to think about the level of scrutiny that might be applied to the granting of any prescribed area.

\(^{524}\) See sections 41 and 42 of the Interpretation Act 1984.

\(^{525}\) Ibid, section 42.
The second is to actually create regulations that specify in what circumstances the legislation can be used. In some respects regulations are more fluid than legislation if you need to go back and ask for an extra part to be added if another scenario presents itself. The regulations maybe should allow for emergency-type responses as well. 526

4.13 The Committee noted that, of all the jurisdictions considered by the Committee in this inquiry, Western Australia is unique for using regulations to prescribe areas where police stop and search powers such as those proposed in the Bill may be used (see item 7, read with item 5, of the comparison table in Appendix 5). The legislation in all of the other jurisdictions allowed for areas to be designated by other mechanisms, for example, declarations and authorisations, which are not required to be tabled in Parliament.

**Committee Comment**

4.14 The Committee noted that, in terms of the prescription of an area under proposed section 70A(1)(a), the Bill offers a relatively high level of scrutiny; that is, parliamentary scrutiny. The prescription of an area by regulation would require ministerial approval before gazettal. Such a prescription would take effect no earlier than the date of gazettal, and suggests more than a transient operational necessity. Any prescription by regulation would be subject to disallowance, and hence be subject to scrutiny, by Parliament, even if the period for which the area has been prescribed has expired. Furthermore, the responsible Minister would be open to questioning in Parliament and accountable politically to the public.

**Parliamentary Scrutiny of Designated Areas - Designation by Declaration**

4.15 Proposed section 70A(1)(b) refers to areas being declared by the Commissioner of Police pursuant to proposed section 70B(1) as areas in which the proposed powers can be used. Refer to paragraphs 4.100 to 4.106 in this Report for further discussion about this issue.

**What Areas are Expected to be Designated?**

4.16 Technically, any area within the State could be prescribed or declared as an area where the proposed stop and search powers can be used. As discussed in paragraphs 2.64 to 2.73 in this Report, the WA Police maintained that the decision to designate an area would be based on intelligence and information about the area, although it was clear from the WA Police’s evidence that the decision will also be determined by the characteristics and movements of categories of people (paragraphs 3.133 to 3.138 in

526 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p38.
Should there be Prescribed Factors to Guide Designation of an Area?

4.17 As discussed in paragraphs 2.64 to 2.73 in this Report, proposed sections 70A(1) and 70B(1) do not specify any factors which must be considered before an area is designated. The WA Police assured the Committee that it would, as a matter of policy, consider intelligence and information about the area and will update the police manual, an administrative document, to include the criteria which ought to be considered before an area is designated. However, the Committee considered that legislative safeguards are necessary to ensure that all individuals who occupy the office of:

- Commissioner of Police are governed by the same criteria when considering whether to declare an area under proposed section 70B(1); and
- Minister for Police are governed by the same criteria when considering whether to prescribe an area under proposed section 70A(1)(a).

4.18 The Committee took this view due to the internal, impermanent and non-binding nature of administrative policies and guidelines and the fact that the persons occupying the positions of Commissioner of Police and Minister for Police will change from time to time. The Committee recognised that its view is more prescriptive than that held by the Government. While no legislation can ever anticipate all situations, the Committee considered it possible to prescribe principles with the correct balance of specificity and flexibility. The insertion of a set of principles into legislation would also give the public greater confidence that the proposed powers will be used responsibly.

4.19 A number of submissions pointed out that the Bill lacked safeguards in this regard, for example:

- “[The Bill should be amended so] ... that before making a declaration the Commissioner or Minister have formed a particular opinion regarding: a. the nature, likelihood, degree and imminence of danger to people at the particular location and b. effective police response to that danger (as in s69 and in New South Wales, Victoria and the United Kingdom). Even if police or Ministerial guidelines are drafted regarding this, they will not be subject to the scrutiny that applies to Parliament’s laws and courts’ decisions.”

527 For example, Submission No 5 from Hon Giz Watson MLC, 13 January 2010, pp5-6; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, pp4 and 5; and Submission No 21 from Mr Vincent Sammut, 21 January 2010, p1.

528 Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p6.
“The lack of procedural safeguards for determining designated and declared areas are far-reaching, excessive and arbitrary. There is no requirement in the Bill that declared areas be based on evidence of higher crime rates or intelligence that crime is likely to occur ….”

“The wording leaves too much latitude for interpretation. More rigour is needed. As a citizen living under such a regime I would feel vulnerable and at a loss to know where I stood legally.”

4.20 The Commissioner for Children and Young People thought that inserting a list of prescribed factors which must be considered before designating areas would be “extremely helpful”. The WA Police considered that there is no need to prescribe these factors because “they can be fluid and other factors may come into play at various times.” However, the Commissioner of Police (quoted at paragraph 4.12 above) viewed these factors as the second of two safeguards which could be introduced, albeit in regulations made under the Bill.

4.21 The Commissioner of Police also assumed that there would be some form of review of the reasons for declaring an area under proposed section 70B:

I would assume that there needs to be some process of review or audit, so that if I was to make an application to the minister and the minister was to grant it, the broad information on which it was based—maybe there are some specifics of intelligence that may be an issue in some circumstances—would be available for scrutiny by Parliament or anyone else who could oversee that sort of process, so that they can see that the stop-and-search powers are not being abused. Whether you give that to the Corruption and Crime Commission, the Parliament or whatever, there needs to be a very clear audit process so that any application that was made by the police has some justification for it and people can see how it is being applied.

4.22 Items 9 and 15 of the comparison table in Appendix 5 list the criteria which must be considered before a prescription, declaration or some other authorisation is given in the other models considered by the Committee. Amongst these models, which include

529 Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p5.
530 Submission No 21 from Mr Vincent Sammut, 21 January 2010, p1.
531 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p17.
532 Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p5.
533 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, pp40-41.
antic-terrorism legislation, the Bill appears to be unique in not requiring any criteria to be considered before an area is designated.

4.23 Section 69(1)(c) of the Act states that a pre-condition to exercising the powers requires a responsible officer to reasonably suspect that it is necessary to safeguard a particular place or people who are in or may enter the place; section 69(2) requires the declaring officer to hold an opinion to that effect. Most of the other models require the designating authority to hold an opinion, be satisfied, or have reasonable grounds to believe, that the particular area will not be safe. Several of them also require the designating authority to reasonably believe, reasonably suspect, be satisfied, or at least consider, that the designation or the use of the police stop and search powers will, or help to, prevent the trouble which is sought to be avoided. Further, in New South Wales, in relation to authorisations, the authorising police officer must be satisfied that the nature and extent of the stop and search powers are appropriate to the public disorder that is occurring or is threatened.

4.24 The Committee also considered the possibility of requiring the designating authority to be satisfied that no other police stop and search powers would be adequate for the circumstances in question; that is, reserving the use of the proposed powers as the last resort. It appeared to the Committee that the WA Police accepted this suggestion:

**Hon HELEN MORTON:** My question was: should it be conditional; should being able to enact this section [proposed section 70A] be conditional upon a consideration that section 69 [of the Act] could not meet the objective that you are seeking?

**Dr O'Callaghan:** That could be part of the process of making application to whoever is responsible for granting the prescribed area saying that 69 will not apply, cannot apply or will not be very effective in this circumstance because it is a public place and not an event, which is controlled et cetera.

**Mr Brown:** That is part of the rationale that we go through for other applications, such as telephone intercepts and listening devices, that we ask the officers, who in those cases swear an affidavit, to go through what they have done and why it is necessary to go in the application process. This latter step is probably more onerous than the others.

534 For example, Victoria (with regard to unplanned designated areas), News South Wales (authorisations), and the United Kingdom (both general and anti-terrorism legislation).

535 Section 87D(2) of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW).

536 Hon Helen Morton MLC, Member of the Standing Committee on Legislation, Dr Karl O’Callaghan, Commissioner of Police, and Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, Western Australia Police, *Transcript of Evidence*, 10 March 2010, p50.
Committee Comment

4.25 The Committee considered that:

- when an area is prescribed under proposed section 70A(1)(a), the Minister must reasonably believe that it is necessary to exercise the proposed stop and search powers for the purposes of safeguarding the area or people who are in or may enter the area that is to be prescribed (refer to Recommendation 3 below); and

- when declaring an area under proposed section 70B(1), the Commissioner of Police must reasonably believe that it is necessary to exercise the proposed stop and search powers for the purposes of safeguarding the area or people who are in or may enter the area that is to be declared (refer to Recommendation 4 below).

4.26 The Committee was of the view that the proposed stop and search powers should be available only when all other existing police stop and search powers are insufficient to safeguard the area or people who are in or may enter the area. The question of whether other existing powers are sufficient is to be decided by the Minister, in the case of the prescription of an area, or the Commissioner of Police, in the case of the declaration of an area (refer to Recommendation 5 below).

4.27 Based on the discussion in paragraphs 2.64 to 2.73 and 3.157 to 3.171 in this Report, the Committee was concerned that there is no legislative restraint against the powers in the Bill being used to designate areas so as to interfere with or disrupt lawful events, protests, rallies or industrial action. A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon) recommended amending the Bill to prohibit the designation of areas affecting such events (refer to Minority Recommendation A below).

4.28 Based on the discussion in paragraphs 2.74 to 2.79 in this Report, the Committee was concerned that vulnerable persons who frequent homeless shelters, refuges and crisis centres may be, or may perceive that they are, unfairly and disproportionately affected by the exercise of the proposed powers, if these places fall within an area designated under the Bill. A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon) recommended legislative exemption of such places from the application of powers under the Bill. A minority of the Committee was concerned that this legislative exemption may have undesirable consequences for such vulnerable persons (refer to Recommendation 6 below).
Recommendation 3: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that when an area is prescribed under proposed section 70A(1)(a) of the Criminal Investigation Act 2006, the responsible Minister must reasonably believe that it is necessary to exercise the proposed stop and search powers for the purposes of safeguarding the area or people who are in or may enter the area that is to be prescribed.

Recommendation 4: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that when declaring an area under proposed section 70B(1) of the Criminal Investigation Act 2006, the Commissioner of Police must reasonably believe that it is necessary to exercise the proposed stop and search powers for the purposes of safeguarding the area or people who are in or may enter the area that is to be declared.

Recommendation 5: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended so that the proposed stop and search powers should be available only when all other existing police stop and search powers are insufficient to safeguard the area to be designated or the people who are in or may enter the area to be designated. The question of whether the other powers are sufficient is to be decided by the Minister, in the case of the prescription of a area, or the Commissioner of Police, in the case of the declaration of an area.

Minority Recommendation A: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended to prohibit the designation of areas affecting lawful events, protests, rallies or industrial action.

Recommendation 6: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot, and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended to exempt homeless shelters, refuges and crisis centres from the application of the proposed stop and search powers.

Should there be a Restriction on the Size of the Area Designated?

The Committee queried why proposed section 70A(1)(a) does not restrict the size of prescribed areas. For example, the provision could be modelled on proposed section 70B(3), which provides that the size of declared areas must not be larger than is reasonably necessary, having regard to the reasons for making the declaration.
Several submissions identified this lack of prescription as a problem, fearing that very large areas could be prescribed as a result.  

4.30 This element of the models considered by the Committee is listed at item 14 of the comparison table in Appendix 5. The Committee noted that in Victoria, the equivalent provision provides that a planned designated area “must not be larger than is reasonably necessary to enable members of the police force to effectively respond to the threat of violence or disorder”.  

4.31 The WA Police’s response to the Committee’s query was as follows:

*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.*  

(Underlining added)

4.32 The WA Police also offered the following reasons why it would be impracticable to prescribe large areas for the purpose of exercising the proposed powers:

- “We would not propose making the area broader than we needed or making the times wider than the information or the intelligence provided to us suggested. It would take a considerable amount of effort and work to identify the specific areas that we would propose to be declared.”  

- “I have no intention if this legislation is passed of using it to declare entire areas or entire suburbs that I cannot control because I cannot then supervise the police officers in it. I do not have the—Look, the other thing is that the

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537 For example, Submission No 13 from the SCALES Community Legal Centre, January 2010, p6; Submission No 16 from South Coastal Women’s Health Services, 18 January 2010, p1; Submission No 17 from the Pilbara Community Legal Service, 18 January 2010, p1, Submission No 18 from Ms Catherine Hall, 18 January 2010, p1; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p4; and Submission No 24 from Ms Gabrielle Jane Walker, received 10 February 2010, p1.

538 Section 10D(2) of the *Control of Weapons Act 1990* (Vic). The same restriction applies to unplanned designated areas: section 10E(3) of the *Control of Weapons Act 1990* (Vic).


resource implications of trying to cast a net over the whole of a Northbridge or over the whole of a particular suburb are too difficult and you also lose control and you lose accountability. ... What I would not do—I know that the legislation provides for it—but I can tell you as Commissioner of Police I will not be declaring the entire area of Northbridge or the entire city block or even seeking to do that.”

4.33 The Committee considered the above reasons to be inadequate. The WA Police was again attempting to assure the Committee that matters as important as this will be addressed internally and administratively, rather than be enshrined in legislation, which is more permanent, transparent and accountable. The Committee accepted that the Governor would not be making the decisions to prescribe areas. However, under our system of government, the Governor is bound to accept the advice of the Minister for Police, and therefore, the WA Police, as the relevant government department.

Committee Comment

4.34 The Committee was of the view that restrictions should be placed on the size of the area to be prescribed as a guide to the Executive Government when developing and drafting the relevant regulations, much like the other considerations suggested by the Committee in Recommendations 3, 4 and 5 above.

Recommendation 7: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended to restrict the prescription of an area under proposed section 70A(1)(a) of the Criminal Investigation Act 2006 to an area that is not larger than is reasonably necessary, having regard to the reasons for making the prescription.

Publicising Designation of Areas

4.35 This aspect of the Bill and the legislation from Western Australian and other jurisdictions considered by the Committee is summarised in item 19 of the comparison table in Appendix 5.

4.36 As discussed in paragraphs 2.61 to 2.63 in this Report, any designation of an area, whether it be by prescription or declaration, must be published in the Western Australian Government Gazette, although a failure to gazette a declaration does not

541 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, pp18-19.

affect the validity of the declaration.\footnote{Refer to paragraphs 4.117 to 4.122 in this Report for a discussion of this issue.} In addition, prescriptions of areas must also be tabled in Parliament. A number of submitters contended that this method of publicising the designation of an area will be ineffective.\footnote{For example, Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p7; Submission No 9 from Ms Adele Carles MLA, 18 January 2010, p3; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p5; and Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p5.} For example, the Youth Affairs Council of Western Australia stated that publication in the \textit{Western Australian Government Gazette} is:

\begin{quote}
inappropriate and inadequate. The majority of the public, particularly young people, are unaware of the very existence of the Gazette, let alone where it can be accessed. This will result in most people being unaware of the declaration of an area. We propose a media announcement followed by a published notice in \textit{The West Australian} as a more appropriate and fair method of informing the public about the declaration of an area.\footnote{Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p5.}
\end{quote}

4.37 Some additional methods of publicising the designation of an area which came to the Committee’s attention included erecting posters and other signage in and around the designated area, distributing leaflets, utilising the Internet, radio and television, using other print-based media, using the Short Message Service (or \textit{SMS}) available with mobile telephones, and spreading the information through word-of-mouth in, for example, non-government and community-based organisations and hostels.\footnote{For example, see Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p7; Submission No 9 from Ms Adele Carles MLA, 18 January 2010, p3; Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p5; Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p3.} The Committee noted that in Victoria, the equivalent provision requires a notice of the planned designation of an area to be gazetted and published in a newspaper. Among other things, the notice must include a map of the designated area.\footnote{Sections 10D(4) and (5) of the \textit{Control of Weapons Act 1990} (Vic).} Notice of the planned designation must be gazetted at least seven days before the designation commences.\footnote{\textit{Ibid}, section 10D(6).} There are no publication requirements for unplanned designations of areas.

4.38 Recommendation 8 of the ALS’ submission also suggested:

\begin{quote}
That the government … engage in a community education campaign about the proposed laws so that members of the public are aware of their rights and responsibilities when entering such areas, including
\end{quote}
specific funding to ALSWA to provide culturally appropriate
education to Aboriginal peoples [about the proposed powers]. 549

4.39 Similarly, the Law Society recommended that:

*If the Bill is enacted then provisions requiring wide publication in all forms of the media of prescribed/declared areas should also be enacted. There should also be wide publicity explaining the reasons for and effect of any new laws and the substantial changes to pre-existing laws, as most people would not be aware of the substantial obligations imposed by s70A.* 550

4.40 The Commissioner for Children and Young People was of the view that the *Western Australian Government Gazette* and the newspaper are not ways in which children and young people gather information. Instead, she suggested using the radio, the Internet and SMS. 551

4.41 However, Hon Giz Watson and the Commissioner for Children and Young People contended that, even with more meaningful or effective methods of publicising a designation, it will not be possible to notify everyone who may be affected. While Hon Giz Watson supported the use of signs, media alerts, the Internet and police officer visits to backpacker hostels as means of spreading the word about a designation, she submitted that some people will:

> nonetheless be unable to avoid public places within a prescribed/declared area eg people reliant on public transport that travels to/from/through the area, and people who live or work in the area. 552

4.42 With respect to disadvantaged children and young people:

*Ms Scott:* ... *There are a group of children and young people who would not, no matter what mechanism you applied, be aware that a particular area was subject to a stop and search. It might be by word of mouth in the evening if something was happening; there might be some word of mouth.*

...
Ms Scott: Could I suggest this: if the legislation progresses in relation to that and you wanted to develop a communication approach-strategy, then I would be happy to participate with those people who are developing that. I am sure there are a number of other organisations that would be happy to do that as well.

Hon ALISON XAMON: Can I have it confirmed that your testimony here is that there are simply some children who are so marginalised and who are so disadvantaged to whom conventional, or even attempts at various communication techniques would simply fail to reach; is that what you are telling us?

Ms Scott: Yes, that is correct. 553

4.43 The WA Police offered evidence that publicising the designation of an area will not necessarily be successful in notifying people:

Mr Dawson: ... the Victorian legislation invites, requires in fact, public notification some weeks [554] prior to that search taking place. So I think it is quite instructive to note that people were still carrying weapons even with the public knowledge put out there and they were aware that the searches were to take place.

... 555

Mr Dawson: If I can respond, one piece of information, which I understand Victoria are attempting to remedy, is that the public notification of when and where this is going to take place obviates the circumstances we just outlined earlier. If you are going to declare to, for instance, an organised criminal group that we are going to search at a particular point in seven days hence, it makes the whole thing a nonsense. 555

Ms Michelle Scott, Commissioner for Children and Young People, and Hon Alison Xamon MLC, Member of the Standing Committee on Legislation, Transcript of Evidence, 9 February 2010, p18.

553  On the contrary, notification of a planned designation of an area must be gazetted at least seven days before the designation commences: section 10D(6) of the Control of Weapons Act 1990 (Vic).

554  Mr Christopher Dawson, Deputy Commissioner, Western Australia Police, Transcript of Evidence, 10 March 2010, pp6 and 13.
so it may be that it [the advertisement] did not have much of an effect ...


Dr O’Callaghan: I do not know whether people will read it and take notice of it. If you say you are going to run an operation in Northbridge, say you publish it in the daily newspaper, The West Australian or something, my view would probably be that the type of people who would cause problems with weapons in Northbridge are probably not reading Wednesday’s West in the public announcements column. So you could publish them but I do not think it will have much effect unless for a certain group of the population who are interested in reading that type of stuff.\textsuperscript{556}

4.44 However, rather than clearly demonstrating the ineffectiveness of publicising the designation of an area, it is arguable that the Victorian experience to date shows that police stop and search powers which are similar to those proposed in the Bill are not necessarily successful in deterring people from carrying and concealing weapons illegally.\textsuperscript{557}

4.45 Despite its suggestion that publicising area designations is ineffective, the WA Police stated that it would still undertake some of the following methods of notification:

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.\textsuperscript{558}

4.46 The Police Union accepted the suggestion that there be a legislative requirement to advertise, for an extended period, the designation of an area.\textsuperscript{559}

\textsuperscript{556} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, pp46 and 47.

\textsuperscript{557} Victoria’s relatively short experience with similar police stop and search powers is discussed in paragraph 3.31 of this Report.

\textsuperscript{558} Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p6.

\textsuperscript{559} Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, p13.
Committee Comment

4.47 The Committee considered that the prescription of an area under the Bill should be publicised in a similar way to the publication of a notice of the planned designation of an area in Victoria (refer to Recommendation 8 below).

4.48 With respect to the declaration of an area under the Bill, the Committee recognised that declarations are designed to be a fast and flexible response to sudden incidents of violence or anti-social behaviour.\(^{560}\) However, the Committee was of the view that reasonable steps should still be taken by the WA Police to inform the public and residents in the declared area of the declaration as soon as is practicable (refer to Recommendation 9 below). In addition, the Committee considered that, at a minimum, a written record of a declaration should be published by way of public notice and other reasonable forms of advertising as soon as is practicable after the declaration is made (refer to paragraph 4.122 and Recommendation 22 later in this Report).

4.49 The Committee supported the Commissioner for Children and Young People’s suggestion that the Government develop a communication strategy to disseminate information effectively to children and young people (refer to Recommendations 8 and 9 below and to Recommendation 22 later in this Report).

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\(^{560}\) Refer to paragraphs 4.96 to 4.99 in this Report for a discussion about the rationale behind proposed section 70B.
Recommendation 8: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require notification that an area has been prescribed under proposed section 70A(1)(a) of the Criminal Investigation Act 2006 to be published in:

(a) a daily newspaper circulating generally in Western Australia;

(b) if the prescribed area is outside of the metropolitan area, in the most regular newspaper circulating generally within that area, if such a newspaper exists; and

(c) other media which may be accessed by children and young people,

either on the same day as the prescription is gazetted or as soon as is practicable after that.

The notification is to contain sufficient detail in relation to the prescription relevant to the form of media utilised, ensuring that the public is able to access at least the following details from one central information point:

(d) A description of the prescribed area.

(e) A map of the prescribed area.

(f) The stop and search powers which police officers are authorised to exercise in the prescribed area while the prescription is in force.

(g) The period of operation of the prescription.

Notices should be couched in a form, and disseminated in a manner, which makes the information accessible to children and young people.

Recommendation 9: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require reasonable steps to be taken by the Western Australia Police to inform the public and residents in a declared area of the declaration, and its ramifications, as soon as is practicable after the area is declared under proposed section 70B of the Criminal Investigation Act 2006. The steps chosen to inform the public and residents in a declared area should be couched in a form, and disseminated in a manner, which makes the information accessible to children and young people.
Proposed Section 70A(2)

4.50 This proposed section provides that regulations prescribing an area for the purposes of the proposed powers can only be in force for up to 12 months.

Commencement of Prescription of an Area

4.51 Regulations prescribing an area could commence as early as the day on which they are gazetted, although a provision in the regulations could provide for a later commencement date. This means that the prescribing regulations will generally commence operation on, or very soon after, the day of publication in the Western Australian Government Gazette. Gazettal of the regulations just before or during a long break in Parliament sittings will maximise the amount of time the regulations will be in force before Parliament has had an opportunity to scrutinise the regulations.

4.52 In the worst case scenario, the prescribing regulations could be gazetted on the first day of the summer break in Parliament sittings, say, in mid to late December, and not come under parliamentary scrutiny (because they would not have been tabled) until sittings resume in late February or early March the next year. That would leave the prescription of an area operative but unscrutinised for two and a half to three months, by which time, the prescription may have ceased. If it happens that the prescribing regulations are still in force when Parliament sittings resume and either House resolves to disallow the regulations, the instrument would cease to have effect on the day of the disallowance but the disallowance would not affect the validity of anything done, or the omission of anything, in the meantime.

4.53 This aspect of the Bill and the other models considered by the Committee is summarised in item 20 of the comparison table in Appendix 5. Of these models, Victoria is unique in delaying the commencement of the declarations of planned designated areas: the planned designation of an area takes effect, at the earliest, seven days after the publication of the notice of the designation in the Victorian Government Gazette.

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561 Section 41 of the Interpretation Act 1984.
562 Generally, regulations must be tabled in Parliament within six sitting days after gazetted. Once the regulations are tabled, the Parliament usually has 14 sitting days in which to scrutinise the regulations and, if necessary, give notice of motion to disallow the regulations: ibid, section 42.
563 A failure to table the prescribing regulations within the usually required period of six sitting days after gazetted would result in the automatic disallowance of the regulations: ibid, section 42(2).
564 In the Legislative Council, the motion for disallowance must be resolved within 11 sitting days after the motion for disallowance is moved: Legislative Council Standing Order 153(c).
565 Section 42(2) of the Interpretation Act 1984.
566 Section 10D(6) of the Control of Weapons Act 1990 (Vic).
The Committee considered other options in delaying the commencement of designations by prescription, such as amending proposed section 70A so that:

- the prescribing regulations do not commence operation until after the expiration of the period for parliamentary disallowance. This option would provide the Parliament with an opportunity to disallow the regulations after they are made but before they come into effect.

An example of this mode of parliamentary scrutiny is section 56 of the Planning and Development Act 2005, which relates to the disallowance procedure for region planning schemes. Region planning schemes are required to be published in the Western Australian Government Gazette\textsuperscript{567} and tabled in each House of Parliament within six sitting days after gazettal\textsuperscript{568}. Each House then has 12 sitting days in which to give notice of motion for disallowance.\textsuperscript{569} The region planning scheme would only commence operation once it is not longer subject to disallowance.\textsuperscript{570}

- the prescribing regulations do not commence operation until a draft of the regulations has been approved by both Houses of Parliament. An example of this mode of parliamentary scrutiny is sections 5, 6 and 6B of the Consumer Credit (Western Australia) Act 1996, which relates to the approval process for amending the Consumer Credit (Western Australia) Code and the Consumer Credit (Western Australia) Code Regulations. This option would provide the Parliament with the opportunity of approving the regulations before they are made and before they come into effect. Therefore, it would provide a higher level of parliamentary scrutiny than what is proposed by the Bill and the option considered immediately above.

The Committee noted that the prescribing regulations, even if proposed section 70A is amended to incorporate one of the two options discussed above, would still fall within the terms of reference of the JSCDL.\textsuperscript{571} unless the Bill or the Act was amended to provide otherwise. The WA Police’s view on the proposition of delaying the commencement of the prescription of areas, for example, until after the Parliament’s disallowance process is complete, was that:

\textsuperscript{567} Section 41(1)(a) of the Interpretation Act 1984.

\textsuperscript{568} Section 56(1) of the Planning and Development Act 2005.

\textsuperscript{569} Ibid, section 56(2).

\textsuperscript{570} Ibid, section 56(3).

\textsuperscript{571} Refer to paragraph 4.11 in this Report for a discussion about the role of the Joint Standing Committee on Delegated Legislation.
This could be problematic if there is a need to enact Regulations and Parliament is not sitting at the relevant time.\textsuperscript{572}

4.56 However, this should only be a problem for extended sitting breaks, such as the winter sitting break, usually from July to mid August, and the summer sitting break, usually from December to February. As these periods usually last for approximately one and a half to three months, the Committee considered that the option to declare an area under proposed section 70B for up to two months could be utilised during a sitting break when necessary. The Committee understood that the option to declare an area was drafted into the Bill principally to allow for areas to be designated very quickly and flexibly in emergency or sudden situations.\textsuperscript{573}

| Committee Comment |

4.57 Given the unusual nature of the proposed stop and search powers, the Committee was of the view that delaying the commencement of a designation by prescription until after the Parliament has had an opportunity to scrutinise the regulations would give greater transparency to the use of the powers and foster public confidence that these powers will be used responsibly. However, although the opportunity for parliamentary scrutiny before the commencement of a prescription is preferred, the Committee recognised that this may not be practical from a police operational perspective. The Committee noted that the equivalent Victorian legislation imposes a seven-day delay in the commencement of a planned designation post gazettal.

Recommendation 10: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that a prescription of an area under proposed section 70A(1)(a) of the \textit{Criminal Investigation Act 2006} takes effect seven days after the publication of the regulations effecting the prescription in the \textit{Western Australian Government Gazette}.\textsuperscript{572}

Maximum Period of Prescription - Is 12 Months too Long?

4.58 This aspect of the Bill and the other models considered by the Committee is summarised in item 10 of the comparison table in Appendix 5. The maximum period of prescription of an area pursuant to proposed section 70A(2) of the Act is much longer than the maximum periods prescribed in the other models,\textsuperscript{574} including anti-

\textsuperscript{572} Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p6.

\textsuperscript{573} Refer to paragraphs 4.96 to 4.99 in this Report for a discussion about the rationale behind proposed section 70B.

\textsuperscript{574} Except for two of the three heads of power under section 69 of the \textit{Criminal Investigation Act 2006} (prescribed public places and public places designated by the searching police officer), which appear to have unlimited timeframes.
terrorism legislation, most of which are only a matter of hours or days. In the equivalent provision in Victoria, the planned designation of an area, except in relation to events,\textsuperscript{575} is valid for up to only 12 hours. The period of operation of the Victorian Chief Commissioner of Police’s declaration:

\textit{must be not longer than is reasonably necessary to enable members of the police force to effectively respond to the threat of violence or disorder ...}.\textsuperscript{576} (underlining added)

4.59 A number of submissions contended that the maximum period of 12 months is too long.\textsuperscript{577} For example, the SCALES Community Legal Centre was of the view that:

This timeframe demonstrates that it is not intended to be used for particular events or risks but rather as a way of allowing arbitrary search powers [to be used] more broadly.\textsuperscript{578}

4.60 The Law Society endorsed Victoria’s timeframe model\textsuperscript{579} and stated further that:

The only justification for s70A has been on the basis of searching for weapons in entertainment precincts such as Northbridge or during school leavers [sic] week. Given this, the Society believes that the maximum period for prescription should be 1 month and for declaration, 7 days.\textsuperscript{580}

\textsuperscript{575} The planned designation of an area in relation to an event (for example, music festivals and sporting and other events) is not limited to a maximum duration of 12 hours. Such designations may also operate for more than one period as long as each period occurs during the event: sections 10D(3), (3A) and (3B) of the \textit{Control of Weapons Act 1990} (Vic). These amendments were effected by the \textit{Control of Weapons Amendment Act 2010} (Vic) and commenced on 22 August 2010.

\textsuperscript{576} Section 10D(3) of the \textit{Control of Weapons Act 1990} (Vic).

\textsuperscript{577} For example, Submission No 13 from the SCALES Community Legal Centre, January 2010, p6; Submission No 16 from South Coastal Women’s Health Services, 18 January 2010, p1; Submission No 17 from the Pilbara Community Legal Service, 18 January 2010, p1, Submission No 18 from Ms Catherine Hall, 18 January 2010, p1; and Submission No 24 from Ms Gaibrielle Jane Walker, received 10 February 2010, p1.

\textsuperscript{578} Submission No 13 from the SCALES Community Legal Centre, January 2010, p6.

\textsuperscript{579} Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p3; and Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 8 March 2010, p2.

\textsuperscript{580} Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p3.
4.61 The WA Police advised the Committee that:

*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.*\(^{581}\)

### Committee Comment

4.62 Given the concerns about the potential prescription of an area for up to 12 months and the absence of evidence to support a necessity for an area to be prescribed for that period, the Committee was of the view that the Bill should impose a shorter maximum period of prescription. A majority of the Committee (including Hon Mia Davies) considered that the maximum period of prescription should be one month. A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon) thought that it should be a maximum of 12 hours, as per the Victorian legislation.

4.63 The following recommendation must be read in conjunction with the Committee’s Recommendation 12, which relates to cyclical prescriptions of an area.

### Recommendation 11: A majority of the Committee (including Hon Mia Davies MLC) recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70A(2) of the *Criminal Investigation Act 2006* authorises the regulations prescribing an area to be in force in relation to that area for a non-renewable maximum period of one month.

### Minority Recommendation B: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70A(2) of the *Criminal Investigation Act 2006* authorises the regulations prescribing an area to be in force in relation to that area for a non-renewable maximum period of 12 hours.

### Cyclical Prescription of an Area

4.64 Another concern which came to the Committee’s attention is the potential for an area to be continuously prescribed for the purposes of exercising the proposed powers.\(^{582}\) This could be achieved by making a new set of prescribing regulations to replace existing, and soon to expire, prescribing regulations. There is nothing in the Bill which prevents this continuous re-prescription from occurring.

\(^{581}\) Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p6.

\(^{582}\) Submission No 21 from Mr Vincent Sammut, 21 January 2010, p1.
This trend of cyclical designation of stop and search areas has been observed in the United Kingdom’s use of Section 60 Powers and Section 44 Powers. For example, Professor Marian FitzGerald noted that:

> It also appeared that forces were starting to find ways around the 24 hour time limit by effectively re-authorising s60 on an almost ongoing basis but rotating it around the same area such that locals would be unaware from one night to the next whether they were in a street where s60 applied or whether the police were only supposed to search them if they had reasonable grounds for doing so.

Further, researchers for the United Kingdom’s Home Office found that:

> Across a range of settings, when [stops and] searches are carried out more often they tend to be less productive. However, where they are used in a targeted and intelligence led way, this does not necessarily follow.

The Commissioner of Police advised the Committee that he does not wish to overuse the proposed powers or have them incorporated into daily policing, as he was recently told that this had become the case in London’s Metropolitan Police Service with respect to the Section 60 Powers.

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The Committee noted that the equivalent provisions in Victoria provide that a declaration for a planned designated area cannot take effect until after a ten-day period after a previous planned designation of the area has ended. Refer to item 13 of the comparison table in Appendix 5 for a summary of this aspect of the Bill and the other models considered by the Committee.

The Committee was of the view that regulations prescribing an area under proposed section 70A(1)(a) of the Act should not be gazetted for at least ten days after a previous prescription of the area has ended.

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583 For example, see the discussion in paragraph 3.60 in this Report.
584 Professor Marian FitzGerald, Visiting Professor of Criminology, University of Kent, Background Note: Analyses of MPS knife crime data and the use of s60 searches, 2 February 2010, p3.
586 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p38.
587 Section 10D(8) of the Control of Weapons Act 1990 (Vic).
Recommendation 12: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that regulations prescribing an area under proposed section 70A(1)(a) of the Criminal Investigation Act 2006 cannot be gazetted for at least ten days after a previous prescription of the area has ended.

Committee Comment

4.70 The Committee observed that if Minority Recommendation B and Recommendation 12 were to be adopted, an area could be prescribed for no more than approximately 18 days in a 12-month period.

Proposed Section 70A(3)

4.71 This proposed section provides that regulations prescribing an area may be “expressed to apply at all times or at times specified in the regulations.” (underlining added) The WA Police could not advise the Committee as to what times are likely to be specified, saying:

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.  

Use of the Word ‘Specified’

4.72 When the Committee queried why the verb ‘specified’ is used instead of ‘prescribed’ the WA Police explained that:

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

4.73 This appeared to the Committee to be an unusual and unsatisfactory response given that ‘prescribed’ is defined in the Act as follows:

In this Act, unless the contrary intention appears -

... 

prescribed means prescribed by regulations made under this Act.

589 Ibid.
590 Section 3(1) of the Criminal Investigation Act 2006.
One fundamental rule of statutory interpretation is that different words, when used in the same legislation, have different meanings unless a contrary intention is evident.\(^{591}\)

The Committee addressed this issue in its Seventh Report, stating:

> The Committee understands that ‘prescribe’, when used in the context of providing a subsidiary legislation-making power, requires the matter which is to be prescribed to appear in, and be dealt with by, the text of that subsidiary legislation. For example, where an Act provides that a matter is to be prescribed by regulations, the resulting regulations would be exceeding their legislative power if they delegated the matter to the decision of a public servant [or any other person or body]. While the regulations would be disallowable and subject to publication and tabling requirements, the decision of that public servant (made under delegated legislative authority) would not normally be required to be tabled in Parliament, nor would it normally be disallowable.\(^{592}\)

The JSCDL and the Standing Committee on Uniform Legislation and Statutes Review have also commented on the ramifications of primary legislation requiring matters to be ‘specified’ or ‘provided for’ (or other similar term), rather than ‘prescribed’, when considering the need for effective parliamentary control over delegated legislative powers.\(^{593}\)

The Committee was concerned that, unless the verb ‘prescribed’ is used, the proposed section may be interpreted to mean that the prescribing regulations may be drafted so that the determination of the times when the regulations are operative can be subdelegated to another person or body. For example, the current wording of the proposed section may allow the prescribing regulations to provide that the regulations apply at the times which are determined by the Commissioner of Police. The operative times of the prescription, and therefore, the times when the proposed stop and search powers can be used in the area, would then not be required to be gazetted or tabled in Parliament and would not be disallowable by the Parliament.


Committee Comment

4.77 The Committee considered that, in the interests of maintaining:

- parliamentary scrutiny over the exercise of delegated legislative power;
- clarity for the public about when the proposed stop and search powers can be used; and
- transparency and accountability in the use of the proposed stop and search powers,

it would be best to ensure that the times of operation of an area prescription are always stated in the prescribing regulations. Accordingly, the Committee was of the view that proposed section 70A(3) should be amended to replace the word ‘specified’ with the word ‘prescribed’.

Recommendation 13: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that the word ‘specified’ in proposed section 70A(3) of the Criminal Investigation Act 2006 is replaced by the word ‘prescribed’.

Proposed Section 70A(4)

4.78 This is the provision which will give police officers the proposed stop and search powers.

Basic Search

4.79 The Bill contemplates that the police will be able to conduct a basic search of a person when exercising the proposed stop and search powers. For example, a basic search includes a frisk search of a person. Paragraphs 2.12 to 2.21 in this Report discuss what is involved in a basic search and paragraphs 2.49 to 2.59 discuss how a proposed stop and search will be conducted under the Bill.

Committee Comment

4.80 The Premier and Minister for Police have publicly stated that the Government has in
mind something short of frisking or other bodily contact as the routine search proposed under the Bill.\textsuperscript{594} That being so, a majority of the Committee (including Hon Mia Davies) thought that it would be desirable for the Bill to be amended to reflect that position, as follows: the Bill should be amended to restrict a search of a person under the Bill to scanning with electronic or mechanical devices, as provided for in section 63(1)(a) of the Act. The searching police officer should be permitted to submit that person to a more intrusive level of basic search, as defined in sections 63(1)(b), (c) and (d) of the Act, only if some object consistent with being a weapon, and for which no satisfactory explanation is provided, is detected upon the person.

4.81 A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon) was of the view that, in line with the undertakings from the Premier and the Minister for Police, searches of people should be limited to only metal detector arches and wands. The power to conduct a more intrusive level of basic search should only be available if the result of the search conducted with a metal detector or wand gives the officer grounds for reasonable suspicion under section 68 of the Act.

Recommendation 14: A majority of the Committee (including Hon Mia Davies MLC) recommends that the Criminal Investigation Amendment Bill 2009 be amended so that a search of a person pursuant to the proposed stop and search powers is restricted to:

(a) scanning with electronic or mechanical devices, as provided for in section 63(1)(a) of the Criminal Investigation Act 2006; and

(b) a more intrusive level of basic search, as defined in sections 63(1)(b), (c) and (d) of the Criminal Investigation Act 2006, only if some object consistent with being a weapon, and for which no satisfactory explanation is provided, is detected upon the person.

Minority Recommendation C: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended so that any searches of people conducted pursuant to the proposed stop and search powers are limited to the use of metal detector arches and wands and that any subsequent searches be undertaken only with reasonable suspicion under section 68 of the Criminal Investigation Act 2006.

\textsuperscript{594} For example, Hon Colin Barnett MLA, Premier, \textit{Transcript - 6PR Mornings with Simon Beaumont}, 12 October 2009, p7; Hon Colin Barnett MLA, Premier, \textit{Transcript - 6PR Mornings with Simon Beaumont}, 11 November 2009, p1; Hon Colin Barnett MLA, Premier, \textit{Transcript - Stateline WA}, 26 February 2010, p2; Hon Colin Barnett MLA, Premier, Parliament of Western Australia, Legislative Assembly, \textit{Parliamentary Debates (Hansard)}, 11 November 2009, p8835; Hon Robert Johnson MLA, Minister for Police, Parliament of Western Australia, Legislative Assembly, \textit{Parliamentary Debates (Hansard)}, 11 November 2009, p8860, and 12 November 2009, pp8946, 8953, 8955 and 8956. See also, paragraphs 2.51 to 2.52 in this Report, where some of these pronouncements are discussed.
4.82 The Committee observed that this proposed section does not indicate what items the searching police officer is permitted to search for when exercising the proposed stop and search powers. This differs from the majority of the stop and search powers provided in the other models which were considered by the Committee (this aspect of the Bill and the legislation from Western Australia and other jurisdictions considered by the Committee is summarised in item 3 of the comparison table in Appendix 5). For example:

- the equivalent stop and search provisions in Victoria authorise the police officers to search for “weapons”; and

- a police officer conducting a stop and search under section 69 of the Act is authorised to search for “any thing that the officer reasonably suspects does or may endanger the place or people who are in or may enter it”. Although this category of items is very wide, section 69 is still more specific about what may be the object of a search than proposed section 70A(4).

4.83 However, the proposed section prescribes what may be seized during a search (refer to paragraphs 4.87 to 4.92 in this Report).

4.84 The WA Police provided the following reasons why it is not necessary, nor advisable, to prescribe the object of the search:

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”.

4.85 The Law Society was of the view that, if the Bill is passed, the reasons for the search should be prescribed because this would be a “check on otherwise completely unfettered police power.” The Law Society endorsed the Victorian approach for a ‘weapons search’, arguing that the only reason which could attach to such an extreme

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595 Sections 10G(1) and 10H(1) of the Control of Weapons Act 1990 (Vic).
596 Section 69(6) of the Criminal Investigation Act 2006.
598 Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p1.
police power is a search for weapons,\textsuperscript{599} and “given the Government’s attempted public justification of the need for the legislation by reference to weapons in Northbridge.”\textsuperscript{600}

4.86 When the Committee queried the possibility of limiting the proposed search powers to a search for weapons, the WA Police had the following reservations:

\begin{quote}
there are other things that we may need to search for. One of the things we have already spoken about today is the carriage of implements that can damage public property or create significant damage. I would not necessarily agree to limiting the bill to a weapon or a specific implement.\textsuperscript{601}
\end{quote}

\begin{tcolorbox}
Recommendation 15: The Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70A(4) of the Criminal Investigation Act 2006 specifies that the searching police officer may search for any thing that the officer reasonably suspects does or may endanger the place or people who are in or may enter it.
\end{tcolorbox}

\textbf{What Items can be Seized?}

4.87 Proposed sections 70A(4)(c) and (d) provide that the following items may be seized during a search being conducted under the proposed stop and search powers:

\begin{itemize}
  \item Subsection (c): “\textit{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}”; and
  \item Subsection (d): “\textit{any thing relevant to an offence}”.
\end{itemize}

4.88 The phrase ‘thing relevant to an offence’ is defined in section 5 of the Act, as follows:

\begin{quote}
\textit{(1) For the purposes of this Act, a thing is a thing relevant to an offence if it is reasonably suspected that —}
\end{quote}

\begin{quote}
\textit{(a) the thing has been, is being, or is intended to be used for the purpose of committing an offence;}
\end{quote}

\textsuperscript{599} \textit{Ibid.}
\textsuperscript{600} Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 8 March 2010, p2.
\textsuperscript{601} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p57.
(b) the thing has been obtained by the commission of an offence;

(c) an offence has been, is being, or may be committed in respect of the thing;

(d) the thing is or may afford —

(i) evidence relevant to proving the commission of an offence or who committed an offence;
or

(ii) evidence that tends to rebut an alibi.

(2) For the purposes of this Act, a thing relevant to an offence may be material or non-material, animate (other than human) or inanimate.

Example: the distance between 2 things or the visibility from a window are non-material things.

4.89 A number of submitters argued that the descriptions of the things which may be seized are too wide, capturing items which would not normally, and should not, be seen as items which are illegal to carry:

- Mr Johnson Kitto suggested that the phrase ‘may endanger the place or people’ in proposed section 70A(4)(c) is “hopelessly wide and vague” and may result in some of the following things being seen as items which may be seized:

  pamphlets published by a political lobby, calling for mass demonstrations, a boycott of particular places or institutions, civil disobedience, or any other democratic right.

  ...

  Clearly the legislation is presently so poorly drafted that it is not limited to genuinely harmful articles such as firearms, weapons, and drugs. Presently, it may be “anything”. A pamphlet advising people of their rights in relation to the police, could foreseeably be considered by a police officer to be such a thing capable of being lawfully seized, effectively putting an end to any kind of democratic, lawful public demonstration, political rally, or march.602

602 Submission No 15 from Mr Johnson Kitto, 15 January 2010, p7.
The Youth Affairs Council of Western Australia thought that the phrase ‘thing relevant to an offence’ needs clarification:

[Pursuant to the effects of the Criminal Code Amendment (Graffiti) Act 2009, young adults] found with markers or any other ‘graffiti implement’ will not only be charged for possession of an object ‘relevant to an offence’ but may also be wrongfully accused of graffiti or vandalism, merely for possessing a newly criminalised art tool.

... we would call on the State Government to publicly announce exactly what objects may be considered ‘relevant to an offence’ - aside from the obvious weapons and drugs - and to communicate the likely penalties faced by young people should they be caught with such an object.

Mr Vincent Sammut submitted that, under proposed section 70A(4)(c):

tools, sports equipment or any other item which could conceivably be used to harm someone ... could be seized and held and only surrendered to the owner when “practicable” - a rubbery term.

The Committee agreed that the descriptions of items which can be seized appear to be very broad and obtained some advice from the WA Police as to the type of things which may be included. The WA Police’s response related specifically to the description in proposed section 70A(4)(c) but the Committee understood it would be generally applicable to both categories of items which can be seized:

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”.

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603 See also, the Criminal Law Amendment (Simple Offences) Act 2004 and sections 216, 444, 445 and 446 of The Criminal Code.
604 Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p4.
605 Which refers to the seizure of “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”.
606 Submission No 21 from Mr Vincent Sammut, 21 January 2010, p3.
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.\textsuperscript{607}

\subsection*{Committee Comment}

\subsubsection*{4.91} A majority of the Committee (including Hon Mia Davies) considered that the concerns of submitters critical of the legislation are unfounded. Proposed section 70A(4)(d) merely reflects the power to seize items found during the course of a lawful search in section 68(1)(b) and must in any case be read subject to section 146 of the Act. Proposed section 70A(4)(c) goes further, to empower a police officer to seize anything the officer reasonably suspects does or may endanger the place or people who are in or may enter it and is equivalent to the existing power under section 69(6). The proposed powers of seizure do not criminalise the carriage of, or render subject to seizure, otherwise lawful items in the manner suggested by Mr Kitto. If the Committee’s Recommendation 15 (regarding the objective of the search) is adopted, there is even less reason for any further amendment to proposed section 70A(4).

\subsubsection*{4.92} A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon) found that the concerns of the submitters had some validity. The Bill extensively modifies the definition of a ‘lawful search’ by removing the requirements of both reasonable suspicion and consent (and in the absence of a requirement for a search warrant and arrest). Given that what constitute threshold requirements of searches under existing legislation are being removed by the Bill, the minority of the Committee finds that some restrictions and/or precise definitions of what items might be considered ‘relevant to an offence’ and what things ‘may endanger a public place or people who are in or may enter it’ should be provided. However, if the definition of a search was amended in line with Minority Recommendation C then such restrictions would not be required.

\textsuperscript{607} Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p7.
Minority Recommendation D: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that, if Minority Recommendation C is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended so that it inserts some restrictions and/or precise definitions of:

(a) what items might be considered ‘relevant to an offence’; and

(b) what things ‘may endanger a public place or people who are in or may enter it’,

into the Criminal Investigation Act 2006 for the purposes of proposed section 70A of that Act.

Proposed Section 70B(1)

4.93 This is the provision which will empower the Commissioner of Police, with the Minister for Police’s approval, to declare an area for the purpose of exercising the proposed stop and search powers.

‘Commissioner’ is not Defined in the Act

4.94 Proposed section 70B uses the term ‘Commissioner’, presumably in reference to the Commissioner of Police. However, the term is not defined in the Bill, the Act, or the Interpretation Act 1984, although the Act uses the phrase ‘Commissioner of Police’. The Committee queried the use of the term instead of the phrase ‘Commissioner of Police’, resulting in the following exchange:

Mr Penn: I have discussed this matter with the Parliamentary Counsel. It appears to be an oversight on our part in the bill that has been drafted. There are other references in the Criminal Investigation Act to the commissioner, but using the full term “Commissioner of Police”. The bill refers only to “commissioner”, so I have had discussions with the Parliamentary Counsel and it is prepared to draft an amendment to clarify that it is the Commissioner of Police and clarify what is meant by “Deputy Commissioner” in that section. At this stage, I have not sought the approval of the minister to draft it; Parliamentary Counsel will not draft it until it has the approval of the minister, but it is prepared to draft something and knows what needs to be drafted. They just need the formal approval of the minister to do so.

The CHAIRMAN: Will that be a definitional provision in the principal act?
Mr Penn: It may not need to be, because elsewhere in the act it uses the full term and in other sections it talks about the Commissioner of Police. It may be that in proposed section 70B where there is reference to “commissioner” we might say “Commissioner of Police”, or we might insert a definition at the end of section 70B to say “commissioner” means “Commissioner of Police” and “deputy commissioner” means “Deputy Commissioner of Police”. We have not actually decided what is best form to achieve that amendment, but we are aware that the amendment needs to be drafted to just to clarify the definition. 608

Committee Comment

4.95 The Committee agreed that there is a need to amend the Bill, particularly in clause 5, proposed section 70B, to clarify the meaning of the words ‘Commissioner’, ‘Deputy Commissioner’ and ‘Assistant Commissioner’ and also to ensure that the use of terminology is consistent throughout the Act.

Recommendation 16: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to clarify the meaning of the words ‘Commissioner’, ‘Deputy Commissioner’ and ‘Assistant Commissioner’ and to ensure that the use of terminology is consistent throughout the Criminal Investigation Act 2006.

Why is this Declaration Power Necessary?

4.96 The WA Police told the Committee that the power to make declarations under proposed section 70B(1) is designed to be a fast and flexible response to sudden incidents of violence or anti-social behaviour; that is, situations for which regulations would not be practicable. Some of these comments are extracted here for the information of the House:

- “There may be occasions based upon levels of offences committed in a particular area—there might have been a recent increase in violent offences in a particular area—and there is a need for police to act quickly. There could be a particular event that is taking place that we have only just become aware of, and we feel there is a need because of the intelligence we have received that we want to exercise those powers. There may not be sufficient time to get the necessary regulations drafted, enacted and promulgated. That

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608 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, and Hon Michael Mischin MLC, Chair, Standing Committee on Legislation Transcript of Evidence, 10 March 2010, pp57-58.
is why we have included a provision for the commissioner, with the approval of the minister, to declare an area.\textsuperscript{609}

- “if we believed that there is imminent danger of harm being caused to a particular community. So, you know, serious weapons use, some immediate information that something is going to occur today, this evening, and people could be subject to harm and we have substantial intelligence to prove that. That would be the sort of circumstance where you would want an immediate response.

... Because we do not have time to go through the normal gazettal process, yes.\textsuperscript{610}

... the most acute situations we face probably have the potential to do the most harm to people in the short term. I think the commissioner needs to be able to ask for a very speedy declaration in extreme circumstances, I suppose, where there is significant risk of harm to the community.\textsuperscript{611}

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<th>Committee Comment</th>
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<td>4.97 The Committee acknowledged that two separate circumstances may arise for which the proposed powers can be used. The first entails a strategic decision to put measures in place to curb anti-social behaviour and the carriage of weapons in public places. The second requires a swift response by the police in order to ensure public safety.</td>
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<td>4.98 In the Committee’s view, the first circumstance is properly handled by designating areas by prescription in regulations pursuant to proposed section 70A(1)(a).</td>
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<td>4.99 A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) considered that the second circumstance is satisfactorily covered by the powers already available to police under existing section 69 of the Act, particularly when the powers are invoked pursuant to sections 69(2) and 69(1)(c). A minority of the Committee was of the view that the declaration-making power in proposed section 70B(1) is required to address the second circumstance.</td>
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\textsuperscript{609} Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, \textit{Transcript of Evidence}, 2 February 2010, p14.

\textsuperscript{610} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, p52.

\textsuperscript{611} \textit{Ibid}, p53.
Recommendation 17: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended to delete proposed section 70B of the Criminal Investigation Act 2006.

Parliamentary Scrutiny of Declaration of Areas

4.100 In proposed section 70B(1), the Parliament will delegate the power to declare areas in which the proposed stop and search powers can be used to the Executive Government; that is, the Commissioner of Police and the Minister for Police. As with designating areas through regulations, before passing proposed section 70B(1), the Parliament should consider:

- in the first instance, whether it is appropriate to delegate this declaration power to the Executive Government; and if so,

- what sort of parliamentary oversight should be given to the Executive Government’s declaration of areas under proposed section 70B(1).

4.101 As declarations made by the Commissioner of Police do not fall within the definition of ‘regulations’ under section 42 of the Interpretation Act 1984, they would not be required to be tabled in Parliament and they would not be disallowable by the Parliament unless the Bill is amended to expressly provide for tabling and disallowance. Although parliamentary scrutiny is not required for declared areas as it is for prescribed areas, proposed section 70B(1) does require the Commissioner of Police to obtain the approval of the Minister for Police when making the declaration. This approval requirement appeared to be at least consistent with, if not more demanding than, the other models considered by the Committee in this inquiry (see item 8 of the comparison table in Appendix 5).

4.102 Some submitters held the view that proposed section 70B(1) does not offer sufficient protection against the potential misuse of arbitrary powers. For example, the Youth Affairs Council of Western Australia stated that proposed section 70B is:

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612 Under clause 5 of the Criminal Investigation Amendment Bill 2009; proposed section 70A(1)(a) of the Criminal Investigation Act 2006.

613 Refer to paragraphs 4.9 to 4.14 in this Report.

614 Including sections 69(1)(b) and (2) and (1)(c) of the Criminal Investigation Act 2006.

615 For example, Submission No 8 from the Australian Association of Social Workers, Western Australia Branch, 15 January 2010, p2; Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p5; and Submission No 26 from Mr Simon Woodings, 24 February 2010, p1.
extraordinary in the power that it grants an unelected individual, while reducing the elected representative’s role to that of a ‘rubber stamp’. We ask that proper Parliamentary checks and balances are applied to the declaration of an area to ensure that the Commission and Minister are not wielding undue influence over public life.\footnote{Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p5.}

4.103 However, the Committee noted the Law Society’s comment that:

Whilst independence from Government would improve prescription and declaration, it is difficult to see how such a mechanism might work without the creation of a new and specific executive position. Prescription and declaration are arguably not judicial functions and should not be done through a court process.\footnote{Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p3.}

4.104 When the Committee queried the rationale behind requiring the Minister for Police, rather than a person or body independent of the Government, to approve the declaration of an area, the WA Police indicated that this feature of the Bill had been initiated by a Cabinet decision:

Without going into too much detail about issues of cabinet confidentiality, there were matters that were decided upon that were not matters that WA Police brought. We are not able to advise the committee of the reason for that particular matter being inserted into the legislation ... They are not matters that we are in a position to comment on as to the reasoning behind why those provisions were inserted. That is why, in relation to our previous response to the questions, we indicated to the committee that they are matters that the committee may need to take up with the Minister for Police.\footnote{Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 2 February 2010, p58.}
table any declarations in Parliament. The danger of prescribing some form of ‘independent’ person or authority to approve a Commissioner’s recommendation instead of the Minister is not only a duplication of responsibilities but divorces the Minister from being politically accountable for the declaration.

4.106 However, a majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) was of the view that the designation of areas should only occur through prescription by regulations (refer to paragraphs 4.96 to 4.99 in this Report), in which case the question of parliamentary scrutiny of declarations does not arise.

Recommendation 18: The Committee recommends that, if Recommendation 17 is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended to require the responsible Minister to table in both Houses of Parliament any declarations made pursuant to proposed section 70B(1) of the Criminal Investigation Act 2006 as soon as is practicable after the declarations are made.

What Areas are Expected to be Declared?

4.107 This issue is discussed at paragraph 4.16 in this Report.

Should there be Prescribed Factors to Guide Declaration of an Area?

4.108 This issue is discussed in paragraphs 4.17 to 4.28 in this Report.

Proposed Section 70B(4)

Maximum Period of Declaration - Is 2 Months too Long?

4.109 This aspect of the Bill and the other models considered by the Committee is summarised in item 10 of the comparison table in Appendix 5. Under proposed section 70B(4)(c), the maximum period of declaration of an area is 2 months, which is much longer than the maximum periods prescribed in the other models, including anti-terrorism legislation, most of which are only a matter of hours or days. In the equivalent provision in Victoria, the unplanned designation of an area is valid for up to only 12 hours. The period of operation of the Victorian Chief Commissioner of Police’s declaration:

must be not longer than is reasonably necessary to enable members of the police force to effectively prevent or deter the unlawful
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possession, carriage or use of weapons or[^619] respond to the threat of violence or disorder ....[^620] (underlining added)

4.110 The ALS contended that the maximum period of 2 months is too long, recommending that proposed section 70B(4)(c) be amended to limit the period of a declaration to a maximum of 48 hours.[^621] The Law Society endorsed Victoria’s timeframe model[^622] and stated further that:

The only justification for s70A has been on the basis of searching for weapons in entertainment precincts such as Northbridge or during school leavers [sic] week. Given this, the Society believes that the maximum period for prescription should be 1 month and for declaration, 7 days.^[^623]

4.111 The WA Police advised the Committee that:

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.^[^624]

Committee Comment

4.112 A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) was of the view that the designation of areas should only occur through prescription by regulations (refer to paragraphs 4.96 to 4.99 in this Report). Therefore, the question of the maximum period of declaration does not arise. However, in the event that proposed section 70B proceeds, the majority considered that the maximum period for which a declaration may be in force should be 48 hours, consistent with declarations made under section 69(2) of the Act.

4.113 A minority of the Committee considered that the maximum period for which a

[^619]: The phrase “prevent or deter the unlawful possession, carriage or use of weapons or” was inserted on 22 August 2010 to broaden the criteria for declaring unplanned designated areas: inserted by section 13(4) of the Control of Weapons Amendment Act 2010 (Vic). The additional criteria will cease to have effect on 22 August 2013: sections 22(4) and 2(3) of the Control of Weapons Amendment Act 2010 (Vic). The expiry of these criteria will allow for a review of their effectiveness to be conducted: Explanatory Memorandum (Amended Print) for the Control of Weapons Amendment Bill 2010 (Vic), p15.

[^620]: Section 10E(4) of the Control of Weapons Act 1990 (Vic).

[^621]: Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p5.

[^622]: Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p3; and Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 8 March 2010, p2.

[^623]: Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p3.

declaration may be in force should be two weeks. The minority considered that a period longer than the maximum allowed by section 69 of the Act for declarations could be justified by reason of police operational requirements and the statutory requirement that a declaration be approved by the Minister for Police.

Recommendation 19: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) recommends that, if Recommendation 17 is not adopted by the Government, clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70B(4) of the Criminal Investigation Act 2006 authorises the declaration of an area to be in force in relation to that area for a non-renewable maximum period of 48 hours.

Minority Recommendation E: A minority of the Committee recommends that, if Recommendation 17 is not adopted by the Government, clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70B(4) of the Criminal Investigation Act 2006 authorises the declaration of an area to be in force in relation to that area for a non-renewable maximum period of two weeks.

Cyclical Declaration of an Area

4.114 Two submitters were concerned about the potential problem of certain areas being continuously re-declared under proposed section 70B, as there is nothing in the Bill which prevents this from occurring. The discussion in paragraphs 4.64 to 4.70 in this Report relating to the cyclical prescription of an area under proposed section 70A applies equally to this issue, with one exception: the Victorian restriction on the continuous planned re-designation of areas does not extend to unplanned designations.

Committee Comment

4.115 As previously noted, a majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) was of the view that the designation of areas should only occur by prescription through regulations (refer to paragraphs 4.96 to 4.99 in this Report). Therefore, the question of the cyclical declaration of an area does not arise.

4.116 The Committee was of the view that declarations are intended to be a fast and flexible response to sudden incidents of violence or anti-social behaviour. However,
repeated requests to declare the same area should persuade the police to address the question about whether the area would more appropriately be designated by prescription. Therefore, the Committee considered that restrictions should be included in the Bill to prevent the cyclical declaration of areas.

Recommendation 20: The Committee recommends that, if Recommendation 17 is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended to include restrictions which would prevent the cyclical declaration of areas under proposed section 70B of the Criminal Investigation Act 2006.

Proposed Section 70B(5)

Effect of Failure to Gazette a Declaration

4.117 Proposed section 70B(5) provides as follows:

*The Commissioner must publish the written record of the declaration in the Gazette as soon as is practicable after the declaration is made, but the validity of the declaration is not affected by a failure to comply with this subsection.* (underlining added)

4.118 Several submissions alluded to this feature of the declaration-making power, many of which argued that it effectively undermines the safeguard of requiring the written record of the declaration to be gazetted:

- “This same section removes the security that it creates by the validity of the declaration not being altered by the Commissioner failing to publicise the declaration [by gazetting the declaration]. ... The principle of law requires that the public at least have access to what the law is and more specifically in this situation that the public knows what areas have been declared.”

- “because the declaration is published only in the Government Gazette and it is not invalid if the Commissioner fails to publish it, people will not

628 Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p7; Submission No 6 from Search for Your Rights, 16 January 2010, p3; Submission No 9 from Ms Adele Carles MLA, 18 January 2010, p3; Submission No 11 from The Law Society of Western Australia, January 2010, p4; Submission No 14 from Youth Legal Service Inc Western Australia, received 19 January 2010, p1; Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p5; Submission No 25 from Street Law Centre WA Inc, received 23 February 2010, p4; and Submission No 26 from Mr Simon Woodings, 24 February 2010, p1.

629 Submission No 6 from Search for Your Rights, 16 January 2010, p3.
realistically be able to avoid the prescribed areas where these powers are to be exercised.”

“however failure to do this [gazette the written record of the declaration] does not affect the validity of his declaration. Accordingly, it is possible that citizens or visitors to Western Australia may not be aware that they are entering a place to which they could be subject to a random search of their person or vehicle without their consent.”

“We feel that this amounts to the Police not fulfilling the responsibilities that naturally come with such unprecedented rights to search individuals. We call on the Minister to adopt our proposal above [see paragraphs 4.35 to 4.49 in this Report] and make it a requirement that any declaration must be accompanied by a published notice.”

4.119 The WA Police explained that the gazettal requirement was included mainly to provide a method of publicising the declaration of an area and was not meant to be a hindrance to the making of a valid declaration:

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 [see paragraphs 4.35 to 4.49 in this Report for other methods of publicising the designation of an area]. But if for some reason that publication doesn’t happen, the declaration won’t be invalid.

Committee Comment

4.120 A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) was of the view that the words “but the validity of the declaration is not affected by a failure to comply with this subsection” should be removed from proposed section 70B(5). Removing those words effectively requires gazettal of the declaration so that a failure to gazette would make the declaration invalid from the outset (refer to Recommendation 21 below).

630 Submission No 9 from Ms Adele Carles MLA, 18 January 2010, p3.
631 Submission No 11 from The Law Society of Western Australia, January 2010, p4.
632 Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p5.
633 Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p9. See also, Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 2 February 2010, p16.
4.121 A minority of the Committee considered that a declaration takes effect from the time that it is made and that it is neither logical nor practical that its commencement be contingent upon its gazettal.

4.122 The Committee considered it important that, at a minimum, a written record of the declaration and those matters specified in proposed sections 70B(4)(a), (b) and (c) be published by way of public notice and other reasonable forms of advertising as soon as is practicable after the declaration is made (refer to Recommendation 22 below). In addition, the Committee was of the view that reasonable steps should still be taken by the WA Police to inform the public and residents in the declared area of the declaration as soon as is practicable (refer to Recommendation 9 in this Report).

Recommendation 21: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLC) recommends that, if Recommendation 17 is not adopted by the Government, clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that the following words are deleted from proposed section 70B(5) of the Criminal Investigation Act 2006:

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

Recommendation 22: The Committee recommends that, if Recommendation 17 is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended to require the Commissioner of Police to publish a written record of the declaration and those matters specified in proposed sections 70B(4)(a), (b) and (c) of the Criminal Investigation Act 2006 in a public notice and other reasonable forms of advertising as soon as is practicable after the declaration is made. The public notice and types of advertising chosen should be couched in a form, and disseminated in a manner, which makes the information accessible to children and young people.

Proposed Section 70B(6)

Delegation of Declaration-Making Power

4.123 This proposed section will allow the Commissioner of Police to delegate, in writing, his or her power to declare an area to the Deputy Commissioner or an Assistant Commissioner of Police. The power cannot be delegated further.634 This aspect of the Bill and the legislation from Western Australia and other jurisdictions considered by the Committee is summarised in item 16 of the comparison table in Appendix 5. Of these other models, only the equivalent Victorian and New South Wales statutes allow

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634 Clause 5 of the Criminal Investigation Amendment Bill 2009; proposed section 70B(7) of the Criminal Investigation Act 2006.
for the declaration and authorisation powers, respectively, to be delegated to another senior member of the police force.

4.124 A number of submitters saw the ability to delegate the declaration power as a problem because it offers further opportunity for the proposed powers to be misused.635 The Law Society contended that:

_A power as wide as s70B should be non-delegable save only for when the Commissioner is incapacitated and then only to the Deputy Commissioner._636

4.125 The WA Police and Police Union offered the following rationale for this proposed section:

- _“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.”_637

- _“The power of delegation to the Commissioner’s nominee would be necessary to cover events where the Commissioner of Police may be interstate or overseas. It would be reasonable that the delegate would be permitted to declare an area from an operational perspective.”_638

**Committee Comment**

4.126 A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) considered that the power to make a declaration should be confined to the Commissioner of Police or an Acting Commissioner of Police, notwithstanding that a declaration is contingent upon the Minister’s approval.

4.127 A minority of the Committee had no objection to the Commissioner’s power to make a declaration being delegated to the Deputy Commissioner.

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635 Submission No 13 from the SCALES Community Legal Centre, January 2010, p6; Submission No 16 from South Coastal Women’s Health Services, 18 January 2010, p1; Submission No 17 from the Pilbara Community Legal Service, 18 January 2010, p1, Submission No 18 from Ms Catherine Hall, 18 January 2010, p1; Submission No 24 from Ms Gaibrielle Jane Walker, received 10 February 2010, p1.

636 Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p3.


638 Letter from Mr RL Armstrong, General President, WA Police Union of Workers, 2 March 2010, p2.
Recommendation 23: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed sections 70B(6) and (7) of the Criminal Investigation Act 2006 are deleted.

Minority Recommendation F: A minority of the Committee recommends that clause 5 of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 70B(6) authorises the Commissioner of Police to delegate his or her power to make a declaration to a Deputy Commissioner of Police.

CLAUSE 6 - SECTION 157 AMENDED

Review Period - Is Five Years too Long?

4.128 The effect of clause 6 of the Bill is that the operation and effectiveness of the proposed police stop and search powers must be reviewed as soon as is practicable after five years from their commencement. This aspect of the Bill and the legislation from Western Australia and other jurisdictions considered by the Committee is summarised in items 32 and 33 of the comparison table in Appendix 5.

4.129 There are various review periods for the three other models which require a review, ranging from 12 months to five years. The Committee noted that in anti-terrorism legislation in the United Kingdom, the reviews are continuous.

4.130 Hon Giz Watson considered that five years is too long to wait for a review of “unstable laws” which effect “radical changes” to “long-standing public rights”, and recommended that either:

- the review period be lowered to two years; or
- a two-year sunset clause be inserted into the Act with respect to the proposed powers. This was Hon Giz Watson’s favoured approach as it would:

  *allow for Parliament to debate whether the ‘stop and search’ laws had been effective in deterring weapon based violence in prescribed areas.*

4.131 Similarly, the Law Society submitted that:

*Rather than review, the Bill should have a two year sunset clause. Powers as wide as those contemplated should not be allowed to lie on*

639 Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p4.
4.132 The Youth Affairs Council of Western Australia suggested a six to 12-month review period, after which the proposed powers could either be amended or phased out. It considered a five-year review period to be “entirely unacceptable” “Given the controversial nature of this legislation and the significant community concern around it”. The Commissioner for Children and Young People recognised that it is standard practice for legislation to be subject to a five-year review. However, she was of the opinion that this is “a considerable amount of time given the potential impact” of the proposed powers. Instead, she suggested the operation and effectiveness of the proposed powers be reviewed on a number of occasions: after 12 months, then three years and then after five years. Instead of a five-year review, Dr Frank Morgan recommended that the Bill’s operation and effectiveness should be “systematically monitored” by the WA Police at least annually.

4.133 Evidence from the WA Police indicated that the decision to adopt a five-year review period was made at the ministerial level. However, the Commissioner of Police thought that a two-year review would be practicable:

*I think two years, only because usually in one year—particularly if we are going to use it in a very targeted, controlled and limited way in its first year of operation or at least until we get a view of how [it] works—you are not going to have an awful lot of data in the first 12 months of operation. You will obviously have some. I think the ideal period would be something around the two-year period. We would have an ongoing formative and review analysis process of how it is working for us as well, so we would expect to make changes to our operating procedures on the way.*

4.134 The WA Police Union suggested a three-year review would be appropriate, “*Given the controversial nature of the legislation*.“
4.135 As has already been noted, a review of the operation and effectiveness of the Act, which includes the existing powers in section 68 and 69, has not yet taken place. That review, pursuant to section 157(1) of the Act, is not due until 2012.

Committee Comment

4.136 The Committee acknowledged the obligation on the Minister under proposed section 157(2A) to carry out a review of the operation and effectiveness of the amendments proposed by clause 5 of the Bill as soon as is practicable after the expiry of five years from the commencement of the clause. However, the Committee considered that the review should be conducted earlier and should be repeated regularly. A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) considered that those reviews should be conducted at least annually. A minority of the Committee considered that a formal review every two years is sufficient. Recommendation 24 below reflects these views.

4.137 The Committee was of the view that the Bill should be subject to a sunset clause. A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) considered that the Bill should expire after two years. A minority of the Committee considered that, to give the Bill time to become operational, for its effectiveness to be demonstrated and formally reviewed, and its merits debated in the Parliament, it should be permitted to operate for at least five years. Recommendations 25 and 26 and Minority Recommendation G below reflect these views.

Recommendation 24: The Committee recommends that clause 6(1) of the Criminal Investigation Amendment Bill 2009 be amended so that proposed section 157(2A) of the Criminal Investigation Act 2006 requires a regular review of the operation and effectiveness of the amendments proposed by clause 5 of the bill at least every one or two years after the commencement of the clause.

Recommendation 25: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to insert a sunset clause.

Recommendation 26: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) recommends that the powers proposed by the Criminal Investigation Amendment Bill 2009 expire after two years.

Minority Recommendation G: A minority of the Committee recommends that the powers proposed by the Criminal Investigation Amendment Bill 2009 expire after five years.
Independence of the Reviewer

4.138 The Bill provides that the Minister for Police, rather than a person independent of the Government, must conduct a review of the operation and effectiveness of proposed sections 70A and 70B. This aspect of the Bill and the legislation from Western Australia and other jurisdictions considered by the Committee is summarised in item 34 of the comparison table in Appendix 5. Of the three other models which require a review, the United Kingdom’s Section 44 Powers are unique in that they are reviewed by an independent reviewer who is selected by the Secretary of State. The remaining three models prescribe ministerial reviews.

4.139 Regarding the Section 44 Powers, the debate in the House of Lords on the establishment of a commission of three parliamentarians to review the legislation which was subsequently replaced by the Terrorism Act 2000 (UK) indicates that ‘independence’ was an important element of the commission. The Committee understood this to mean independence from the Executive Government, as the review was intended to inform the Parliament. It appears that the commission was not established by statute; instead, the Executive Government undertook to appoint, and did appoint, a single person to conduct these reviews.

4.140 Further, the Explanatory Notes to the Terrorism Act 2006 (UK) say that Part 3 of that Act (which includes the review clause, section 36) provides for the oversight of the operation of Part 1 of this 2006 Act and the Terrorism Act 2000 (UK) through an independent annual review to Parliament.

4.141 The Law Society was of the view that, if the Bill is passed, the independent review of its operation would be “essential”:

Given the substantial extension of police powers that is contemplated, a Parliamentary Inspector function similar to that under the Corruption and Crime Commission Act 2003 should be enacted. All “search records” must be provided to the Parliamentary Inspector who would review all searches and report to Parliament at least

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647 Section 36(1) of the Terrorism Act 2006 (UK) provides that “The Secretary of State must appoint a person to review the operation of the provisions of the Terrorism Act 2000 and of Part 1 of this Act.” The first independent reviewer was Lord Carlile of Berriew QC, House of Lords, a member of the Liberal Democrats, which did not form part of the Government at the time of his appointment. In July 2010, Lord Carlile tabled his final annual review of the operation of the terrorism legislation.


649 Parliament of the United Kingdom, House of Lords, Parliamentary Debates (Hansard), 8 March 1984, volume 449, cc 384-419.

650 Explanatory Notes to the Terrorism Act 2006 (UK), paragraph 14.
annually. If a Parliamentary Inspector were established, the office would need to be adequately resourced.651

4.142 The WA Police advised the Committee that the option of an independent review of the operation and effectiveness of the proposed powers was discussed with the Government, but was not accepted.652 However, the WA Police indicated that this did not preclude the Minister for Police from commissioning a review from an independent person or body:

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.653

Committee Comment

4.143 The Committee considered that the review should be conducted by a person independent of the Executive Government with the following procedures in place:

- The Minister must report the appointment and identity of the reviewer to the Parliament upon the appointment being made.
- The reviewer must report his or her findings to the Minister, who must then table the reviewer’s report in both Houses of Parliament within three months of receiving the report.
- The Minister may also table the Government’s response to the reviewer’s report in the Parliament.

651 Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p4.
652 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 2 February 2010, pp36-37.
Recommendation 27: The Committee recommends that clause 6 of the Criminal Investigation Amendment Bill 2009 be amended so that the reviews of the operation and effectiveness of the amendments proposed by clause 5 of the bill must be conducted by a person independent of the Government with the following procedures in place:

(a) The responsible Minister must report the appointment and identity of the reviewer to the Parliament upon the appointment being made.

(b) The reviewer must report his or her findings to the responsible Minister, who must then table the reviewer’s report in both Houses of Parliament within three months after receiving the report.

(c) The responsible Minister may table the Government’s response to the reviewer’s report in Parliament.

Effect of the Disjunctive ‘or’

4.144 This discussion is provided in the event that Recommendation 27 above is not adopted by the Government.

4.145 Section 157 of the Act currently requires the Minister of Police 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 appeared to the Committee 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. After the proposed amendment, section 157 of the Act will read as follows:

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from its commencement.

(2A) The Minister must carry out a review of the operation and effectiveness of the amendments made to this Act by the Criminal Investigation Amendment Act 2009 section 5 as soon as practicable after the expiry of 5 years from the commencement of that section. [This is the requirement for the five-year review of the proposed stop and search powers.]

(2) The Minister must prepare a report based on the review under subsection (1) or (2A) and, as soon as is practicable after the report is prepared, must cause the report to be laid before each House of Parliament.
4.146 The word ‘or’ in section 157(2) would be construed disjunctively and not imply similarity unless the word ‘similar’ or some other word of like meaning is added.\textsuperscript{654} That is, the requirements to prepare a report for:

- the review of the Act; and
- the review of the proposed stop and search powers,

appear to be alternatives, with the Minister being required to do only one or the other, but not both, reports.

4.147 Although it could be argued that a purposive approach\textsuperscript{655} should be applied to the interpretation of section 157(2) of the Act, as proposed to be amended, it is not clear whether this construction of the amended section is even available, based on:

- the words which are to be used in the amendment, as ‘or’ is clearly disjunctive, even in common usage;\textsuperscript{656} and
- the stated policy of the Bill, as there is nothing in the Second Reading Speech nor the \textit{Explanatory Memorandum} for the Bill which suggests an intention for the Minister for Police to prepare and table a report about the five-year review of proposed sections 70A and 70B.

4.148 If the word ‘or’ is simply read as an ‘and’, which the Committee considers cannot be the case, the amended section would then refer to ‘the review under subsection (1) and (2A)’ as if the reviews are connected, but they are very much distinct reviews.

4.149 The WA Police did not agree with this interpretation of section 157(2), as proposed to be amended:

\textit{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}

\textsuperscript{654} Section 17 of the \textit{Interpretation Act 1994}.

\textsuperscript{655} As required under section 18 of the \textit{Interpretation Act 1994}, which provides that: “\textit{In the interpretation of a provision of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose or object.”}

\textsuperscript{656} ‘Or’ is defined in the Macquarie Dictionary as follows: “conjunction a particle used: 1. to connect words, phrases, or clauses representing alternatives: to be or not to be. 2. to connect alternative terms for the same thing, or different ways of expressing the same concept: the Hawaiian or Sandwich islands”: \textit{The Macquarie Dictionary}, On-line, Macmillan Publishers Australia, 2010.
carried out and reports of both reviews will have to be tabled in Parliament.  

Recommendation 28: The Committee recommends that, if Recommendation 27 is not adopted by the Government, clause 6(2) of the Criminal Investigation Amendment Bill 2009 be amended so that it will amend section 157(2) of the Criminal Investigation Act 2006 to read as follows:

The Minister must prepare a report based on each of the reviews under subsections (1) and (2A) and, as soon as is practicable after the each report is prepared, must cause the report to be laid before each House of Parliament.

Substance and Objectives of the Review

4.150 As the Commissioner for Children and Young People stated:

One of the fundamental things about reviewing an act is finding out whether it achieved its purpose, and that is what I would be interested in—if there is clarity around the purpose of the legislation, did it achieve that purpose?

4.151 While the Bill requires the operation and effectiveness of the proposed powers to be reviewed, it does not also prescribe what matters should be covered in the review, who should be consulted and how the level of success will be measured. Presumably, these decisions would be left to the Minister for Police, and the Minister’s consultants, to decide. Apart from quantitative indications of the success of the Bill, such as the resulting arrest rates, the Commissioner for Children and Young People was interested in seeing an analysis of the demographics of the people who are stopped and searched under the proposed powers:

Ideally, in a longitudinal sense, one would want to know what the impact has been on the child or young person. As the honourable member indicated, did it lead to them entering the justice system—so that was their entrée—or not?

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658 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p19.
659 Ibid.
4.152 As for the people who, and organisations which, should be consulted in the review process, the Commissioner for Children and Young People provided the following comments:

My main issue there would be that any review draws on the evidence not just from the police but also from other interest groups that would have a contribution to make, such as myself, other youth organisations, and families in the community that have had direct experience.\textsuperscript{660}

4.153 Dr Frank Morgan suggested that a review of proposed sections 70A and 70B should include a “broad range of information including -”

- “Public perception of police using surveys, with particular attention given to the demographic of those targeted by the legislation”;
- “An assessment of intelligence provided to police by the demographic of those targeted by the legislation”; and
- “Trends in offences (ideally determined by survey as well as police data) of the kind targeted by the legislation”.\textsuperscript{661}

4.154 Associate Professor David Indermaur submitted that the review could also incorporate an analysis of:

- hospital statistics on people who present with wounds caused by another person using a sharp instrument; and
- surveys of people who work in the designated areas, such as the Nyoongar Patrol in Northbridge, “to get a sense from them about what is going on with knife crime and whether the people they deal with are carrying knives.”\textsuperscript{662}

4.155 Dr Morgan and Associate Professor Indermaur considered that the Bill should have clear objectives against which the results of the review will be measured.\textsuperscript{663} Associate

\textsuperscript{660} Ibid, p20.
\textsuperscript{661} Email from Dr Frank Morgan, Director, Crime Research Centre, University of Western Australia, 6 May 2010, Attachment 1, pp2-3.
\textsuperscript{662} Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, p23.
\textsuperscript{663} Associate Professor Dr Frank Morgan, Director, and Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, p6 and pp2 and 7, respectively.
Professor David Indermaur described the Bill as a proposal “without any clear purpose”.664

4.156 The Committee noted that the objectives of reducing weapons carriage, violence and anti-social behaviour in entertainment precincts, as stated in the Second Reading Speech,665 do not explicitly cover some particular purposes to which the WA Police proposed to put the powers in the Bill. One example involved stopping and searching members of outlaw motorcycle gang runs throughout the State.

4.157 The WA Police advised the Committee that it has not yet considered what sort of criteria the proposed powers will be assessed against.666 However, the Commissioner of Police gave the Committee an indication of what may occur during the review process:

*We are not experts in research and assessment of legislation. In all of the times we have had to review legislation, we have sought advice from criminologists and people who work in the academic sphere who have the research knowledge about how you can really assess the impact of legislation. The impact of any police power legislation is notoriously difficult because there are always a number of side effects for any particular thing. So, we have not sat down yet and worked out whether a good indication—in fact, I think the answer is there will have to be many criteria to work on. You cannot just work on the number of weapons seized or the number of weapons not seized or the number of offences that occur in an adjoining suburb or an adjoining entertainment precinct—all of those things have to go together.*

*In some way there has to be some sort of qualitative assessment of the entire data set at the end of that process, because if you rely on quantitative assessments you are likely to come up with the wrong answer. That is the difficulty. We have not done—We would actually outsource this and pay for someone to do the research. One of views that I have is that there is nothing worse than having a bill where police have an increase in powers and then they are responsible for assessing their own performance. I do not want that to occur, because that does not convince anybody that there has actually been movement. We need to outsource that to people who understand a*

664  Associate Professor David Indermaur, Crime Research Centre, University of Western Australia, Transcript of Evidence, 5 May 2010, p2.

665  Hon Peter Collier MLC, Minister for Energy, Parliament of Western Australia, Legislative Council, Parliamentary Debates (Hansard), 17 November 2009, p9059.

666  Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p15; and Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 19 May 2010, pp18 and 19.
little bit about the environment and will do a complete review. But what those criteria are at this stage, I have no idea.

If we were back before this committee in a year’s time, for argument’s sake, to talk about how the legislation had been applied if it had been passed, we would obviously want to be providing you with a number of things—whether there is an increase or decrease in weapons seizures, whether there is an increase or decrease in crimes in the areas we have used and what is happening in the adjoining suburbs—so that you have a more complete picture about whether there is a displacement effect. We would also want to talk to the health profession about whether they are seeing fewer knife-related injuries at emergency centres. There is a whole range of things that I would want to get data on to provide you with to convince you one way or the other that the legislation is working or not.\footnote{Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 10 March 2010, pp17-18.}

In relation to gauging the public’s opinion of the operation and effectiveness of the proposed powers, the Commissioner of Police advised that:

\[\text{I think there are two ways of going about this. Obviously there are things we can do ourselves, like gather the information about complaints made to police about the way that it is applied. But we would almost certainly commission a research organisation from day one. … there are public confidence surveys done nationally every year for policing and all government services, so we have an idea of what the general confidence level of policing is in Australia, and specifically in Western Australia. It would seem to me easy to piggyback on the back of those and to use that process to gauge the public’s reaction to this.}\footnote{\textit{Ibid}, p42.}

At a later hearing, the Commissioner of Police indicated that the aim of the Bill is to reduce “weapon seizures … or weapons detections on the streets.”\footnote{Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, \textit{Transcript of Evidence}, 19 May 2010, p19.} The Committee took this to mean that the objective of the Bill is to lower the incidence of weapons carriage in public places.
Committee Comment

4.160 The Committee was concerned that the WA Police could not articulate how it would measure the success or otherwise of the Bill, and, indeed, had not given any consideration to that issue. The issue is complicated by the lack of clarity of the objectives of the Bill as revealed by inconsistencies between the Second Reading Speech and the evidence of the WA Police as to the purposes for which the proposed powers will be used.

4.161 Clarification of the objectives of the Bill is essential for informing the WA Police of the data necessary for any review. The Committee could not see how a meaningful review of the proposed powers could be undertaken if the substance and objectives of the review were not clearly established before the Bill is passed (refer to Recommendations 29 and 30 below). The Committee considered that the addition of an objectives clause would improve the Bill.

4.162 Furthermore, the Committee considered that any review should take into account issues including the objectives of the Bill, the effectiveness of the proposed powers in achieving policing objectives, the impact of the use of the proposed powers on communities in locations which have been the subject of designation, public perceptions of how the proposed powers have been used by the police and the effect on police-community relations. Any review should also include a cost/benefit analysis of the proposed powers (refer to Recommendation 31 below).

Recommendation 29: The Committee recommends that an objectives clause specifying the purposes to which the powers proposed by the Criminal Investigation Amendment Bill 2009 are to be put and the range and focus of the police activities to be conducted under the auspices of the bill be inserted into the bill.

Recommendation 30: The Committee recommends that this objectives clause form the basis of the terms of reference of any and all reviews of the operation and effectiveness of the amendments proposed by clause 5 of the Criminal Investigation Amendment Bill 2009.
Recommendation 31: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended so that the reviews of the operation and effectiveness of the amendments proposed by clause 5 of the bill must address the following matters:

(a) The objectives of the bill.

(b) The effectiveness of the proposed stop and search powers in achieving policing objectives.

(c) The impact of the use of the proposed stop and search powers on communities in locations which have been the subject of designation.

(d) Public perceptions of how the proposed stop and search powers have been used by the police.

(e) The effect of the use of the proposed stop and search powers on police-community relations.

(f) A cost/benefit analysis of the proposed stop and search powers.
CHAPTER 5
CONDUCT OF THE PROPOSED STOP AND SEARCH

INTRODUCTION

5.1 This Chapter discusses, and contains recommendations about, how the Bill, if passed by the Parliament, may be amended to help ensure that the proposed stop and search powers are exercised responsibly. Reference is made to elements of legislation in other jurisdictions with the following caveat:

There are significant differences between the states, and one of the things that I would like to highlight to the committee is, when we look to adopt legislation, whether it is from overseas or another state, we have to be cognisant of the whole different context in another state, particularly in relation to other legislation, policy, services and programs.\(^{670}\)

POLICE AUXILIARY OFFICERS

5.2 This issue is dealt with in paragraphs 2.43 to 2.48 and Finding 5.

Committee Comment

5.3 Given that police auxiliary officers are not intended to perform ‘front-line’ policing duties, the Committee was of the view that the Bill should clearly state that the proposed powers cannot be exercised by such officers. However, the Committee was of the view that appropriately trained police auxiliary officers can assist police officers exercising the powers under the Bill.

Recommendation 32: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to expressly state that the proposed stop and search powers cannot be exercised by police auxiliary officers.

ADMINISTRATIVE GUIDELINES VERSUS PRESCRIBED PROCEDURES

5.4 Sections 70 and 71 of the Act provide, among other things, some rules for conducting basic searches on people (these rules, and the powers available to the police when performing basic searches, are discussed in paragraphs 2.12 to 2.21 in this Report).

\(^{670}\) Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p2.
Similar or equivalent legislation in the other jurisdictions considered by the Committee provide legislative instructions which are comparable to these rules. This aspect of the Bill and the other models considered by the Committee is summarised in items 25 to 29 of the comparison table in Appendix 5.

5.5 Although the above sections of the Act provide some rules which direct a police officer’s actions during a basic search, there were a number of key areas highlighted in this inquiry where the legislative rules appear to be lacking, particularly when one considers the nature of the proposed stop and search powers. Some of these matters are discussed in the remaining headings of this Chapter.

5.6 The Law Society commented that:

_If … the extension of police stop and search powers is inevitable, then procedures should be put in place prescribing how the powers are to be exercised. Those procedures should include … specific police obligations covering the manner of exercise of the power._

5.7 Rules on police stop and search powers which are either prescribed or adopted by legislation and are made freely available to the public, being binding and transparent, may be of assistance to people who feel that they have been the subject of an inappropriate stop and search. However, legislation can also be slow to respond to changes in the community. This is a dilemma which was noted by the Commissioner for Children and Young People:

_One option is [to establish police stop and search rules] through legislation. The problem with legislation, though, is that that can be quite restrictive and if circumstances change, how could you have discretion? It is the same, to some extent, with regulations. One solution is to have the guidelines binding and for police to have considerable training. The other is making sure that the guidelines are updated and reviewed, taking into account the circumstances. A fundamental concern to me is that there is going to be very broad discretion and that the guidelines will not be binding._

5.8 The WA Police indicated that guidelines for exercising the proposed powers will be inserted into the police manual, which is issued by the Commissioner of Police. It implied that more prescriptive guidelines would not be necessary because of the

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671 Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p1.

672 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p18.

673 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 2 February 2010, p35.
planned update to the police manual, the existing rules on basic searches in the Act and the training which will be received by police officers:

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.674

5.9 Similarly, the Police Union assured the Committee that the updated police manual will provide adequate guidelines to police officers, adding that the WA Police’s internal investigation and complaints systems will ensure that there are appropriate checks and balances on the use of the proposed powers.675 The Police Union also acknowledged the advantages and limitations of having clear and binding legislative rules:

Any explanatory memorandum or legislative instructions that will assist our members in their policing duties would be welcomed. However, being too prescriptive may inhibit police officers from carrying out their duties. There needs to be clear guidance to police through the legislation, so there is no ambiguity in what is or is not permitted.676

5.10 It has been found in the United Kingdom that there is a “huge gap” between “policy as it is written” and “policy in practice”677 However, it was also found that discriminatory police behaviour was less likely to occur where there were clear guidelines or criteria for decision-making.678 The Committee noted that Section 60 Powers and Section 44 Powers in the United Kingdom are, like other police stop and search powers available in that jurisdiction, subject to codes of practice issued by the Secretary of State and approved by the Parliament.679 For example, Code of Practice A requires the searching constable to note the person’s self-defined ethnicity in the written

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675 Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, p16.
676 Letter from Mr RL Armstrong, General President, WA Police Union of Workers, 2 March 2010, p2.
679 Sections 66 and 67 of the Police and Criminal Evidence Act 1984 (UK). Also, refer to item 26 in the comparison table in Appendix 5.
A failure on the part of a police officer to comply with any provision of a code of practice does not of itself render him or her liable to criminal or civil proceedings, although the codes are admissible in evidence in any criminal or civil proceedings and any code appearing, to a court or tribunal, to be relevant must be taken into account.  

Committee Comment

5.11 While recognising the advantages and disadvantages of prescribed rules, the Committee was of the view that, wherever practicable, rules governing the exercise of the proposed stop and search powers should be prescribed, or at least adopted, by legislation (including subsidiary legislation).

Recommendation 33: The Committee recommends that, wherever practicable, the Criminal Investigation Amendment Bill 2009 be amended to prescribe or adopt, or authorise subsidiary legislation to prescribe or adopt, the rules governing the exercise of the proposed stop and search powers.

SEARCH NOTICE

5.12 Under the Act, police officers conducting a basic search are already required to identify themselves to the person who is to be searched. This involves, where reasonably practicable:

- giving the person the police officer’s official details: that is, his or her surname and rank and, if his or her official details are required to be stated on a document, the officer’s registered number; and

- if the police officer is not in uniform, also showing the person evidence that the officer is a police officer.

5.13 If reasonably practicable, the searching police officer must also inform the person of the reason for the search.

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681 Section 67 of the Police and Criminal Evidence Act 1984 (UK).

682 Section 70(2)(a) of the Criminal Investigation Act 2006.

683 Ibid, section 11(1)(a)(i) and the definition of ‘official details’ in section 3(1).


685 Ibid, section 70(2)(b).
5.14 The Act does not, and the Bill will not, require police officers, when conducting a proposed stop and search, to give the person being searched, or whose vehicle is being searched, a ‘search notice’ which advises the person of certain other facts; for example, the fact that they have entered a designated area, the police officer’s powers to stop and search and the person’s rights and obligations during the course of being stopped and searched. This aspect of the Bill and the other models considered by the Committee is summarised in item 21 of the comparison table in Appendix 5.

5.15 Of all the models considered, Victoria is unique in requiring the searching police officer to give the person being searched, or whose vehicle is being searched, a search notice which states the sort of information referred to above. This search notice requirement is in addition to the requirement to give certain requested information verbally. For example, a Victorian police officer is, upon being requested to do so, required to identify himself or herself to the person being searched. He or she must do so in writing if requested to do so. A copy of the current search notice which is issued in Victoria is attached as Appendix 15. The information is written in three languages.

5.16 The ALS recommended that the Bill be amended to require searching police officers to issue search notices to every person who is stopped under the proposed powers. The form of the search notice should be prescribed by regulations and should clearly state the following information:

   a. Name and station of the police officer.
   b. Legal basis for the stop.
   c. The person’s rights.
   d. The reason the person has been stopped and searched.
   e. Why the police chose that person.
   f. What the police were looking for and indicate what they found (if anything).

5.17 The Law Society was also of the view that a search notice requirement should be mandatory and presented in a manner that is understood by the recipient, particularly

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686 Sections 10I(1)(e) and (3) of the Control of Weapons Act 1990 (Vic).
687 Ibid, see section 10I of the Control of Weapons Act 1990 (Vic) generally, and in particular, sections 10I(1)(a) and (b).
688 Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, pp5-6.
people for whom English is a second language, Aboriginal people and children. The following information should be included in the search notice:

[advice] of entry into a prescribed/declared public space, the police officer’s powers of stop and search, the person’s rights and obligations and the reasons for the stop and search. Enacted procedures should also require police officers to identify themselves by name and the station where they work to each person searched.

5.18 The Commissioner for Children and Young People thought that a search notice, such as that required in Victoria, would be a useful, additional check and balance on the proposed powers. However, she warned that it would not assist every person who will be stopped and searched, particularly if he or she is a child or young person or if he or she has a condition which is not apparent:

All the science shows that children, generally, are not fully mature and that their brain cells are not fully developed even by the time they are 18. A lot of brain development goes on at that point and also psychological development, so even with children who are among the 96 per cent who do not come into contact [with the criminal justice system], there are a range of responses possible, as there are now when a P-plater is stopped by the police and is asked what he feels about it, how frightened he is and how confident he is in dealing with an authority figure, as distinct from groups that are highly marginalised in our community. I think that giving clear information, having the conversation and explaining is of assistance, but the police will require some special measures. … sometimes they do come across people in the community—this time I am talking about adults, but the same applies to young people—where they have no knowledge of that person’s condition or understanding—for example, a person with autism or someone with a serious mental illness, as distinct from someone who has an intellectual disability. If you stop and search someone with those conditions, it requires specialist knowledge and specialist understanding. In the Kimberley, as members are aware, people are very concerned about foetal alcohol spectrum disorder. That affects children and adults in a particular way. It is a highly specialised area in terms of how one communicates with that person. If one gives basic information—“You are being stopped and searched

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689 Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 8 March 2010, pp1-2.
690 Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p2.
691 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p20.
because of," et cetera, as you would communicate it to me, it will not necessarily have the same impact.  

5.19 However, when the Committee queried why the Bill will not require searching police officers to issue a search notice of the sort envisaged by the Committee, the WA Police advised simply that it was not “directed to include any such provisions” in the Bill. It also provided the following reasons why search notices would not be necessary or feasible:

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.

5.20 However, at a later hearing with the WA Police, the Commissioner of Police indicated that searching police officers will provide the people stopped under the proposed powers with a search notice similar to that used in Victoria:

We will probably put in more information, if anything, not less, particularly if we had to explain something about the search process. These things will be subject to some modification, because if we use them and people seem to be confused, it is not clear enough or it does not provide enough information, then my view is that the next iteration will be slightly different or more comprehensive. But I certainly intend to provide some sort of brochure for police officers to hand out to the people who are subject to this type of search.

... I do not have any particular problem with the legislation reflecting that a pamphlet will be handed out and will contain this information [about the person’s rights] if that is what government or Parliament wants to put into it. It is not usual for that sort of level of prescription, although I would not personally object to it. It would seem to me to be easy enough to print information onto a pamphlet to

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694 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p31.
give to somebody, and if that information was specific in the legislation, that is fine.695

...

[With respect to informing the person about his or her right to complain about a proposed stop and search,] I think the best way to handle that situation is to give people a clear line of contact to a particular phone or a particular point where they can make a complaint if they wish. And if Parliament finds it necessary to include the name of the police officer that did the search, it becomes slightly more complicated in that you have got to have individualised notices then with the name of that person on it. But you can certainly provide, on this pamphlet that we were talking about earlier, information about how to go about making the complaint, who to contact, what the number is.696

5.21  The Police Union accepted the suggestion that a search notice, similar to that required and used in Victoria, be mandated under the Bill:

Certainly if that could be part of the legislation, we would not have a problem with it, because it clearly identifies to all groups of people why we are doing what we are doing. If it works in Victoria, maybe it should be looked at here.697

Committee Comment

5.22  The Committee found merit in the Victorian practice of issuing every person stopped and searched by a police officer a notice in an appropriate language informing them that they have entered into a designated area and setting out their rights and obligations.

5.23  In the Committee’s opinion, items a, e and f in the ALS’ recommended search notice, while important, would more appropriately be noted in a written record of the search, as such information would be unique to each search and would become part of a record of each search performed. The principal purpose of a search notice is to inform the person about the stop and search process, not to form a written record of the search (refer to paragraphs 6.2 to 6.22 in this Report for a discussion about written records of stops and searches).

697  Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, p22.
5.24 The Committee noted that in Western Australia, a police officer must, as a matter of course, identify himself or herself to the person being searched if reasonably practicable. In addition to this current requirement, the Committee was of the view that police officers who stop someone for the purposes of searching him or her under the proposed powers should issue the person with a search notice containing the following information:

- The fact that the person has entered a public place in a prescribed or declared area.
- The fact that a prescription or declaration is in force.
- The police officer’s powers of stop and search without arrest, a search warrant, reasonable suspicion or consent.
- The person’s rights (for example, to complain about inappropriate behaviour or procedure) and obligations (including that it is an offence to hinder or obstruct a stop and search) during the stop and search.
- The person’s entitlement to obtain a written record of the search (see paragraphs 6.2 to 6.22 in this Report).
- A point of contact for complaints.
- That the search is being supervised by a senior police officer (refer to paragraphs 6.23 to 6.26 in this Report for a discussion about the supervised use of the proposed powers).

5.25 The search notice must be written in an appropriate range of languages (see paragraphs 5.27 to 5.30 in this Report) and must be presented in a culturally appropriate way.

5.26 The Committee acknowledged that merely issuing a search notice will not necessarily result in every person who is stopped and searched under the proposed powers fully understanding the process. Accordingly, in conjunction with the use of a search notice, police officers must be trained to communicate effectively with all people in our community, particularly Aboriginal people or people from other ethnic minority groups, people who have a mental illness or disability and children or young people.

Recommendation 34: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require a police officer who stops a person for the purposes of searching him or her under the proposed stop and search powers to issue the person with a search notice.
Recommendation 35: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to prescribe, or authorise subsidiary legislation to prescribe, the form of the search notice. The search notice must:

(a) be written in an appropriate range of languages;

(b) be presented in a culturally appropriate way; and

(c) contain the following information:

(i) The fact that the person has entered a public place in a prescribed or declared area.

(ii) The fact that a prescription or declaration is in force.

(iii) The police officer’s powers of stop and search without arrest, a search warrant, reasonable suspicion or consent.

(iv) The person’s rights (for example, to complain about inappropriate behaviour or procedure) and obligations (including that it is an offence to hinder or obstruct a stop and search) during the stop and search.

(v) The person’s entitlement to obtain a written record of the search.

(vi) A point of contact for complaints.

(vii) That the search is being supervised by a senior police officer.

PROTECTION FOR PEOPLE WHO DO NOT UNDERSTAND SPOKEN ENGLISH

5.27 There are various reasons why a person may not understand spoken English sufficiently to understand a police officer who is talking to him or her before and during a stop and search: for example, the person may have a different first language or the person may be hearing-impaired. The WA Police advised the Committee of the following protections in the Act for people in these situations:

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 [if it is reasonably practicable]. 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.698 (underlining added)

5.28 Outlines of the learning modules undertaken by police trainees indicated that police trainees receive four 45-minute training sessions on “Policing people with other languages” after which they are expected to be able to:

- Identify a range of techniques to determine whether a person speaks English as a Second language or has a significant hearing impairment.

- Assess when a community member may require an interpreter.

- Recognise the legal implications of interpreters for law enforcement.

- Demonstrate how to work effectively and professionally with an interpreter.699

5.29 The ALS recommended that the Bill be amended to require searching police officers to supply people who do not understand spoken English, in the event that an interpreter is not available, with a search notice written in “a number of languages, including Aboriginal languages and in a culturally appropriate way”.700 The Police Union was supportive of this suggestion:

If somebody could put that in legislation, we would certainly probably accept that. But I know that the commissioner, through the training, the policies and the guidelines that he puts out, would be quite clear on how they would deal with those groups that you have mentioned. I do not know whether you could legislate for that.701

698 Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p11.
699 Western Australia Police, Police Trainee Module: Community Diversity Training Program, Lesson 15: Policing people with other languages - translating and interpreting, p1.
700 Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p6.
701 Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, p23.
Committee Comment

5.30 The Committee agreed with the suggestion from the ALS and considered that the search notice referred to in Recommendations 34 and 35 above would satisfy these requirements.

PROTECTION FOR CHILDREN AND YOUNG PEOPLE

5.31 This aspect of the Bill and the other models considered by the Committee is summarised in item 28 of the comparison table in Appendix 5.

5.32 As mentioned in paragraphs 2.32 to 2.79 in this Report, the proposed stop and search powers will apply equally to children and young people as it does to adults. Section 71 of the Act may be of some assistance in protecting children and young people as it generally requires the police officer conducting a basic search under the proposed powers to be of the same gender as the person being searched, as long as this is practicable in the circumstances. However, there are no specific protections afforded to children and young people who are subjected to the proposed stop and search powers, which is different to the case in several other provisions in the Act, for example:

- section 72(3)(g) (“Strip search, additional rules for doing”). The Committee notes that a basic search or a strip search can result from a stop and search under section 68 of the Act. A section 69 stop and search can only result in a basic search;
- section 80 (“Volunteer for a forensic procedure to be informed”);
- section 81 (“When forensic procedure may be done on volunteer”);
- section 84 (“Request for protected person to undergo forensic procedure”);
- section 86 (“Forensic procedure, when it may be done”);
- section 88 (“Officer may apply for FP [forensic procedure] warrant (involved person)”);
- section 90 (“FP [forensic procedure] warrant (involved person), issue and effect of”);
- section 92 (“Request for protected person to undergo forensic procedure”);
- section 94 (“Forensic procedure, when it may be done”);
- section 99 (“FP [forensic procedure] warrant (suspect), application for”).
section 101 (“General requirements [for how forensic procedures must be done]”); and

section 107 (“Evidence of refusal of consent etc.”).

5.33 Of the models considered by the Committee, the Victorian legislation is unique in terms of the protections it affords children and young people: for example, a search of a “child” in a planned designated area pursuant to equivalent provisions in Victoria, except for searches by means of an electronic metal detection device, must be conducted in the presence of a parent or guardian of the child. If the child is mature enough to express an opinion and indicates that the presence of the parent or guardian is not acceptable to the child, the search must be conducted in the presence of an independent person who is capable of representing the interests of the child and who, as far as is practicable in the circumstances, is acceptable to the child. If the child’s parent or guardian is not present and the search has to be conducted without delay, the search must be conducted in the presence of an independent person who is capable of representing the interests of the child and who, as far as is practicable in the circumstances, is acceptable to the child. Similar, but less onerous, rules exist for searches of children where the searches do not amount to planned designation searches. All of these rules are activated when the searching police officer reasonably believes that the person who is to be searched is a child.

5.34 In Western Australia, there is nothing in the Act or the Bill requiring a parent or guardian (a ‘responsible person’ is the term used in the Act) to be present when children and young people are stopped and subjected to a basic search. Paragraphs 3.173 to 3.178 in this Report discuss the reasons why children and young people:

• may be disproportionally targeted during the use of the proposed stop and search powers;

• once selected for a police stop and search, may react differently to an adult; and

• may be more negatively affected by a police stop and search than an adult.

5.35 As a result of these concerns, both the ALS and the Commissioner for Children and Young People recommended that the Bill be amended to prevent its application to

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702 The term ‘child’ is defined as “a person under the age of 18 years”: section 3(1) of the Control of Weapons Act 1990 (Vic).

703 Schedule 1, clause 11 of the Control of Weapons Act 1990 (Vic).

704 Refer to paragraphs 2.12 to 2.21 in this Report for a discussion about basic searches under the Criminal Investigation Act 2006.
persons under the age of 18 years.\textsuperscript{705} The Commissioner for Children and Young People offered the following further comments on the need to protect children and young people from the effects of the Bill:

- “With this obligation [the searching police officers will have “the full burden for respecting the child’s rights and for protecting the child from rights violations”\textsuperscript{706}], ... comes the need for strong checks and balances to ensure children and young people are treated fairly, equitably and in full accordance with the law. I believe there is substantial cause for concern when broad police powers can be applied to children and young people without special regard for them and their vulnerable status in our community.”\textsuperscript{707}

- “[The] ... bill does not distinguish between children and adults. It does not reflect the Young Offenders Act [which sets out the broad principles that should be followed in dealing with criminal offenders under 18 years of age\textsuperscript{708}]; it does not reflect everything that we have based our legislation on in the past in relation to children and young people. It is for that reason that I do not support the bill. I do not believe that the bill is in the best interests of children and young people. I have not been presented with any compelling evidence as to why children and young people should be subject to this bill. I am, in particular, concerned about not only children and young people as a group; I am concerned about those who might be vulnerable. I have already highlighted to the committee the overrepresentation of Aboriginal children and young people. I am also very concerned about other children and young people; for example, children and young people who may have a disability or a mental illness. The reason that I am highlighting that is the overseas evidence that very young children have been stopped and searched; in fact, children as young as two and three have been stopped and searched under the UK legislation.”\textsuperscript{709}

- “Firstly, there is a lot of research about brain development and a child’s development. I think that is why we have legislation like the Young Offenders Act, which recognises that children are vulnerable developmentally as well as

\textsuperscript{705} Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p5; and Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p8.


\textsuperscript{707} Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, p5.

\textsuperscript{708} See Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p2.

\textsuperscript{709} Ibid, p3.
emotionally and psychologically. They are not fully formed adults. Those of us who have been there ourselves or have children who are over 18 know that the maturing process is ongoing. There is no question about the science. There is a full range of possibilities of how a child might respond. A child might be very frightened and scared about being stopped by the police and react depending on his particular circumstances. The child might become aggressive, but he might not. There is a full range of possibilities because children are like adults; they are not all the same, and we all have different responses. When we are pulled over by the police, what do we think? It is important that the science tells us that they are not yet mature and that their brain and physical development and their emotional and psychological development are still ongoing. That must be recognised in the law and we have a proud tradition of that in Western Australia. My concern is that this may override the [young offenders] legislation.”

5.36 When the Committee queried why the Bill does not introduce protection mechanisms for children and young people who may be subjected to the proposed stops and searches, the WA Police advised that:

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.  

5.37 At a later hearing with the Committee, the Commissioner of Police indicated that, if the Bill is passed and is still applicable to people under 18 years of age, there will be administrative protocols established to ensure that searching police officers deal with children and young people appropriately:

Dr O’Callaghan: … I suppose it depends on the age of the child as well and also the risk profile. So you might, for argument’s sake—and I have not worked this through in detail—deal with 16 and 17-year-olds in much the same way you deal with 18, 19 or 20-year-olds. If there was ever an occasion where you had to deal with kids that were much younger, there would be a different process of explanation and certainly there would have to be a different process of dealing with them.

Hon ALISON XAMON: So are you suggesting that that would be outlined in some sort of guidelines or some sort of training or understanding?
... I have not had time to read Michelle Scott’s submission in detail, but I am very open to creating a set of protocols or orders that are different for dealing with younger people, if it is necessary to deal with young people. I am not sure, in the scenario you are talking about [14-year old girls travelling on a train to see a movie in Perth at a respectable time], that they would come up on that antecedent that we were talking about before, that type of child. But if it was necessary, there needs to be a different set of explanation and management protocols in place, of which I do not have a definitive answer today because I have not had a chance to talk to Michelle Scott about her concerns about the issue [this is despite the fact that the Commissioner for Children and Young People had written to both the Minister for Police and the Commissioner of Police on 23 November 2009 outlining her concerns about the Bill and offering to discuss them personally with both recipients of her letters].

5.38 The WA Police provided the Committee with outlines of the learning modules undertaken by police trainees. This information indicated that police trainees receive one 45-minute training session on “youth and police”, after which they are expected to be able to:

- “Outline the issues police may encounter when undertaking policing duties with youth”; and

- “Identify and apply a communications style and appropriate responses for interaction and engagement with youth.”

5.39 Although the Police Union was supportive of inserting protections for children and young people into the Bill, it was also of the view that this could be done administratively.

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712 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, and Hon Alison Xamon MLC, Member of the Standing Committee on Legislation, Transcript of Evidence, 10 March 2010, p53.

713 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, pp3-6.

714 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p54.

715 Western Australia Police, Police Trainee Module: Community Diversity Training Program, Lesson 11: Youth and Police, p1.
Committee Comment

5.40 As with section 69 of the Act, the Bill does not distinguish between adults and children and young people. However, a child or young person within a designated place may only be searched pursuant to the section 69 powers with his or her consent. This requirement for the child or young person’s consent limits a police officer’s power to search that person.\(^{717}\) Under the Bill, there will be no such limit. Accordingly, the Committee concluded that it will be necessary for the Bill to provide some protection for children and young people who find themselves within an area designated under proposed section 70A or 70B.

5.41 However, the Committee differed on the question about whether there should be any exemptions or whether people under 18 or 10 years of age should be exempted from the operation of the Bill. A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon) concluded that people under 18 years of age should be exempt from the operations of the Bill (refer to Recommendation 36 below).

5.42 The Committee agreed that, in the event that the Bill remains applicable to children and young people, a minimum level of protection for children and young people who are subjected to a stop and search under the proposed powers would be necessary (refer to Recommendation 37 below).

5.43 The Committee also recognised that some children and young people may be particularly sensitive to pat-down, or other intrusive, searches. For this reason, if the Bill remains applicable to children and young people, such searches should be a last resort (refer to paragraphs 4.79 to 4.81 in this Report) and instructions to police officers relating to stop and search should reflect the particular sensitivities of children and young people to physical searches (refer to Recommendation 38 below).

Recommendation 36: A majority of the Committee (comprised of Hons Mia Davies, Dr Sally Talbot and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended so that it does not apply to people under the age of 18 years.

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\(^{716}\) Mr Russell Armstrong, General President, WA Police Union of Workers, Transcript of Evidence, 9 February 2010, p23.

\(^{717}\) The question of whether a child or young person can give an informed consent is a matter which falls outside the scope of this inquiry.
Recommendation 37: The Committee recommends that, if the Criminal Investigation Amendment Bill 2009 remains applicable to children and young people, it be amended to insert a minimum level of protection for children and young people who are subjected to a stop and search under the proposed powers.

Recommendation 38: The Committee recommends that the Government ensure that instructions to police officers relating to stop and search procedures should reflect the particular sensitivities of children and young people to physical searches.

**Protection for People with a Mental Disability**

5.44 This aspect of the Bill and the legislation from Western Australia and other jurisdictions considered by the Committee is summarised in item 29 of the comparison table in Appendix 5.

5.45 For the purposes of this discussion, the term ‘mental disability’ will have the same meaning as that provided in section 73 of the Act:

> which term includes intellectual disability, a psychiatric condition, an acquired brain injury and dementia ... .

5.46 As mentioned in paragraphs 2.32 to 2.79 in this Report, the proposed stop and search powers will apply equally to people with or without a mental disability. There are no specific protections afforded to mentally disabled people who are subjected to the proposed stop and search powers, which is different to the case in several other provisions in the Act which provide protections for mentally disabled people, and which are listed at paragraph 5.32 of this Report. In addition, section 100 of the Act (“FP [forensic procedure] warrant (suspect), issue and effect of”) also provides protections for people with a mental disability.

5.47 Hon Giz Watson was concerned about the “likely reaction of people with mental health issues” to being searched under the proposed powers. The ALS recommended that the Bill be amended to require the searching police officer to consider whether the person selected for a stop and search under proposed section 70A “may be suffering a mental illness and whether it is reasonable in the circumstances to carry out the search.” The Commissioner for Children and Young People also alluded to the difficulties which may be faced by police officers who, without forming

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718 The definition of ‘incapable person’ in section 73 of the *Criminal Investigation Act 2006*.

719 Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p8.

720 Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p6.
a reasonable suspicion, want to stop and search a person with a mental disability which is not apparent:

the police will require some special measures. ... sometimes they do come across people in the community—this time I am talking about adults, but the same applies to young people—where they have no knowledge of that person’s condition or understanding—for example, a person with autism or someone with a serious mental illness, as distinct from someone who has an intellectual disability. If you stop and search someone with those conditions, it requires specialist knowledge and specialist understanding.\textsuperscript{721}

5.48 Of the different models considered by the Committee, the one used in Victoria is unique in terms of the protections it affords people with a mental disability: for example, the search of a “person with impaired intellectual functioning”\textsuperscript{722} in a planned designated area, except for searches by means of an electronic metal detection device, must be conducted in the presence of a parent or guardian of the person. If that is not acceptable to the person, the search must be conducted in the presence of an independent person who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person. If the person’s parent or guardian is not present and the search has to be conducted without delay, the search must be conducted in the presence of an independent person who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person. Similar, but less onerous, rules exist for searches of people with impaired intellectual functioning where the searches do not amount to planned designation searches. All of these rules are activated when the searching police officer reasonably believes that a person who is to be searched has an impaired intellectual functioning.\textsuperscript{723}

5.49 In Western Australia, there is nothing in the Act or the Bill requiring a parent or guardian (a ‘responsible person’ is the term used in the Act) to be present when a person with a mental disability is stopped and subjected to a basic search.\textsuperscript{724} When the Committee queried why the Bill does not introduce protection mechanisms for mentally disabled people who may be subjected to the proposed stops and searches, the WA Police advised that:

\textsuperscript{721} Ms Michelle Scott, Commissioner for Children and Young People, \textit{Transcript of Evidence}, 9 February 2010, p21.

\textsuperscript{722} This is defined as meaning “(a) total or partial loss of a person’s mental functions; or (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or (c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour”: Schedule 1, clause 2 of the \textit{Control of Weapons Act 1990} (Vic).

\textsuperscript{723} Schedule 1, clause 12 of the \textit{Control of Weapons Act 1990} (Vic).
WA Police weren’t directed to include any specific provisions in the Criminal Investigation Amendment Bill 2009 in relation to searching people with disabilities.  

5.50 At a later hearing with the Committee, the Commissioner of Police acknowledged that police officers need more and better training in interacting with mentally disabled people:

Police officers currently do not have reasonable training for dealing with people with mental illnesses. One of the things we have been doing is talking to the health people about increasing that level of training, because there have been a number of issues raised in recent times about problems that have occurred at the interface between someone who has a mental health problem and police. It is actually a quite difficult thing to do on the ground some days, because you are dealing with people who are affected by substances or alcohol or may have a mental illness. So the ability to identify that and provide the right response can sometimes be quite complicated for an officer who is trying to deal with any or all of these things at once on the ground. But one of the things we are particularly looking at at the moment, not just in connection with this legislation but generally in the way police respond, is to increase the level of training and awareness for dealing with people who have mental illnesses.

... There is currently discussion about increasing the breadth of that curriculum.

5.51 Outlines of the learning modules undertaken by police trainees indicated that police trainees receive three 50-minute training sessions on “Communicating with Persons with Mental Illness”, after which they are expected to be able to:

1. Recognise the impact of mental illness and drugs/alcohol on the communicative process.

2. Assess situations with persons with mental illness and adapt communication technique accordingly.

724 Refer to paragraphs 2.12 to 2.21 in this Report for a discussion about basic searches under the Criminal Investigation Act 2006.

725 Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p11.

726 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p24.
3. Speak effectively with persons with mental illness.

4. Use conflict resolution skills to address incidents with persons with mental illness.

5. Describe the services provided by the Mental Health Emergency Response Line (MHERL) and other support agencies.\(^{727}\)

5.52 Although the Police Union supported inserting protections for mentally disabled people into the Bill, it was of the view that this could also be done administratively.\(^{728}\)

**Committee Comment**

5.53 The Committee was concerned that people with a mental disability may require specific protection in the event that the Bill proceeds. The need for this protection arises for several reasons. In the first place, people with a mental disability may more readily attract the attention and suspicions of a police officer. Second, a mentally disabled person’s perception of the reasons for him or her being stopped and searched may vary depending upon the severity and type of disability. Third, a mental disability may cause a person to react in an irrational and extreme manner, to which the police will have to respond.

5.54 The Committee was of the view that the Bill should be amended to provide protection for mentally disabled people.

**Recommendation 39: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to provide protection for mentally disabled people.**

**PROTECTION FOR PEOPLE WITH CERTAIN DRESS REQUIREMENTS**

5.55 As with the current police powers to stop and search people under the Act and under the statutes discussed at paragraphs 2.23 to 2.25 in this Report, the proposed stop and search powers will apply to people who wear items of outer clothing, such as headwear, in public for cultural reasons, without exception. Hon Giz Watson expressed a concern about the impact of the Bill’s proposed powers on these people.\(^{729}\)

Section 71 of the Act may be of some assistance in protecting these people, generally

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\(^{727}\) Western Australia Police, *Police Trainee Program Title: Communicating with Persons with Mental Illness, Lessons 1 to 3*, p1.


\(^{729}\) Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p8.
requiring the police officer conducting a basic search under the proposed powers to be of the same gender as the person being searched, as long as this is practicable in the circumstances. However, there are no specific protections afforded to people with certain dress requirements who are subjected to the proposed stop and search powers.

5.56 The Committee queried why there is no protection or provision in the Bill for people with certain dress requirements, to which the WA Police answered as follows:

    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.730

5.57 The WA Police provided the Committee with outlines of the learning modules undertaken by police trainees. This information indicated that police trainees receive:

- two 40-minute training sessions on “Religious Diversity and Policing (Islam)”;
- one 45-minute training session on “Religious Diversity and Policing - Buddhist, Hindu, Jewish, Sikh”; and
- one 45-minute training session on “Religious Diversity and Policing – Sikh”,

after which they are expected to be able to:

- “Outline the issues police may encounter when undertaking policing duties with diverse religious communities”; and
- “Identify and apply a communications style and appropriate responses for interaction and engagement with people from ... [Muslim communities and other diverse religious communities]”.731

730 Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p12.
731 Western Australia Police, Police Trainee Module: Community Diversity Training Program, Lesson 8: Religious Diversity and Policing (Islam), p1; Western Australia Police, Police Trainee Module: Community Diversity Training Program, Lesson 9: Religious Diversity and Policing - Buddhist, Hindu, Jewish, Sikh, p1; and Western Australia Police, Police Trainee Module: Community Diversity Training Program, Lesson 9: Religious Diversity and Policing – Sikh, p1.
Committee Comment

5.58 A majority of the Committee (including Hon Mia Davies) was not persuaded that any specific protection beyond those currently provided for by the Act and recommended by the Committee in this Report was necessary in relation to people with cultural dress requirements.

5.59 A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon) considered that additional protections are needed for people with cultural dress requirements who are subjected to the proposed powers; for example, the searching police officer should be required to permit the person to remove items of clothing out of public view and out of sight of any person of the opposite sex.

Minority Recommendation H: A minority of the Committee (comprised of Hons Dr Sally Talbot and Alison Xamon MLCs) recommends that the Criminal Investigation Amendment Bill 2009 be amended to provide protection for people with cultural dress requirements.
CHAPTER 6
OTHER PROCEDURES TO ENSURE TRANSPARENCY AND ACCOUNTABILITY

INTRODUCTION

6.1 As was noted by the Youth Affairs Council of Western Australia, the Bill increases “powers for police officers, at the expense of citizens, without any attendant increase in responsibility.”732 This Chapter discusses, and contains recommendations about, how the Bill, if passed by the Parliament, may be amended to help ensure that the use of the proposed stop and search powers is transparent and accountable. Reference is made to elements of legislation in other jurisdictions with the following caveat:

There are significant differences between the states, and one of the things that I would like to highlight to the committee is, when we look to adopt legislation, whether it is from overseas or another state, we have to be cognisant of the whole different context in another state, particularly in relation to other legislation, policy, services and programs.733

STOP AND SEARCH RECORDS

6.2 Currently, there are no requirements under the Act for a police officer who has performed a stop and search to make any record of the stop and search; nor is there a requirement to give the person who was searched, or whose vehicle was searched, that record. As the Bill does not alter this situation, there will be no requirement to make records of stops and searches conducted under proposed section 70A. The Commissioner of Police confirmed this approach based on what already occurs in practice:

The previous legislation [that is, the Act] is silent on what sort of information police have got to keep. In that case, if I am making a choice about how I spend my IT budget, it will be spent on things that are actually directed through legislation or directed to keep the system going.734

732 Submission No 20 from the Youth Affairs Council of Western Australia, received on 22 January 2010, p6.
733 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p2.
734 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 19 May 2010, p13.
6.3 This aspect of the Bill and the other models considered by the Committee is summarised in items 22, 23 and 24 of the comparison table in Appendix 5. The Committee noted that equivalent provisions in Victoria and the United Kingdom require searching police officers to make written records of their searches. The details which are required to be recorded are listed in items 22 and 24 of the comparison table. As summarised in item 23 of the comparison table, the person searched, or whose vehicle was searched, is entitled to obtain a copy of the written record of the search and has one year in Victoria, or three months in the United Kingdom, after the stop and search to make a request for the written record. The United Kingdom’s Metropolitan Police website advises that a written record of the search is usually given at the time of the event. In Victoria, the legislation explicitly provides that a copy of the written record is to be provided without charge. The United Kingdom provisions also entitle the person searched, or the driver of the vehicle which was searched, to obtain a written statement that he or she, or the vehicle, was stopped under Section 60 Powers or Section 44 Powers, whichever applied (see item 22 of the comparison table).

6.4 Hon Giz Watson was concerned that the Bill does not require police officers to record details of the stops and searches conducted under the proposed powers, arguing that these details would:

Assist Parliament or anyone else to identify whether particular ethnic or age or other groups ... [for example, homeless people... are being targeted, ... [determine] ... the proportion of searches that result in charges compared with those that don’t, ... [and determine] ... whether any person has been searched repeatedly. I understand that only limited information will be recorded, for example the number and nature of any charges, time and place. This is insufficient to enable Parliamentary or public scrutiny of the effect of the Bill. Further, as the Bill does not require that even those minimal records be kept, the Minister of the day is free to change his or her mind.

Systemic scrutiny being impossible, scrutiny will be limited to situations where individuals make a formal complaint about their...
treatment. This is a very hit and miss approach as it depends on the complainant having the ability, energy and courage to pursue a formal complaint. It is also not a safeguard against wrongs occurring in the first place.739

6.5 The Commissioner for Children and Young People also supported the mandatory recording of all stops and searches conducted under the proposed powers, citing the United Kingdom’s recording requirements as a good example:

"If the legislation is passed, particular attention must be given to according checks and balances on police to ensure children and young people are not disproportionately affected, and children’s rights are protected. This should include a comprehensive process of data collection, monitoring and reporting."

... one of our primary objectives should be to ensure the fair treatment of children and young people and to ensure that this legislation, if implemented, does not increase the overrepresentation of Aboriginal young people in the justice system. This cannot be known for sure unless a process of monitoring and reporting is established.

... It is my view that in its current form, and without reporting requirements (such as in the UK), the Bill does not effectively balance police needs with citizens’ rights. As mentioned above, I have not been persuaded that there is a case for this, and the potentially deleterious effects on vulnerable citizens such as children and young people create a convincing opposing case.740

6.6 The Commissioner for Children and Young People suggested that the circumstances of the stop and search and the demographical information about the people searched should be recorded, including their age ("so that we have information about children and young people"), ethnic background, and whether they had any disability.741

6.7 The ALS recommended that written records of the searches should include the following information:

739 Submission No 5 from Hon Giz Watson MLC, 13 January 2010, p7.
740 Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, pp1 and 5-6.
741 Ms Michelle Scott, Commissioner for Children and Young People, Transcript of Evidence, 9 February 2010, p19.
The details recommended by the ALS are very similar to the information which used to be required for written records of searches in the United Kingdom. These requirements changed slightly when section 1 of the *Crime and Security Act 2010* (UK) commenced operation around June 2010. Previously, searching constables were required to record ten items of information. Searching constables now need to record only seven items of information about the stop and search, being:

- the date;
- the time;
- the place;

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742 Submission No 19 from the Aboriginal Legal Service of Western Australia Inc, 22 January 2010, p7.
743 These were: the searching constable’s identity; the person’s name (if known); the person’s ethnicity; a description of the vehicle (if applicable); the object, place, time and date of the stop and search; the grounds for the stop and search; and a description of what was found: section 3 of the *Police and Criminal Evidence Act 1984* (UK) prior to June 2010; and Code of Practice A.
• the ethnicity of the person stopped and searched, or whose vehicle is searched;\textsuperscript{744}

• the object of the search;

• the grounds for the search; and

• the identity of the constable carrying out the stop and search.\textsuperscript{745}

6.9 The Law Society also recommended that the Bill incorporate a requirement to record stops and searches conducted under the proposed powers similar to that imposed in the United Kingdom. Further, the Law Society submitted that the record should be made in a manner that is capable of being understood by the person searched, or whose vehicle is searched, including people who speak English as a second language, Aboriginal people and children.\textsuperscript{746}

6.10 In the United Kingdom, the MPA summarised the importance and usefulness of the systematic recording of police stops and searches:

\begin{quote}
One of the ways that the Met [the Metropolitan Police Service in London] is addressing concerns regarding discriminatory policing is through data collection. By collecting information on the nature, character and demographics of police practices around stop and search, the MPS is in a better position to enhance its ability to assess the appropriate application of the power and the broad discretion entrusted to the police.
\end{quote}

\begin{quote}
These data collection efforts have the potential for shifting the rhetoric surrounding disproportional stop and search rates from accusations and anecdotal evidence to a much sounder discussion about the appropriate allocation of police resources. Well-planned and cohesive data collection efforts can serve as a catalyst for nurturing and shaping this type of community and police discussion.
\end{quote}

\begin{quote}
The collection and sharing of such information will either allay community concerns about the activities of the police or help communities ascertain the scope and magnitude of the problem.
\end{quote}

\textsuperscript{744} This involves recording the person’s self-defined ethnicity and, if the constable disagrees with the person’s self-definition, the constable’s assessment of the person’s ethnicity: Exploratory Notes for the Crime and Security Bill (UK), paragraph 22.

\textsuperscript{745} Ibid, paragraph 21. These requirements are prescribed in section 3 of the Police and Criminal Evidence Act 1984 (UK), as amended by section 1 of the Crime and Security Act 2010 (UK) around June 2010.

\textsuperscript{746} Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p2; and Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 8 March 2010, pp1-2.
Sharing the results of the data collection system also sends a clear message to the entire police force community, as well as to the larger community, that the police have nothing to hide and that any racial bias in stop and search practice is inconsistent with effective policing and equal protection. When implemented properly, such data can also help to shape and inform police training about the conscious and subconscious use of racial stereotypes and to promote courteous and respectful police–citizen encounters.\footnote{Equal Opportunity and Diversity Board, MPA, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, pp66-67.}

6.11 Researchers for the United Kingdom’s Home Office also supported the recording of details regarding police stops and searches. They suggested that the non-recording of searches is a threat to the ‘legality’ of stops and searches, in terms of the stops and searches complying with the guidelines designed to regulate their practice.\footnote{J Miller, N Bland & P Quinton, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Police Research Series Paper 127: The Impact of Stops and Searches on Crime and the Community, United Kingdom, September 2000, p(vii) (Recommendation 8); and J Miller, P Quinton & N Bland, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Briefing Note, Police Stops and Searches: Lessons from a Programme of Research, United Kingdom, September 2000, p2. The ‘legality’ of a police stop and search was measured by whether the power to stop and search was used within the guidelines designed to regulate its use. ‘Legality’ was taken to be an indicator of the legitimacy of police stop and search powers. Refer to paragraph 3.36 in this Report for a discussion about what the Home Office researchers considered to be indicators of the legitimacy of police stop and search powers.}

Among other things, the researchers evaluated the impact of recommendations 61 to 63 of the Stephen Lawrence Inquiry, which proposed that all police stops and searches should be recorded, including information such as the reason for the stop, the outcome, and the person’s self-defined ethnicity, and that a copy of the search record should be given to the person stopped.\footnote{Sir W Macpherson of Cluny, The Stephen Lawrence Inquiry: Report of an inquiry by Sir William Macpherson of Cluny, United Kingdom, 1999.} As indicated in the second paper\footnote{N Bland, J Miller & P Quinton, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, Police Research Series Paper 128: Upping the PACE? An evaluation of the recommendations of the Stephen Lawrence Inquiry on stops and searches, United Kingdom, September 2000.} in the research programme, the researchers found that:

- “Some officers, however, commented that they were more likely to at least ‘think twice’ about stops and searches [when required to record all stops and searches and provide a copy of the written record to the person affected], and provide more explanation and information during encounters. … [while other officers saw the recording requirement as an imposition].”

- Members of the public welcomed the use of the search record forms, “seeing it as a useful basis for accountability.” However, “It was clear … that public trust and confidence is primarily based on being treated fairly and with
6.12 The MPA made similar findings in its 2004 review of the Metropolitan Police Service’s use of stop and search powers:

Police discriminatory behaviour is most likely where there are no clear guidelines or criteria for decision – making: ... where there is no requirement to record or monitor decisions or the decision making process; ... .

6.13 When the Committee questioned why the Bill does not 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, the WA Police responded that:

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.

6.14 This argument that the mandatory recording of proposed stops and searches would be impractical was continued at a later hearing with the WA Police:

Dr O’Callaghan: ... I think it was also suggested that police record all the detail of everyone they search. It is just impractical. That level of compliance is so impractical, you just could not do it. You would not be able to conduct your searches if you had to record the details of every person that you actually conducted searches on. If you did that, that information would have to go somewhere. So it would have to end up on the police computer or somewhere so that it


752 Equal Opportunity and Diversity Board, Metropolitan Police Authority, Report of the MPA Scrutiny on MPS Stop and Search Practice, United Kingdom, October 2004, p61.

753 Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p11.
is auditable. You cannot just collect information and just tuck it in a back room somewhere.\textsuperscript{754}

\ldots

\textbf{Mr Brown:} \ldots If you were to reflect on an archway set up at Perth train station, where several hundred people might be required to walk through that (this is despite evidence from the WA Police and the Police Union that the police cannot and will not conduct random, mass searches under the proposed powers\textsuperscript{755}), the vast majority will pass the test, they will be free to go and it will be a mere inconvenience on their day or evening. To stop them and ask them to provide their details after passing through the arch would certainly for us result in a lot more complaints and a lot of time and effort to go through that process.\textsuperscript{756}

6.15 The Police Union saw the recording requirement as a “reasonable suggestion” and would support it “as long as it is not too administratively cumbersome for Police.”\textsuperscript{757}

\begin{center}
\textbf{Committee Comment}
\end{center}

6.16 The Committee was of the view that some data collection in relation to the use of the powers under the Bill is necessary. Due to the arbitrary and potentially intrusive nature of the powers, information will need to be collected for two purposes:

- To record the police operation (such as the date, time, place, registered number and identity of the police officers involved et cetera).
- To compile data with a view to assessing the effectiveness of the operation and the manner in which the powers had been used (such as the person’s apparent gender, ethnicity and age, the basis for selecting the person searched, the reason for the search, if any, the result of the search and what, if anything, was found).

6.17 It would also be necessary to provide the person searched, or whose vehicle is searched, with a record of, and information about, the search (for example, the name

\textsuperscript{754} Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p49.

\textsuperscript{755} For example, Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, and Superintendent Gary Budge, Western Australia Police, Transcript of Evidence, 2 February 2010, pp12-13; and Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, p20. Refer also to paragraphs 3.133 to 3.138 in this Report.

\textsuperscript{756} Mr Stephen Brown, Assistant Commissioner, Metropolitan Region, Western Australia Police, Transcript of Evidence, 10 March 2010, p50.

\textsuperscript{757} Letter from Mr RL Armstrong, General President, WA Police Union of Workers, 2 March 2010, p2.
However, a balance must be struck between data collection for accountability and operational effectiveness. A further balance must be struck between the need to provide relevant information to the person searched and the practicality of doing so. For example, a distinction can be drawn between searches which indiscriminately capture people in the designated area and those that capture individuals of a specific profile.

An example of an indiscriminate capture would be metal detector scanning of all persons entering an area or (say) every tenth person entering an area. Apart from routine operational data (such as date, time, place, registered number and identity of the police officers involved et cetera), there would appear to be no need for any record keeping beyond a head count.

It is only when a person amongst that group is selected for a more intrusive search that the greater level of data collection and record keeping may be necessary, as would the provision, in writing, of the identity of the officer(s) conducting the search. The Committee considered that, in such circumstances, it ought to be compulsory for the searching police officer to provide the person searched with a document similar to that required in the United Kingdom and Victoria, setting out the date, time, and place of the search and other relevant information (Recommendations 40 and 41 below reflect these views).

Evidence received by the Committee concerning the use of the section 69 powers (see paragraphs 3.226 to 3.240 in this Report) has revealed that the WA Police needs to improve its record keeping of the use of those stop and search powers and address the deficiencies revealed during the course of the Committee’s inquiries (refer to Recommendation 42 below).

If, as the Commissioner of Police claims, appropriate record keeping will require additional resources, these should be provided by the Government.
Recommendation 40: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require police officers to record the following information in writing when exercising the proposed stop and search powers:

(a) For the scanning of people with electronic or mechanical devices: the date, time, place, registered number and identity of the police officers involved.

(b) For more intrusive searches of people: the date, time, place, registered number and identity of the police officers involved, the person’s apparent gender, ethnicity and age, the basis for selecting the person searched, the reason for the search, if any, the result of the search and what, if anything, was found.

(c) For vehicle searches: the date, time, place, registered number and identity of the police officers involved.

Recommendation 41: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require a police officer exercising the proposed stop and search powers, by conducting a search of a person that is more intrusive than a scan with an electronic or mechanical device, to provide, in writing, his or her name and registered number, the date, time and place of the search, and other relevant information.

Recommendation 42: The Committee recommends that the Western Australia Police establish an adequate record keeping regime before the stop and search powers proposed by the Criminal Investigation Amendment Bill 2009 are used.

SUPERVISED USE OF PROPOSED STOP AND SEARCH POWERS

6.23 The evidence received by the Committee was that the Commissioner of Police accepts that there should be supervision of the use of the powers under the Bill by a senior police officer or “supervisor”.758 Section 3(1) of the Act defines a ‘senior police officer’ as:

\[
\text{a police officer who is, or is acting as, an inspector or an officer of a rank more senior than an inspector} \ldots
\]

6.24 However, the Commissioner indicated that it would be impracticable for these officers to supervise the proposed stops and searches in large and/or open designated areas.

758 Dr Karl O’Callaghan, Commissioner of Police, Western Australia Police, Transcript of Evidence, 10 March 2010, pp18, 19, 20 and 35.
The Commissioner relied on this factor as a natural restriction on the size of designated areas.\textsuperscript{759} There was also evidence that senior enough police officers may not be readily available in remote areas of the State:

\begin{quote}
There are 10 [senior police officers] in the goldfields; nine in the great southern, which is Albany; 13 in the Kimberley; nine in the Midwest-Gascoyne, which is the Geraldton and Carnarvon area; 10 in the Pilbara; 10 in the south west, in the Bunbury area; and six in the wheatbelt, which is based at Northam.\textsuperscript{760}
\end{quote}

6.25 Research from the United Kingdom’s Home Office indicated that appropriate supervision of searches will enhance both the legality\textsuperscript{761} and effectiveness of searches by minimising:

- the disproportionate rate of stops and searches of those from minority ethnic backgrounds;
- the poor management of encounters by police officers; and
- the inadequate explanations by officers to those stopped or searched.\textsuperscript{762}

\textbf{Committee Comment}

6.26 The Committee was of the view that any use of the proposed stop and search powers must be supervised by a senior police officer.

\textbf{Recommendation 43:} The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to require a senior police officer, as it is defined in the \textit{Criminal Investigation Act 2006}, to supervise any use of the proposed stop and search powers.

\textsuperscript{759} Ibid, pp18, 19, 20, 32 and 35.
\textsuperscript{760} Ibid, p57.
\textsuperscript{761} The ‘legality’ of a police stop and search was measured by whether the power to stop and search was used within the guidelines designed to regulate its use. ‘Legality’ was taken to be an indicator of the legitimacy of police stop and search powers. Refer to paragraph 3.36 in this Report for a discussion about what the Home Office researchers considered to be indicators of the legitimacy of police stop and search powers.
RESOURCING

6.27 The Committee heard evidence from the WA Police regarding its lack of metal detector arches, the limited number of metal detector wands available to it and the potential need to upgrade its computer systems to capture and retrieve data relevant to its current powers to stop and search.

6.28 The WA Police gave the following evidence concerning the question of costs arising from the introduction of the Bill:

When we put it [the Bill] through the cabinet process, we said that there are no direct costs to WA Police from the legislation because there is no actual onus in the legislation requiring the police to do something for which there is a cost. The legislation provides powers to police to do something. To the extent to which the police use those powers and require equipment to do so is more of a business case that needs to be looked at.\(^\text{763}\)

6.29 The Committee did not have available to it any evidence of there having been a cost/benefit analysis conducted regarding the proposed powers.

Committee Comment

6.30 Given the costs in paragraph 6.27 and the cost implications of some of the Committee’s recommendations, the Committee considered that there are likely to be additional costs for staff and other establishment and recurrent functions, including advertising designated areas, that might be incurred to implement and monitor the use of the proposed powers.

6.31 The Committee considered that it would be beneficial for the Government to conduct a cost/benefit analysis of the implementation of the Bill and its prospective operation over a two-year period.

Recommendation 44: The Committee recommends that, before the Criminal Investigation Amendment Bill 2009 is passed, the Government:

(a) undertake a cost/benefit analysis of the implementation of the Bill and its prospective operation over a two-year period; and

(b) table the results of this analysis in Parliament.

\(^{763}\)Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 10 March 2010, p56.
6.32 As is currently the case with police stop and search powers under the Act, there is no requirement in the Bill for the Minister for Police or the Commissioner of Police to report to Parliament regarding the use of the proposed stop and search powers. The WA Police explained that this is because:

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

[However,] *This does not prevent the Minister from making a report to Parliament if he wishes to do so.*

6.33 The Commissioner for Children and Young People recommended that if the proposed powers are introduced, they should be accompanied by “*a comprehensive process of data collection, monitoring and reporting*” to “*ensure children and young people are not disproportionately affected, and children’s rights are protected.*”

6.34 The Law Society agreed with the need for parliamentary reporting and oversight of the use of the proposed powers, if they are introduced. The suggested mechanism for this oversight was a parliamentary inspector:

*If the Bill becomes law, independent review of its operation is essential. Given the substantial extension of police powers that is contemplated, a Parliamentary Inspector function similar to that under the Corruption and Crime Commission Act 2003 should be enacted. All “search records” must be provided to the Parliamentary Inspector who would review all searches and report to Parliament at least annually. If a Parliamentary Inspector were established, the office would need to be adequately resourced.*

6.35 This aspect of the Bill and the legislation from Western Australia and other jurisdictions considered by the Committee is summarised in item 31 of the comparison table in Appendix 5. The Committee noted that the majority of these models, including anti-terrorism legislation, require the reporting of the use of the equivalent police stop and search powers to Parliament. The Bill and section 69 of the Act were notable exceptions in this respect.

6.36 The WA Police advised the Committee that the Government intends to inform the Parliament, on an annual basis, of the number of charges laid and the areas in which these charges arose “*so that we can see whether there has actually been a decrease in*”

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765 Submission No 7 from the Commissioner for Children and Young People, 18 January 2010, p1.
766 Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p1.
the number of offences [in each area].”768 This is despite the Bill and the Act being silent on any such reporting requirements. However, it was not clear to the Committee whether these figures would indicate that the charges resulted from a police stop and search, and if so, which stop and search powers were used. If details such as these, and others, for example, the total number of stops and searches conducted in an area over the reporting period, were not included in the report to Parliament, the Committee was of the view that the information foreshadowed by the Government would not be useful.

6.37 The WA Police Union had “no strong view either way on this proposal.”769

Committee Comment

6.38 The Committee has already recommended a one or two-year periodic review of the operation and effectiveness of the amendments proposed by clause 5 of the Bill, which is more frequent than the currently prescribed single review after five years (see Recommendation 24 in this Report). In these circumstances, the Committee did not see any reason for an additional requirement for reporting to Parliament. Should a Member of Parliament be interested in information regarding operations under the Bill, he or she could seek that information by way of questions directed to the Minister for Police.

6.39 Similarly, the Committee saw no reason for the appointment of a Parliamentary Inspector to oversee the use of the proposed powers on the basis that Recommendation 24 (that regular reviews be maintained and tabled in Parliament) is accepted.

6.40 The Committee was of the view that, if Recommendation 24 is not adopted by the Government, the Western Australia Police’s annual report to Parliament should provide the data collected in the course of any use of the proposed powers (refer to paragraphs 6.2 to 6.22 in this Report) over the preceding 12 months.

Recommendation 45: The Committee recommends that, if Recommendation 24 is not adopted by the Government, the Criminal Investigation Amendment Bill 2009 be amended to require the Commissioner of Police to reveal, in the Western Australia Police’s annual reports, the data collected in the course of any use of the proposed stop and search powers over the 12 months preceding each report.

768 Mr Malcolm Penn, Executive Manager, Legislative Services, Legal and Legislative Services Directorate, Western Australia Police, Transcript of Evidence, 2 February 2010, p30.

769 Letter from Mr RL Armstrong, General President, WA Police Union of Workers, 2 March 2010, p2.
REVOCATION OF DESIGNATION OF AN AREA

6.41 This aspect of the Bill and the other models considered by the Committee is summarised in item 30 of the comparison table in Appendix 5. Of these models, the New South Wales legislation and the United Kingdom’s anti-terrorism legislation are the only two examples which provide for the Minister, or a person or body independent of the Government, to revoke or cancel an authorisation for the use of equivalent police stop and search powers in an area. In equivalent provisions in New South Wales, for areas which are the target of an authorisation, the Supreme Court may order the Commissioner of Police or a Deputy or Assistant Commissioner of Police to revoke an authorisation.\(^{770}\) In the United Kingdom, the Secretary of State may cancel an authorisation to use Section 44 Powers.\(^{771}\)

6.42 When the Committee asked why a similar revocation or cancellation power is not available under the Bill, the WA Police explained simply that it was not directed to include such a provision in the Bill.\(^{772}\) The Police Union was of the view that, in relation to declarations made under proposed section 70B, only a person who is capable of making a declaration should have the power to revoke or cancel it:

\[
\text{the proposed power should only be operated by the WA Police, namely the Commissioner of Police or their delegated nominee.}
\]

\[
The area has been ‘declared’ by police for a specific reason. It would be entirely appropriate for the Commissioner of Police (or their delegate) to revoke or cancel the declaration.\(^{773}\)
\]

6.43 The Law Society was of the view that, if the Bill is passed and:

\[
\text{If an independent position is established ... [that is, the Law Society’s recommended Parliamentary Inspector position which oversees the use and operation of the proposed powers] ... that person should have the power of revocation.}\(^{774}\)
\]

Committee Comment

6.44 Once again, the WA Police could not provide the Committee with any evidence as to the rationale for a drafting decision.

\(^{770}\) Section 87G of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW).
\(^{771}\) Section 46(6) of the Terrorism Act 2000 (UK).
\(^{772}\) Letter from Mr CJ Dawson, Acting Commissioner of Police, 19 February 2010, Enclosure, p12.
\(^{773}\) Letter from Mr RL Armstrong, General President, WA Police Union of Workers, 2 March 2010, p2.
\(^{774}\) Refer to paragraph 6.34 in this Report for a discussion about this recommendation.
6.45 The Committee considered that the power to revoke a designation was a necessary corollary to the power to designate an area. The Committee was of the view that this power of revocation should lie with the Minister.

Recommendation 46: The Committee recommends that the Criminal Investigation Amendment Bill 2009 be amended to empower the responsible Minister to revoke the designation of an area, whether the designation occurred by way of regulation or declaration, by publishing a notice of revocation in the Western Australian Government Gazette. The notice is to take effect on and from the date of publication.

Hon Michael Mischin MLC
Chair
21 October 2010

---

Letter from Mr Hylton Quail, President, The Law Society of Western Australia, 25 February 2010, Enclosure 1, p4.
APPENDIX 1

List of People to whom, and Organisations to which, the Committee Wrote
APPENDIX 1

LIST OF PEOPLE TO WHOM, AND ORGANISATIONS TO WHICH, THE COMMITTEE WROTE

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation/Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr Dennis Eggington</td>
<td>Aboriginal Legal Service</td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td></td>
</tr>
<tr>
<td>Mr Bradley Woods</td>
<td>Australian Hotels Association Western Australia</td>
</tr>
<tr>
<td>Chief Executive Officer</td>
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<tr>
<td>Mr Tom Percy QC</td>
<td>Australian Lawyers Alliance</td>
</tr>
<tr>
<td>WA Director</td>
<td></td>
</tr>
<tr>
<td>His Honour Judge Dennis Reynolds</td>
<td>Children's Court of Western Australia</td>
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<tr>
<td>President</td>
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</tr>
<tr>
<td>The Right Honourable Ms Lisa Scaffidi</td>
<td>City of Perth</td>
</tr>
<tr>
<td>Lord Mayor</td>
<td></td>
</tr>
<tr>
<td>Ms Michelle Scott</td>
<td>Commissioner for Children and Young People</td>
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<tr>
<td>Commissioner</td>
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</tr>
<tr>
<td>Hon Len Roberts-Smith QC</td>
<td>Corruption and Crime Commission</td>
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<tr>
<td>Commissioner</td>
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<tr>
<td>Mr Peter Weygers JP</td>
<td>Council for Civil Liberties</td>
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<td>President</td>
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<tr>
<td>Associate Professor Frank Morgan</td>
<td>Crime Research Centre</td>
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<tr>
<td>Mr Richard Utting</td>
<td>Criminal Lawyers Association of Western Australia</td>
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<tr>
<td>Mr Glen Barton</td>
<td>Curtin Business School</td>
</tr>
<tr>
<td>Head</td>
<td>Curtin University of Technology</td>
</tr>
<tr>
<td>Ms Cheryl Gwilliam</td>
<td>Department of the Attorney General</td>
</tr>
<tr>
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<tr>
<td>Mr Bruno Fiannaca</td>
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<td>His Honour Judge Kevin Hammond</td>
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<tr>
<td>Ms Yvonne Henderson</td>
<td>Equal Opportunity Commission</td>
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<tr>
<td>Commissioner</td>
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<tr>
<td>Ms Heather Kay</td>
<td>Law Reform Commission of Western Australia</td>
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<td>Mr David Price</td>
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<td>Director</td>
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<tr>
<td>Name</td>
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<td>Mr George Turnbull</td>
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<td>Director</td>
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<td>Mr Steven Heath</td>
<td>Magistrates Court of Western Australia</td>
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<td>Professor Gabriël A Moens</td>
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<tr>
<td>Head</td>
<td>Edith Cowan University</td>
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<tr>
<td>Ms Wendy Murray</td>
<td>Office of Crime Prevention</td>
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<td>Director</td>
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<tr>
<td>Ms Patria Jafferies</td>
<td>Small Business Development Corporation</td>
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<td>The Honourable Wayne Martin</td>
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<tr>
<td>Associate Professor Jane Power</td>
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<td>University of Notre Dame</td>
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<tr>
<td>Professor William Ford</td>
<td>Faculty of Law</td>
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<tr>
<td>Dean</td>
<td>University of Western Australia</td>
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<tr>
<td>Dr Karl O'Callaghan</td>
<td>Western Australian Police</td>
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<tr>
<td>Commissioner of Police</td>
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<tr>
<td>Mr Russell Armstrong</td>
<td>Western Australian Police Union of Workers</td>
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<tr>
<td>General President</td>
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<tr>
<td>Mr Grant Donaldson SC</td>
<td>The Western Australian Bar Association</td>
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<tr>
<td>President</td>
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<tr>
<td>Mr Brian Wooler</td>
<td>Youth Affairs Council</td>
</tr>
<tr>
<td>Chairperson</td>
<td></td>
</tr>
<tr>
<td>Ms Cheryl Cassidy-Vernon</td>
<td>Youth Legal Service Inc</td>
</tr>
<tr>
<td>Manager</td>
<td></td>
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<tr>
<td>Mr Paul Afkos OAM</td>
<td>Business Improvement Group of Northbridge</td>
</tr>
<tr>
<td>Chairman</td>
<td></td>
</tr>
<tr>
<td>Professor John Phillimore</td>
<td>John Curtin Institute of Public Policy</td>
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<tr>
<td>Executive Director</td>
<td>Curtin University of Technology</td>
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<td>Professor Clive Barstow</td>
<td>School of Communications and Arts</td>
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<tr>
<td>Head of School</td>
<td>Faculty of Education and Arts</td>
</tr>
<tr>
<td>Dr Dot Goulding PhD</td>
<td>The Centre for Social and Community Research</td>
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<tr>
<td>Director</td>
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</tr>
<tr>
<td>Professor Neil Drew</td>
<td>School of Arts and Sciences</td>
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<td>Dean</td>
<td>The University of Notre Dame Australia</td>
</tr>
<tr>
<td>Professor Bruce Stone</td>
<td>Political Science and International Relations</td>
</tr>
<tr>
<td>Chair</td>
<td>The University of Western Australia</td>
</tr>
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APPENDIX 2
LIST OF SUBMISSIONS
**APPENDIX 2**

**LIST OF SUBMISSIONS**

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<thead>
<tr>
<th>No</th>
<th>Name</th>
<th>Organisation/Department</th>
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<tbody>
<tr>
<td>1</td>
<td>Mr Ben Watson</td>
<td>Member of the Public</td>
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<tr>
<td>2</td>
<td>Mr Rachel Koulizos</td>
<td>Member of the Public</td>
</tr>
<tr>
<td>3</td>
<td>Mr Aiden Marsh</td>
<td>Member of the Public</td>
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<td>4</td>
<td>Mr Anthony Watkin</td>
<td>Member of the Public</td>
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<tr>
<td>5</td>
<td>Hon Giz Watson MLC</td>
<td>Member for North Metropolitan Region</td>
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<tr>
<td>6</td>
<td>Mr Yannis Vrodos</td>
<td>Search for Your Rights</td>
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<tr>
<td>7</td>
<td>Ms Michelle Scott</td>
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</tr>
<tr>
<td></td>
<td>Co-ordinator and Legal Contributor</td>
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</tr>
<tr>
<td>8</td>
<td>Mr Nic Hastings-James</td>
<td>Australian Association of Social Workers</td>
</tr>
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<td></td>
<td>President, Western Australian Branch</td>
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<tr>
<td>9</td>
<td>Ms Adele Carles MLA</td>
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<td></td>
<td>Member for Fremantle</td>
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<tr>
<td>10</td>
<td>Mr Russell Armstrong</td>
<td>WA Police Union of Workers</td>
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<td>General President</td>
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<tr>
<td>11</td>
<td>Mr Hylton Quail</td>
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<tr>
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<td>12</td>
<td>Ms Yvonne Henderson</td>
<td>Equal Opportunity Commission</td>
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<td>Commissioner for Equal Opportunity</td>
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<tr>
<td>13</td>
<td>Ms Anna Copeland</td>
<td>SCALES Community Legal Centre</td>
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<td></td>
<td>Solicitor</td>
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<td>Ms Cheryl Cassidy-Vernon</td>
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<td></td>
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<td>15</td>
<td>Mr Johnson Kitto</td>
<td>Kitto and Kitto, Barristers and Solicitors</td>
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<tr>
<td>16</td>
<td>Ms Bev Jowie</td>
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<td></td>
<td>Executive Officer</td>
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<td>17</td>
<td>Ms Ellie Gan</td>
<td>Pilbara Community Legal Service Inc</td>
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<td>Principal Solicitor</td>
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<tr>
<td>18</td>
<td>Ms Catherine Hall</td>
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<tr>
<td>19</td>
<td>Mr John Bedford</td>
<td>Aboriginal Legal Service of Western Australia</td>
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<td></td>
<td>Acting Chief Executive Officer</td>
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<tr>
<td>20</td>
<td>Mr Brian Wooler</td>
<td>Youth Affairs Council</td>
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<tr>
<td></td>
<td>Chairperson</td>
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<td>21</td>
<td>Mr Vincent Sammut</td>
<td>Member of the Public</td>
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<tr>
<td>No</td>
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<tr>
<td>22</td>
<td>Mr Tadeusz Krysiak</td>
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<tr>
<td>23</td>
<td>Mr Peter Weygers JP</td>
<td>Council for Civil Liberties in Western Australia Inc</td>
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<tr>
<td></td>
<td>President</td>
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</tr>
<tr>
<td>24</td>
<td>Ms Gaibrielle Jane Walker</td>
<td>Member of the Public</td>
</tr>
<tr>
<td>25</td>
<td>Mr Ian Murray</td>
<td>Street Law Centre WA Inc</td>
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<td></td>
<td>Chairperson</td>
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<tr>
<td>26</td>
<td>Mr Simon Woodings</td>
<td>Member of the Public</td>
</tr>
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</table>
**APPENDIX 3**  
**LIST OF WITNESSES**

<table>
<thead>
<tr>
<th>Witnesses</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr Malcolm Penn&lt;br&gt;Executive Manager, Legislative Services&lt;br&gt;Legal and Legislative Services Directorate&lt;br&gt;Western Australia Police</td>
<td>02/02/10</td>
</tr>
<tr>
<td>Mr Gary Budge&lt;br&gt;Superintendent&lt;br&gt;Western Australia Police</td>
<td>02/02/10</td>
</tr>
<tr>
<td>Ms Michelle Scott&lt;br&gt;Commissioner for Children and Young People</td>
<td>09/02/10</td>
</tr>
<tr>
<td>Mr Russell Armstrong&lt;br&gt;General President&lt;br&gt;WA Police Union of Workers</td>
<td>09/02/10</td>
</tr>
<tr>
<td>Ms Carol Adams&lt;br&gt;Solicitor&lt;br&gt;WA Police Union of Workers</td>
<td>09/02/10</td>
</tr>
<tr>
<td>Mr Hylton Quail&lt;br&gt;President&lt;br&gt;The Law Society of Western Australia</td>
<td>09/02/10</td>
</tr>
<tr>
<td>Dr Karl O’Callaghan&lt;br&gt;Commissioner of Police&lt;br&gt;Western Australia Police</td>
<td>10/03/10</td>
</tr>
<tr>
<td>Mr Christopher Dawson&lt;br&gt;Deputy Commissioner&lt;br&gt;Western Australia Police</td>
<td>10/03/10</td>
</tr>
<tr>
<td>Mr Stephen Brown&lt;br&gt;Assistant Commissioner&lt;br&gt;Western Australia Police</td>
<td>10/03/10</td>
</tr>
<tr>
<td>Witnesses</td>
<td>Date</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Mr Malcolm Penn&lt;br&gt;Executive Manager, Legislative Services&lt;br&gt;Legal and Legislative Services Directorate&lt;br&gt;Western Australia Police</td>
<td>10/03/10</td>
</tr>
<tr>
<td>Dr Frank Morgan&lt;br&gt;Director, Crime Research Centre&lt;br&gt;University of Western Australia</td>
<td>10/05/10</td>
</tr>
<tr>
<td>Associate Professor David Indermaur&lt;br&gt;Crime Research Centre&lt;br&gt;University of Western Australia</td>
<td>10/05/10</td>
</tr>
<tr>
<td>Dr Karl O’Callaghan&lt;br&gt;Commissioner of Police&lt;br&gt;Western Australia Police</td>
<td>19/05/10</td>
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<tr>
<td>Mr Malcolm Penn&lt;br&gt;Executive Manager, Legislative Services&lt;br&gt;Legal and Legislative Services Directorate&lt;br&gt;Western Australia Police</td>
<td>19/5/10</td>
</tr>
<tr>
<td>Mr Stephen Brown&lt;br&gt;Assistant Commissioner - Metro&lt;br&gt;Western Australia Police</td>
<td>19/5/10</td>
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APPENDIX 4

PART 8, DIVISION 2 OF THE

CRIMINAL INVESTIGATION ACT 2006
APPENDIX 4
PART 8, DIVISION 2 OF THE CRIMINAL INVESTIGATION ACT 2006

Division 2 — General powers to search people

67. Warrant not required
The powers in this Division may be exercised without a warrant.

68. Searching people for things relevant to offences
(1) If an officer reasonably suspects that a person has in his or her possession or under his or her control any thing relevant to an offence, the officer —
   (a) may do a basic search or a strip search of the person;
   (b) may, subject to section 146, seize any thing relevant to an offence that the officer finds, whether or not it is a thing that the officer suspected was in the possession or under the control of the person; and
   (c) whether or not the officer seizes the thing, may do a forensic examination on it.
(2) 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, but may not enter —
   (a) a dwelling; or
   (b) the area associated with a dwelling, unless the officer reasonably suspects that the person —
      (i) is in that area;
      (ii) does not reside in the dwelling; and
      (iii) does not have the express or implied permission of a person who does reside in the dwelling to be in that area.
(3) For the purposes of exercising the powers in subsection (1), the officer may stop and enter a vehicle in which the person to be searched is reasonably suspected by the officer to be and search it for the person.
(4) The powers in subsection (3) may be exercised by an officer in the area associated with a dwelling but only if the officer reasonably suspects that —
   (a) the person in charge of the vehicle does not reside in the dwelling; and
   (b) the vehicle is not in that area with the express or implied permission of a person who does reside in the dwelling.
(5) A power in this section to search a place or vehicle is limited to searching the place or vehicle for the person to be searched.

69. People and vehicles in public places, search of for security purposes

(1) The powers in this section may be exercised in a public place by a police officer —

(a) if the place is prescribed;

(b) if the place is the subject of a written declaration made under subsection (2); or

(c) 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.

(2) If a senior police officer is of the opinion that it is necessary to do so to safeguard a particular public place or people who are in or may enter the place, the officer may declare the place to be one where the powers in this section may be exercised by a police officer.

(3) A senior police officer who makes such a declaration must make a written record of it and —

(a) the public place to which it applies;

(b) the date and time it was made;

(c) the period for which it will be in force, which must not be more than 48 hours; and

(d) the reasons for making it.

(4) If the powers in this section may be exercised in a public place by a police officer, the officer —

(a) having informed a person who is about to enter the place that entry will be refused unless the person consents —

(i) to undergoing a basic search; and

(ii) if the person is in charge of a vehicle, to a search of the vehicle,

may order the person not to enter the place if the person does not consent; or

(b) having informed a person who is in the place that he or she will be ordered to leave the place unless the person consents —

(i) to undergoing a basic search; and

(ii) if the person is in charge of a vehicle, to a search of the vehicle,

may order the person to leave the place if the person does not consent.

(5) If a person does not obey an order given by a police officer under subsection (4), the officer may physically enforce the order.
(6) If a person who is about to enter or is in a public place consents to undergoing a basic search by a police officer, the officer —
   (a) may do a basic search for the purpose of searching for any thing that the officer reasonably suspects does or may endanger the place or people who are in or may enter it; and
   (b) may seize any such thing found.

(7) A thing so seized from a person 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 or under another written law.

(8) The *Criminal and Found Property Disposal Act 2006* applies to and in relation to a thing so seized that is made available to but not collected by the person.

(9) If a police officer doing a search under this section finds a thing which is not a thing referred to in subsection (6) but which is a thing relevant to an offence, the officer —
   (a) may, subject to section 146, seize it; and
   (b) whether or not the officer seizes it, may do a forensic examination on it.

[Section 69. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section deleted 1 Nov 2009. See endnote 1M.]
APPENDIX 5

COMPARISON TABLE OF LEGISLATIVE POLICE STOP AND SEARCH POWERS WHICH DO NOT REQUIRE ARREST, WARRANT OR REASONABLE SUSPICION
## APPENDIX 5

**Comparison Table of Legislative Police Stop and Search Powers which do not require Arrest, Warrant or Reasonable Suspicion**

Comparison of Legislative Police Stop and Search Powers which do not require Arrest, Warrant or Reasonable Suspicion  
(as at 25 August 2010)

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<tr>
<th></th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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<tr>
<td>3. Object of the search</td>
<td>Not prescribed</td>
<td>Any thing that the searching police officer reasonably suspects does or may endanger the place or people who</td>
<td>Weapons: sections 10G and 10H Control of Weapons Act 1990</td>
<td>Not prescribed</td>
<td>Offensive weapons or dangerous instruments: section 60(4) Criminal Justice and Public Order Act 1990</td>
<td>Articles of a kind which could be used in connection with terrorism: section 45(1) Terrorism Act 2000</td>
</tr>
<tr>
<td>The Bill</td>
<td>Other WA - General</td>
<td>VIC - General</td>
<td>NSW - General</td>
<td>UK - General</td>
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</tr>
<tr>
<td>are in or may enter it: section 69(6) <em>Criminal Investigation Act 2006</em></td>
<td>Any thing that the searching police officer reasonably suspects does/may endanger the place or people who are in/may enter it OR any thing relevant to an offence: clause 5 The Bill; proposed sections 70A(4)(c) and (d) <em>Criminal Investigation Act 2006</em></td>
<td>Any thing that the searching police officer reasonably suspects does/may endanger the place or people who are in/may enter it: section 69(6) <em>Criminal Investigation Act 2006</em></td>
<td>A vehicle, mobile phone or other thing, if the seizure of it will assist in preventing or controlling a public disorder OR all or part of a thing (including a vehicle) that the searching police officer suspects on reasonable grounds may provide evidence of the commission of a serious indictable offence: section 87M <em>Law Enforcement</em></td>
<td>Act 1994</td>
<td></td>
<td></td>
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<tr>
<td>4. <strong>What may be seized during the search?</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>An article which the searching constable reasonably suspects is intended to be used in connection with terrorism: section 45(2) <em>Terrorism Act 2000</em></td>
<td></td>
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<tr>
<td>5. When can the power be used? (see the row below for the requirement for consent)</td>
<td>The Bill</td>
<td>Other WA - General</td>
<td>VIC - General</td>
<td>NSW - General</td>
<td>UK - General</td>
<td>UK - Anti-Terrorism</td>
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<td>When the person/vehicle to be searched is in a prescribed/declared area at a prescribed/declared time: clause 5 The Bill; proposed section 70A(1) Criminal Investigation Act 2006</td>
<td>When the person/vehicle to be searched is about to enter/is in a prescribed/declared place at a prescribed/declared time OR when the person/vehicle to be searched is about to enter/is in a place where a police officer reasonably suspects that it is necessary to exercise the powers for the purposes of safeguarding the place or people who are in/may enter the place: section 69(1)</td>
<td>When the person/vehicle to be searched is in a declared designated area at a declared time: sections 10G and 10H Control of Weapons Act 1990</td>
<td>When the person/vehicle to be searched is in an area that is the target of an authorisation AND when the searching police officer reasonably suspects there is a large-scale public disorder occurring/a threat of such a disorder occurring in the near future and the police officer reasonably suspects that the occupants of a vehicle on a road have participated/intend to participate</td>
<td>When the person/vehicle to be searched is in a locality which is the subject of an authorisation during a period specified in the authorisation: section 60 Criminal Justice and Public Order Act 1994</td>
<td>When the person/vehicle to be searched is in an area specified in an authorisation: section 44 Terrorism Act 2000</td>
<td></td>
</tr>
<tr>
<td>6. Is the consent of the person searched/person whose vehicle is searched required before the power is used?</td>
<td>No</td>
<td>Yes. If consent is given, the person may be refused entry to the place/ordered to leave the place: sections 69(4) and (5) Criminal Investigation Act 2006</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>7. Who can make the prescription/declaration/authorisation?</td>
<td>Areas may be prescribed by the Governor in regulations; Areas may be declared by the Commissioner of Police: clause 5 The Bill; proposed Places may be prescribed by the Governor in regulations; Places may be declared by a senior police officer; The searching police</td>
<td>Chief Commissioner of Police: sections 10D and 10E Control of Weapons Act 1990</td>
<td>For areas which are the target of an authorisation - Commissioner of Police/Deputy Commissioner of Police/Assistant Commissioner of A police officer of the rank of inspector or above: section 60(1) Criminal Justice and Public Order Act 1994. It appears that, in If area is in the metropolitan police district - a police officer of at least the rank of commander of the metropolitan police. If area is in the City</td>
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<td>The Bill</td>
<td>Other WA - General</td>
<td>VIC - General</td>
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<td>sections 70A(1) and 70B(1) <em>Criminal Investigation Act 2006</em></td>
<td>officer who reasonably suspects it is necessary to use the stop and search powers in the place: section 69(1) <em>Criminal Investigation Act 2006</em></td>
<td>Police; The police officer who invokes the stop and search powers: sections 87F and 87N <em>Law Enforcement (Powers and Responsibilities) Act 2002</em></td>
<td>certain cases, authorisations may also be given by a member of the British Transport Police Force: see section 60(9A) <em>Criminal Justice and Public Order Act 1994</em></td>
<td>of London - a police officer for the City of at least the rank of commander in the City’s police force. If area is outside Northern Ireland, but not in the metropolitan or City of London police districts - a police officer of at least the rank of assistant chief constable. If area is in Northern Ireland - a member of the Royal Ulster Constabulary of at least the rank of assistant chief constable: section 44(4) <em>Terrorism Act 2000</em>.</td>
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- *Criminal Investigation Act 2006*
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<thead>
<tr>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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</thead>
<tbody>
<tr>
<td><strong>8. Is additional approval from another person/body required?</strong>&lt;br&gt;<strong>If so, whose approval is required?</strong></td>
<td>For prescribed areas - no; For declared areas - Minister’s approval: clause 5 The Bill; proposed sections 70A and 70B(1) <em>Criminal Investigation Act 2006</em></td>
<td>No</td>
<td>No</td>
<td>For areas which are the target of an authorisation - no; Where a searching police officer invokes the stop and search powers - approval of a police officer of/above the rank of inspector (approval may only be given if the</td>
<td>No, although an officer of at least the rank of superintendent must be informed as soon as is practicable: section 60(3A) <em>Criminal Justice and Public Order Act 1994</em></td>
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<td>The Bill</td>
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<td>approver is satisfied</td>
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<td>that the searching</td>
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<td>police officer has</td>
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<td>reasonable grounds for</td>
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<td>his/her suspicions)</td>
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<td>sections 87F and</td>
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<td>87N Law Enforcement</td>
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<td>(Powers and Responsibilities) Act 2002</td>
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<td>If the confirmation</td>
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<td>does not occur, the</td>
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<td>authorisation ceases</td>
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<td>to have effect after 48 hours: sections 46(4) and (5) Terrorism Act 2000</td>
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<td>9. Prescribed purpose for the prescription/declaration/authorisation</td>
<td>None</td>
<td>For prescribed places - none; For declared places - senior police officer is of opinion the declaration is necessary to safeguard the particular public place or people who are in/may enter the place; For instances</td>
<td>For planned designated areas - Chief Commissioner of Police is satisfied that either more than one incident of violence or disorder has occurred in that area in the previous 12 months that involved the use of</td>
<td>For areas which are the target of an authorisation - authorising police officer has reasonable grounds for believing there is a large-scale public disorder occurring or a threat of such a disorder occurring in the</td>
<td>Authorising police officer reasonably believes that incidents involving serious violence may take place in any locality in his police area, and that it is expedient to give the authorisation to prevent their</td>
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<td>The Bill</td>
<td>Other WA - General</td>
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<td>where searching police officer decides to invoke the stop and search powers - searching police officer reasonably suspects the use of the stop and search powers in the place is necessary to safeguard the place or people who are in/may enter the place: sections 69(1) and (2) Criminal Investigation Act 2006</td>
<td>weapons OR an event is to be held in that area and incidents of violence or disorder involving the use of weapons have occurred at previous occasions of that event (wherever occurring) AND there is a likelihood that the violence or disorder will recur; For unplanned designated areas - (a) Chief Commissioner of Police is satisfied that there is a likelihood that “unlawful possession, carriage or use of near future AND is satisfied the exercise of the stop and search powers is reasonably necessary to prevent or control the public disorder. In addition, for preventing/controlling a public disorder in a particular area OR for preventing persons from travelling by a specified road to an area to create or participate in a public disorder; For instances where searching police officer decides to invoke the stop and search powers</td>
<td>occurrence OR that an incident involving serious violence has taken place in England and Wales in his police area, a dangerous instrument or offensive weapon used in the incident is being carried in any locality in his police area by a person, and it is expedient to give the authorisation to find the instrument or weapon OR that persons are carrying dangerous instruments or offensive weapons in any locality in his</td>
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<td>The Bill</td>
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<td><em>weapons or</em>(^{776}) <em>violence or disorder involving weapons will occur in that area during the period of intended operation of the declaration AND the designation is necessary to enable members of the police force to exercise search powers to prevent or deter the &quot;unlawful possession, carriage or use of weapons or&quot;(^{777})</em></td>
<td><em>search powers - searching police officer reasonably suspects there is a large-scale public disorder occurring/a threat of such a disorder occurring in the near future and the police officer reasonably suspects that the occupants of a vehicle on a road have participated/intend to participate in the public disorder: sections 87D, 87E and 87N</em></td>
<td><em>police area without good reason: section 60(1) Criminal Justice and Public Order Act 1994</em></td>
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\(^{776}\) These criteria were inserted by the *Control of Weapons Amendment Act 2010 (Vic)* and commenced on 22 August 2010. They will cease to have effect on 22 August 2013: sections 22(1) and 2(3) of the *Control of Weapons Amendment Act 2010 (Vic)*. The expiry of these criteria will allow for a review of their effectiveness to be conducted: *Explanatory Memorandum (Amended Print)* for the Control of Weapons Amendment Bill 2010 (Vic), p15.

\(^{777}\) These criteria were inserted by the *Control of Weapons Amendment Act 2010 (Vic)* and commenced on 22 August 2010. They will cease to have effect on 22 August 2013: sections 22(1) and 2(3) of the *Control of Weapons Amendment Act 2010 (Vic)*. The expiry of these criteria will allow for a review of their effectiveness to be conducted: *Explanatory Memorandum (Amended Print)* for the Control of Weapons Amendment Bill 2010 (Vic), p15.
<table>
<thead>
<tr>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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<td></td>
<td>violence or disorder involving weapons OR (b) Chief Commissioner of Police is satisfied that “more than one incident of unlawful possession, carriage or use of weapons or violence or disorder involving weapons has occurred in that area in the previous 12 months” AND “there is a likelihood that the unlawful possession, carriage or use of weapons or the violence or disorder</td>
<td>Law Enforcement (Powers and Responsibilities) Act 2002</td>
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</table>

These criteria were inserted by the *Control of Weapons Amendment Act 2010* (Vic) and commenced on 22 August 2010. They will cease to have effect on 22 August 2013: sections 22(1) and 2(3) of the *Control of Weapons Amendment Act 2010* (Vic). The expiry of these criteria will allow for a review of their effectiveness to be conducted: *Explanatory Memorandum (Amended Print)* for the Control of Weapons Amendment Bill 2010 (Vic), p15.
The Bill | Other WA - General | VIC - General | NSW - General | UK - General | UK - Anti-Terrorism
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10. **Maximum duration of the prescription/ declaration/ authorisation**
- For prescribed areas - 12 months; For declared areas - 2 months: clause 5 The Bill; proposed sections 70A(2) and 70B(4) *Criminal Investigation Act 2006*
- For declared public places - 48 hours; For prescribed public places and where the searching police officer reasonably suspects it is necessary to exercise the stop and search powers - unlimited duration: section 69 *Criminal Investigation Act 2006*
- 12 hours for both planned designated areas (except in relation to events)\(^{779}\) and unplanned designated areas: sections 10D(3) and 10E(4) *Control of Weapons Act 1990*  
- For areas which are the target of an authorisation - 48 hours; Where the searching police officer invokes the stop and search powers - 3 hours: sections 87G and 87N(3) *Law Enforcement (Powers and Responsibilities) Act 2002*
- 24 hours: section 60(1) of the *Criminal Justice and Public Order Act 1994*
- 28 days: section 46(2) *Terrorism Act 2000*

11. **Other restrictions on the duration of**
- None
- None
- For planned designated areas (except in relation
- None
- None
- None

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\(^{779}\) The planned designation of an area in relation to an event (for example, music festivals and sporting and other events) is not limited to a maximum duration of 12 hours. Such designations may also operate for more than one period as long as each period occurs during the event: sections 10D(3), (3A) and (3B) of the *Control of Weapons Act 1990* (Vic). These amendments were effected by the *Control of Weapons Amendment Act 2010* (Vic) and commenced on 22 August 2010.
<table>
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<tr>
<th>The Bill</th>
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<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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<td>to events) - the duration must not be longer than is reasonably necessary to enable members of the police force to effectively respond to the threat of violence or disorder; For unplanned designated areas - the duration must not be longer than is reasonably necessary to enable members of the police force to effectively “prevent or deter the unlawful</td>
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These criteria were inserted by the Control of Weapons Amendment Act 2010 (Vic) and commenced on 22 August 2010. They will cease to have effect on 22 August 2013: sections 22(4) and 2(3) of the Control of Weapons Amendment Act 2010 (Vic). The expiry of these criteria will allow for a review of their effectiveness to be conducted: Explanatory Memorandum (Amended Print) for the Control of Weapons Amendment Bill 2010 (Vic), p15.
<table>
<thead>
<tr>
<th>12. Can the duration of the prescription/ declaration/ authorisation be extended?</th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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<tbody>
<tr>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>For areas which are the target of an authorisation - yes, but only if the total duration of the authorisation does not exceed 48 hours OR the Supreme Court allows it; When the searching police officer invokes the stop and search powers - no: sections 87G and 87N Law Enforcement</td>
<td>Yes, for a further 24 hours, if it appears to an officer of the rank of superintendent or above that it is expedient to do so, having regard to offences which have been/are reasonably suspected to have been committed in connection with any activity falling within the</td>
<td>No</td>
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<td>13. Can a prescription/declaration/authorisation be renewed? If so, how and when?</td>
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<td><strong>The Bill</strong></td>
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<td><strong>UK - General</strong></td>
<td><strong>UK - Anti-Terrorism</strong></td>
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<td>Yes.</td>
<td>Yes.</td>
<td>Yes.</td>
<td>Yes.</td>
<td>Yes.</td>
<td>Yes.</td>
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<tr>
<td>With a new prescription/declaration.</td>
<td>With a new prescription/declaration/invoking of stop and search powers by the searching police officer.</td>
<td>With a new declaration. For planned designated areas - the next declaration cannot take effect until after a 10-day period after the first declaration ends; For unplanned designated areas - anytime immediately after the last declaration ends: sections 10D(8) and (9) and 10E Control of Weapons Act 1990</td>
<td>With a new authorisation OR a new decision by the searching police officer to invoke the stop and search powers. Anytime immediately after the last authorisation ends/decision to invoke stop and search powers expires: sections 87D, 87E, 87F, 87G and 87N Law Enforcement (Powers and</td>
<td>With a new authorisation. Anytime immediately after the last authorisation ends: section 60 Criminal Justice and Public Order Act 1994</td>
<td>With a renewal of authorisation. Anytime immediately after the last authorisation ends: section 46 Terrorism Act 2000</td>
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<tr>
<td>Anytime immediately after the last prescription/declaration ends: clause 5 The Bill; proposed sections 70A and 70B Criminal Investigation Act 2006</td>
<td>Anytime immediately after the last prescription/declaration/invoking of stop and search powers by the searching police officer.</td>
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Legislation Committee
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<tr>
<th>14. Any restriction on the size of the affected area?</th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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<tr>
<td></td>
<td>For prescribed areas - none; For declared areas - must not be larger than is reasonably necessary: clause 5 The Bill; proposed sections 70A and 70B(3) Criminal Investigation Act 2006</td>
<td>None</td>
<td>For planned designated areas - must not be larger than is reasonably necessary to enable police to effectively respond to the threat of violence or disorder; For unplanned designated areas - must not be larger than is reasonably necessary to enable police to effectively “prevent or deter the unlawful possession, carriage or use of weapons or”(^781)</td>
<td>For areas which are the target of an authorisation - none; Where the searching police officer invokes the stop and search powers - the search must be confined to the vehicle and any person/thing in or on the vehicle: sections 87F and 87N Law Enforcement (Powers and Responsibilities) Act 2002</td>
<td>None</td>
<td>None</td>
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</tbody>
</table>

\(^781\) These criteria were inserted by the *Control of Weapons Amendment Act 2010* (Vic) and commenced on 22 August 2010. They will cease to have effect on 22 August 2013: sections 22(3) and 2(3) of the *Control of Weapons Amendment Act 2010* (Vic). The expiry of these criteria will allow for a review of their effectiveness to be conducted: *Explanatory Memorandum* (Amended Print) for the Control of Weapons Amendment Bill 2010 (Vic), p15.
<p>| 15. Any other restrictions on the prescription/declaration/authorisation not already mentioned | None | None | None | For areas which are the target of an authorisation - authorising police officer is satisfied that the nature and extent of the stop and search powers are appropriate to the public disorder that is occurring/threatened: section 87D(2) Law Enforcement (Powers and Responsibilities) Act 2002 | None | None |
|---|---|---|---|---|---|
| 16. Can the power to prescribe/ | For prescribed areas - no; For declared | No | For planned and unplanned | For areas which are the target of an | No | No |</p>
<table>
<thead>
<tr>
<th>declare/authorise be delegated?</th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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<tbody>
<tr>
<td>areas - yes (to a Deputy Commissioner of Police or an Assistant Commissioner of Police). The power cannot be delegated further: clause 5 The Bill; proposed sections 70A and 70B(6) and (7) <em>Criminal Investigation Act 2006</em></td>
<td></td>
<td>designated areas - yes (to a police officer who is of or above the rank of Assistant Commissioner of Police): section 10F <em>Control of Weapons Act 1990</em></td>
<td></td>
<td>authorisation - no, but authorisation may already be given by Commissioner of Police/Deputy Commissioner of Police/Assistant Commissioner of Police. The power cannot be delegated further; Where the searching police officer invokes the stop and search powers - no: sections 87F(1) and 87N <em>Law Enforcement (Powers and Responsibilities) Act 2002</em></td>
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17. Who can conduct the stop and **Police officer:** clause 5 The Bill; proposed section **Police officer:** section 69(1) *Criminal* **Member of the police force:** sections 10G and **Police officer:** sections 87H, 87J, 87K and 87N *Law* **Constable in uniform:** section 60(4) *Criminal* **Constable in uniform:** sections 44(1) and (2)
<table>
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<tr>
<th>search?</th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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<tr>
<td>For prescribed areas - required (inherent feature of regulations); For declared areas - required: clause 5 The Bill; proposed sections 70A(1) and 70B(4) Criminal Investigation Act 2006</td>
<td>For prescribed places - required (inherent feature of regulations); For declared places - required; For the searching police officer’s invoking of stop and search powers - not required: section 69 Criminal Investigation Act 2006</td>
<td>Required for both planned and unplanned designated areas: sections 10D(4) and 10E(1) Control of Weapons Act 1990</td>
<td>For areas which are the target of an authorisation - required. If authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable; Where the searching police officer invokes the stop and search powers - not required: sections 87F(2) and (3) and 87N Law Enforcement (Powers and Responsibilities) Act 2002</td>
<td>Required. If authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable: section: sections 60(9) and (9ZA) Criminal Justice and Public Order Act 1994</td>
<td>Required. If authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable: section 44(5) Terrorism Act 2000</td>
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<tr>
<td>19. Publication requirement for the prescription/declaration/authorisation</td>
<td>The Bill</td>
<td>Other WA - General</td>
<td>VIC - General</td>
<td>NSW - General</td>
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<td>UK - Anti-Terrorism</td>
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<td>For prescribed areas - required, in the \textit{Government Gazette} and tabling in Parliament (inherent feature of regulations); For declared areas - required, in the \textit{Government Gazette}, although failure to gazette does not render declaration invalid: clause 5 The Bill; proposed sections 70A(1) and 70B(5) \textit{Criminal Investigation Act 2006}; sections 41 and 42 \textit{Interpretation Act 1984}</td>
<td>For prescribed places - required in the \textit{Government Gazette} and tabling in Parliament (inherent feature of regulations); For declared places - not required; For the searching police officer’s invoking of stop and search powers - not required: section 69 \textit{Criminal Investigation Act 2006}; sections 41 and 42 \textit{Interpretation Act 1984}</td>
<td>For planned designated areas - required, in the \textit{Government Gazette} AND a daily newspaper circulating generally in Victoria AND, if the designated area is outside the metropolitan area, in a daily newspaper circulating generally within that area, if any; For unplanned designated areas - not required: sections 10D(4) and 10E \textit{Control of Weapons Act 1990}</td>
<td>Not required</td>
<td>Not required</td>
<td>Not required</td>
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<td>20. Delay in commencement</td>
<td>No delay</td>
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<td>No delay</td>
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<td>of prescription/ declaration/ authorisation</td>
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<td>Other WA - General</td>
<td>VIC - General</td>
<td>NSW - General</td>
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<td>commencement of declaration cannot occur earlier than 7 days after publication of notice of the declaration in Government Gazette; For unplanned designated areas - no delay: sections 10D(6) and 10E Control of Weapons Act 1990</td>
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</tr>
</tbody>
</table>

21. Requirement for searching officer to provide a written search notice to the person searched/person whose vehicle was searched

- Not required. However, before the search, the searching police officer must, if reasonably practicable: identify himself or herself to the person; inform the
- Not required. However, before the search, the searching police officer must, if reasonably practicable: identify himself or herself to the person; inform the
- Required. Searching police officer must also: if requested, give his/her name, rank and place of duty (in writing if this is requested); produce his/her identification unless
- Not required. However, before or during the search, the searching police officer must provide: evidence that he/she is a police officer (unless he/she is in uniform); his/her
- Not required. However, before the search, the searching constable must take reasonable steps to advise the person: that he/she is a constable, unless the constable is in
- Not required. However, before the search, the searching constable must take reasonable steps to advise the person: that he/she is a constable, unless the constable is in
<table>
<thead>
<tr>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>before/during the search</td>
<td>person of the reason for the search; request the person to consent to the search; and 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: section 70 Criminal Investigation Act 2006</td>
<td>person of the reason for the search; request the person to consent to the search; and 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: section 70 Criminal Investigation Act 2006</td>
<td>he/she is in uniform; inform the person that he/she intends to search the person/the vehicle for weapons and is empowered to do so under the Act: section 10I(1) Control of Weapons Act 1990</td>
<td>name and place of duty; the reason for the stop and search: section 201 Law Enforcement (Powers and Responsibilities) Act 2002</td>
<td>uniform; his/her name and the name of his/her police station; the object of the proposed search; and the constable’s grounds for proposing the search: sections 2(2) and (3) Police and Criminal Evidence Act 1984</td>
</tr>
</tbody>
</table>

22. Requirement for searching police officer to make a written record of stop and search

<p>| Not required | Not required | Required. The written record must contain prescribed particulars, which include the searching police | Not required | Required. The particulars which must be recorded are the date, time and place of the stop and search, the | Required. The particulars which must be recorded are the date, time and place of the stop and search, the |</p>
<table>
<thead>
<tr>
<th>Legislation Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Bill</strong></td>
</tr>
<tr>
<td>officer’s details, the person’s name (if known), a description of the vehicle (if applicable) the place, time and date of the stop and search, the grounds for the stop and search, and a description of what was found (see regulation 14 Control of Weapons Regulations 2000); section 10A Control of Weapons Act</td>
</tr>
</tbody>
</table>

Note that these requirements were introduced when section 1 of the Crime and Security Act 2010 (UK) commenced operation around June 2010, amending section 3 of the Police and Criminal Evidence Act 1984 (UK). Previously, the particulars which had to be recorded included the searching constable’s identity, the person’s name (if known), the person’s ethnicity, a description of the vehicle (if applicable), the object, place, time and date of the stop and search, the grounds for the stop and search, and a description of what was found: section 3 of the Police and Criminal Evidence Act 1984 (UK) prior to June 2010; and Code of Practice A.

Note that these requirements were introduced when section 1 of the Crime and Security Act 2010 (UK) commenced operation around June 2010, amending section 3 of the Police and Criminal Evidence Act 1984 (UK). Previously, the particulars which had to be recorded included the searching constable’s identity, the person’s name (if known), the person’s ethnicity, a description of the vehicle (if applicable), the object, place, time and date of the stop and search, the grounds for the stop and search, and a description of what was found: section 3 of the Police and Criminal Evidence Act 1984 (UK) prior to June 2010; and Code of Practice A.
<table>
<thead>
<tr>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1990</td>
<td></td>
<td>was stopped and searched under section 60: sections 60(10) and (10A) Criminal Justice and Public Order Act 1994</td>
<td>was stopped under section 44: sections 45(5) and (6) Terrorism Act 2000</td>
</tr>
</tbody>
</table>

**23. If a written record of the stop and search is required, must it be made available to the person searched/whose vehicle was searched?**

| Not applicable | Not applicable | Yes, on request. The person has 1 year after the stop and search to make a request for the written record and a copy of the record is to be provided without charge: section 10A Control of Weapons Act 1990 | Not applicable | Yes, on request. The request for the written record of the stop and search can be made up to 3 months from the date of the stop and search: sections 3(7) and (8) Police and Criminal Evidence Act 1984.\(^784\) \(^785\) The request for the written record of the stop and search can be made up to 3 months from the date of the stop and search: sections 3(7) and (8) Police and Criminal Evidence Act 1984.\(^784\) \(^785\) |

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\(^784\) Note that the time limit for requesting the written record used to be 12 months from the date of the stop and search: sections 3(7) and (8) of the Police and Criminal Evidence Act 1984 (UK) prior to June 2010, when section 1 of the Crime and Security Act 2010 (UK) commenced operation.

\(^785\) Note that the time limit for requesting the written record used to be 12 months from the date of the stop and search: sections 3(7) and (8) of the Police and Criminal Evidence Act 1984 (UK) prior to June 2010, when section 1 of the Crime and Security Act 2010 (UK) commenced operation.
<table>
<thead>
<tr>
<th>24. If a written record of the stop and search is required, must it include a description of</th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>written statement that the person/vehicle was stopped and searched under section 60 can be made up to 12 months from the date of the stop and search: sections 60(10) and (10A) Criminal Justice and Public Order Act 1994</td>
<td>written statement that the person/vehicle was stopped under section 44 can be made up to 12 months from the date of the stop and search: sections 45(5) and (6) Terrorism Act 2000</td>
<td></td>
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<tr>
<td></td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Yes, if the person’s name is not known: regulation 14(2) Control of Weapons Regulations 2000</td>
<td>Not applicable</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

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786 Previously, the written record had to include a description of the person searched if the person’s name was not known: section 3(4) of the Police and Criminal Evidence Act 1984 (UK) prior to June 2010, when section 1 of the Crime and Security Act 2010 (UK) commenced operation.

787 Previously, the written record had to include a description of the person searched if the person’s name was not known: section 3(4) of the Police and Criminal Evidence Act 1984 (UK) prior to June 2010, when section 1 of the Crime and Security Act 2010 (UK) commenced operation.
<table>
<thead>
<tr>
<th>the person searched?</th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>25. <strong>Type of search permitted</strong></td>
<td>Search of the vehicle and basic search of the person: clause 5 The Bill; proposed section 70A(4) Criminal Investigation Act 2006. Basic search can involve: scanning a person with an electronic or mechanical device to detect any thing; removing a person’s headwear, gloves, footwear or outer clothing (such as a coat or jacket) in order to facilitate a frisk search; a frisk search of a person (to quickly and methodically run the hands over the outside of the person) in order to detect a weapon.</td>
<td>Basic search of the person: section 69(6) Criminal Investigation Act 2006. Basic search can involve: scanning a person with an electronic or mechanical device to detect any thing; removing a person’s headwear, gloves, footwear or outer clothing (such as a coat or jacket) in order to facilitate a frisk search; a frisk search of a person (to quickly and methodically run the hands over the outside of the person) in order to detect a weapon.</td>
<td>Any thing in the possession or/under the control of the person or in/on the vehicle may be searched. For personal searches, Schedule 1 applies. This can include: an initial electronic device search and an examination of the things found; then an outer search of the person if the person is believed to be concealing a weapon (this may include asking the person to remove his/her overcoat, coat or jacket or similar article of clothing or by passing an electronic metal detection device over the person).</td>
<td>Search of the vehicle and frisk search and ordinary search of the person. Frisk search means: quickly running the hands over the person’s outer clothing or by passing an electronic metal detection device over/in close proximity to the person’s outer clothing; and an examination of anything worn or carried by the person that is conveniently and voluntarily removed.</td>
<td>Search of the person/anything carried by him/her and a search of the vehicle, its driver and any passenger. The searching constable may conduct any search he/she thinks fit: sections 60(4) and (5) Criminal Justice and Public Order Act 1994. However, the searching constable may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves: sections 44(1) and (2) and 45(3) Terrorism Act 2000.</td>
<td>Search of the pedestrian/anything carried by him/her and a search of the vehicle/driver/passenger and anything in/on the vehicle or carried by the driver/passenger. The searching constable may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves: sections 44(1) and (2) and 45(3) Terrorism Act 2000.</td>
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<tr>
<td>(to quickly and methodically run the hands over the outside of the person’s clothing); and a search of any headwear, gloves, footwear or outer clothing removed from the person: section 63 Criminal Investigation Act 2006</td>
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<th>Other WA - General</th>
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<tbody>
<tr>
<td>person’s clothing); and a search of any headwear, gloves, footwear or outer clothing removed from the person: section 63 Criminal Investigation Act 2006</td>
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<tr>
<th>VIC - General</th>
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<tbody>
<tr>
<td>clothing, gloves, shoes or hat); and then a strip search of the person if the searching police officer reasonably suspects certain things: sections 10G and 10H and Schedule 1 Control of Weapons Act 1990</td>
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<tr>
<th>NSW - General</th>
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<tbody>
<tr>
<td>by the person, including an examination conducted by passing an electronic metal detection device over/in close proximity to that thing. Ordinary search means: a search of a person/articles in the possession of a person that may include requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes, socks and hat, and an</td>
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<tr>
<th>UK - General</th>
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<tbody>
<tr>
<td>Evidence Act 1984</td>
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<tr>
<th>UK - Anti-Terrorism</th>
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26. Are there prescribed rules for the conduct of the stop and search powers?

<table>
<thead>
<tr>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes: the search must be done as quickly as is reasonably practicable; the search must not be any more intrusive than is reasonably necessary in the circumstances; the searching police officer must tell the person why it may be necessary to remove any article of clothing; the person must be</td>
<td>Yes: the search must be done as quickly as is reasonably practicable; the search must not be any more intrusive than is reasonably necessary in the circumstances; the searching police officer must tell the person why it may be necessary to remove any article of clothing; the person must be</td>
<td>Yes. For personal searches, the searching police officer must conduct the least invasive search that is practicable in the circumstances: section 10G Control of Weapons Act 1990. Rules for the preservation of dignity during an outer search of a person, including,</td>
<td>Yes. These include: the searching police officer must inform the person whether and why they will be required to remove his/her clothing; the search must be conducted in a way that provides reasonable privacy for the person searched and as quickly as is reasonably practicable; for</td>
<td>Yes, limited. These include the searching constable advising of: his/her name and his/her police station; the object of the proposed search; his/her grounds for the search; and the person’s entitlement to ask for a written record of the search. Period of the search is to be as is reasonably required: sections 2(3) and</td>
<td>Yes, limited. These include the searching constable advising of: his/her name and his/her police station; the object of the proposed search; his/her grounds for the search; and the person’s entitlement to ask for a written record of the search. Period of the search is to be as is reasonably required: sections</td>
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<tr>
<td>The Bill</td>
<td>Other WA - General</td>
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<td>UK - Anti-Terrorism</td>
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<tr>
<td>allowed to dress as soon as the search is finished; the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized; and, during the search, the person must not be questioned about any offence he/she is suspected of having committed: section 70 Criminal Investigation Act 2006.</td>
<td>allowed to dress as soon as the search is finished; the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized; and, during the search, the person must not be questioned about any offence he/she is suspected of having committed: section 70 Criminal Investigation Act 2006.</td>
<td>where reasonably practicable: informing the person whether and why he/she will be required to remove his/her clothing; and the search must be conducted in a way that provides reasonable privacy for the person searched and as quickly as is reasonably practicable: Schedule 1, clause 6 Control of Weapons Act 1990. Further rules exist for strip searches: Schedule 1 Control of Weapons Act 1990.</td>
<td>personal searches, the searching police officer must conduct the least invasive kind of search practicable in the circumstances; the search of a person must not be conducted while the person is being questioned; and if clothing is seized, the person must be left with or given reasonably appropriate clothing: section 32 Law Enforcement (Powers and Responsibilities) Act 2002</td>
<td>(8) Police and Criminal Evidence Act 1984. However, the Secretary of State must also issue codes of practice in connection with the exercise of these powers by police officers. Certain consultation must be undertaken. A code comes into operation only if the Secretary of State, by order, so provides. Such orders may only be made after the draft order has been laid before Parliament and approved by each House. A failure on the part</td>
<td>2(3) and (8) Police and Criminal Evidence Act 1984. However, the Secretary of State must also issue codes of practice in connection with the exercise of these powers by police officers. Certain consultation must be undertaken. A code comes into operation only if the Secretary of State, by order, so provides. Such orders may only be made after the draft order has been laid before Parliament and approved by each House. A failure on the part</td>
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<tr>
<td></td>
<td>The Bill</td>
<td>Other WA - General</td>
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<tr>
<td>27. Must the searching police officer be a person of the same gender as</td>
<td>Yes, but only if practicable: section 71 Criminal Investigation Act 2006</td>
<td>Yes, but only if practicable: section 71 Criminal Investigation Act 2006</td>
<td>Yes, if an outer search will involve running hands over the outer clothing of a person OR it is a</td>
<td></td>
<td>Not prescribed</td>
</tr>
</tbody>
</table>

of a police officer to comply with any provision of a code does not of itself render him/her liable to criminal/civil proceedings, although codes are admissible in evidence in such proceedings and any code appearing to a court/tribunal to be relevant must be taken into account: sections 66 and 67 Police and Criminal Evidence Act 1984

of a police officer to comply with any provision of a code does not of itself render him/her liable to criminal/civil proceedings, although codes are admissible in evidence in such proceedings and any code appearing to a court/tribunal to be relevant must be taken into account: sections 66 and 67 Police and Criminal Evidence Act 1984
### The Bill

<table>
<thead>
<tr>
<th>the person being searched?</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>28. Are there prescribed rules for protecting children who are stopped and searched?</td>
<td>No</td>
<td>No</td>
<td>Yes: Generally, for planned designation searches - must be conducted in the presence of a parent or guardian of the child. If the child is mature enough to express an opinion and indicates that the presence of the parent or guardian is not acceptable to the child, the search must be conducted in the presence of an independent person who is capable of</td>
<td>No</td>
<td>No</td>
</tr>
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</table>

- strip search: Schedule 1, clauses 6(6) and 9(9) *Control of Weapons Act 1990*
- *Act 2002*
<table>
<thead>
<tr>
<th></th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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<td>representing the</td>
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<td>interests of the</td>
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<tr>
<td>child and who, as</td>
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<td>far as is practicable</td>
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<td>in the circumstances, is acceptable to the child. If the child’s parent or guardian is not present and the search must be conducted without delay, the search must be conducted in the presence of an independent person who is capable of representing the interests of the child and who, as far as is practicable in the circumstances, is acceptable to the child; For searches that do not amount</td>
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<tr>
<td>29. Are there prescribed rules</td>
<td>The Bill</td>
<td>Other WA - General</td>
<td>VIC - General</td>
<td>NSW - General</td>
<td>UK - General</td>
<td>UK - Anti-Terrorism</td>
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<td></td>
<td>No</td>
<td>No</td>
<td>Yes:</td>
<td>No</td>
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General, for

Control of Weapons Act 1990
<table>
<thead>
<tr>
<th>for protecting mentally disabled people who are stopped and searched?</th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
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<tbody>
<tr>
<td></td>
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<td>planned designation searches - must be conducted in the presence of a parent or guardian of the person. If that is not acceptable to the person, the search must be conducted in the presence of an independent person who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person. If the person’s parent or guardian is not present and the search must be</td>
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</table>
conducted without delay, the search must be conducted in the presence of an independent person who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person; For searches that do not amount to planned designation searches - must, if practicable in the circumstances, be conducted in the presence of: a parent or guardian of the person or, if
<table>
<thead>
<tr>
<th>30. Can another person/body revoke/cancel the prescription/declaration/authorisation?</th>
<th>The Bill</th>
<th>Other WA - General</th>
<th>VIC - General</th>
<th>NSW - General</th>
<th>UK - General</th>
<th>UK - Anti-Terrorism</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>No</td>
<td>No</td>
<td>it is not practicable in the circumstances for a parent or guardian to be present, any person (whether this person is/is not a police officer) other than the police officer who is conducting the search: Schedule 1, clause 12 Control of Weapons Act 1990</td>
<td>No</td>
<td>No</td>
<td>Yes. Secretary of State may cancel an authorisation: section 46(6) Terrorism Act 2000</td>
</tr>
<tr>
<td>31. Is the use of the stop and search powers required to be reported to the Minister/Parliament? If so, how regularly?</td>
<td>The Bill</td>
<td>Other WA - General</td>
<td>VIC - General</td>
<td>NSW - General</td>
<td>UK - General</td>
<td>UK - Anti-Terrorism</td>
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<tr>
<td>No</td>
<td>No</td>
<td>Yes. Chief Commissioner of Police is required to provide the following information to the Minister for inclusion in the annual report to Parliament: the number of strip searches carried out;</td>
<td>Yes. Ombudsman is required to “keep under scrutiny” the exercise of the powers conferred on police in Part 6A of the Act. The Ombudsman may require the Commissioner of Police/any public</td>
<td>Yes. Chief officer of police for each police force is required to prepare annual reports containing, among other things, information about the recorded searches which have been conducted.</td>
<td>Yes.</td>
<td>Yes. An independent reviewer, appointed by the Secretary of State, is required to report to the Parliament at least once every 12 months about the operation of the Terrorism Act 2000 (UK) and Part 1 of the Act.</td>
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<tr>
<td>The Bill</td>
<td>Other WA - General</td>
<td>VIC - General</td>
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<td>UK - Anti-Terrorism</td>
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<td>searches conducted under section 10G during the financial year (as a total and also separately, in planned and unplanned designated areas); the number and type of weapons and dangerous articles found during searches in designated areas; the number of persons subjected to searches in designated areas and charged with offences against the Act in relation to a weapon or dangerous article found during the search; and any authority to provide information about the exercise of the powers. The Commissioner of Police must ensure that the Ombudsman is provided with a report on any authorisation given under Part 6A, Division 3 (includes section 87D) or approval given under section 87N, the reasons for giving the authorisation/approval and the powers used under the authorisation/approval. The Ombudsman is to include this</td>
<td>conducted in the area to which the report relates, during the period to which it relates. The annual reports must include the total numbers of searches conducted each month for stolen articles, offensive weapons and other prohibited articles, and the total number of persons arrested in each month in consequence of these searches. The annual reports must be submitted to the relevant police authority and the Secretary of State as soon as possible</td>
<td>the Terrorism Act 2006 (UK): section 36</td>
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<tr>
<td>32. Is there a requirement to review the operation and effectiveness of the relevant legislative provisions?</td>
<td>The Bill</td>
<td>Other WA - General</td>
<td>VIC - General</td>
<td>NSW - General</td>
<td>UK - General</td>
<td>UK - Anti-Terrorism</td>
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<td>33. If so, how, when and how often?</td>
<td>Once, 5 years after commencement: clause 6 The Bill; section 157(2A) Criminal Investigation Act 2006</td>
<td>Once, 5 years after commencement: section 157(1) Criminal Investigation Act 2006</td>
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<td>Once, 3 years after commencement: section 243(2) Law Enforcement (Powers and Responsibilities) Act 2002</td>
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<td>Ongoing, at least once every 12 months: section 36(4) Terrorism Act 2006</td>
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APPENDIX 6

Absolute Numbers and Rates of Attempted Murder, Manslaughter and Murder Offences Involving the Use of Weapons in Western Australia from 2000 to April 2010
APPENDIX 6

ABSOLUTE NUMBERS AND RATES OF ATTEMPTED MURDER, MANSLAUGHTER AND MURDER OFFENCES INVOLVING THE USE OF WEAPONS IN WESTERN AUSTRALIA FROM 2000 TO APRIL 2010

<table>
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<tr>
<th>Reported Homicide Offences by Year where a weapon was involved</th>
<th>Sum of Offences</th>
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Rate of Homicide Offences per 100,000 population where a weapon was involved

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**Notes:**
(a) The population figures used for WA Regions has been based on a "best fit" of police district boundaries to Local Government Area (LGA) boundaries.
(b) The population estimates relate to usual residents and do not reflect the fluctuations caused at various times by "visitors" associated with entertainment, employment, recreation, shopping and tourism.

**Source:** Population figures are sourced from the Australian Bureau of Statistics, Regional Population Growth 1996-2006 and 2001-2009 (ABS Cat. No. 3218.0)
APPENDIX 7

EXTRACTED QUESTIONS, ANSWERS AND DEMOGRAPHIC INFORMATION FROM WESTPOLL, DECEMBER 2009

APPENDIX “B”

Extracts from Dec FlashPoll

DATA TABLES -

PREPARED FOR: THE WEST AUSTRALIAN PARLIAMENT
CLIENT CONTACT: DENISE WONG
PATTERSON CONTACT: KEITH PATTERSON
DATE: Feb 2009

NB The data tables have been exported from a data analysis package as a simple word file. None of the normal table functions from Word will operate on the tables – they are essentially a picture of the data tables.

For navigation refer to the table numbers in the index, not the page numbers.
# FLASHPOLL DECEMBER 2009 DATA ANALYSIS - 04/02/2010

**Patterson Market Research**

**PARLIAMENT REGION ANALYSIS**

**TABLE 1**

**BASE: MTD. RESP.**

**WEIGHTS: Weights Matrix**

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<th>ALOE</th>
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<td></td>
<td>UP TO YRS</td>
<td>-AL</td>
<td>-O -TRV</td>
<td>/PAT -PF -R -CID</td>
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<tr>
<td>35+</td>
<td>YRS</td>
<td>TO VRS</td>
<td>MTHR C BNN</td>
<td>ALP LIKE GREE OTHER UNKN</td>
<td>ALA</td>
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**RESPONDENTS**

| | 403 | 108 | 295 | 201 | 202 | 303 | 100 | 169 | 161 | 33 | 17 | 23 | 5 | 156 |
| | MTD. RESP. | 403 | 112 | 291 | 199 | 204 | 310 | 89 | 170 | 159 | 33 | 17 | 24 | 5 | 154 |
| | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

**LOCATION ANALYSIS**

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TABLE 6  
"BY" Q1-4a. Would you be any more or less likely to visit Northbridge if it was declared a stop and search area?

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Q1-4a. Would you be any more or less likely to visit Northbridge if it was declared a stop and search area?

Yes, more likely to visit

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<th>AGE</th>
<th>GENDER</th>
<th>AREA</th>
<th>FEDERAL VOTING INTENT</th>
<th>VTSH</th>
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<tr>
<td>TO YRS</td>
<td>MALE FEM</td>
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<tr>
<td>35-PLUS</td>
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<tr>
<td>109</td>
<td>32</td>
<td>75</td>
<td>51 57</td>
<td>85 22</td>
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</table>

No difference

<table>
<thead>
<tr>
<th>AGE</th>
<th>GENDER</th>
<th>AREA</th>
<th>FEDERAL VOTING INTENT</th>
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<tbody>
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<td>ALP LIBS GRN OTHE PND</td>
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<td>271</td>
<td>30</td>
<td>226</td>
<td>264 281</td>
<td>27 254</td>
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</table>

Less likely to visit

<table>
<thead>
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<th>AGE</th>
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<th>AREA</th>
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<td>-0</td>
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<td>-E</td>
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<td></td>
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<td>246</td>
<td>56</td>
<td>182</td>
<td>126 214</td>
<td>183 57</td>
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Don’t Know

<table>
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<tr>
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<th>FEDERAL VOTING INTENT</th>
<th>VTSH</th>
</tr>
</thead>
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<td></td>
<td></td>
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<td>ALP</td>
</tr>
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<td>-LY</td>
<td>-0</td>
<td>-E</td>
<td>-E</td>
</tr>
<tr>
<td>TO YRS</td>
<td>MALE FEM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35-PLUS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>16</td>
<td>24</td>
<td>14</td>
<td>14</td>
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</tbody>
</table>

TOTALS

<table>
<thead>
<tr>
<th>AGE</th>
<th>GENDER</th>
<th>AREA</th>
<th>FEDERAL VOTING INTENT</th>
<th>VTSH</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>ALP LIBS GRN OTHE PND</td>
<td>ALP</td>
</tr>
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<td>-LY</td>
<td>-0</td>
<td>-E</td>
<td>-E</td>
</tr>
<tr>
<td>TO YRS</td>
<td>MALE FEM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35-PLUS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>603 112 281 159 204 314 85 170 159 33 17 29</td>
<td>24 5 154</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

WEIGHTS: Weights Matrix
### FLASHPOLL DECEMBER 2009 DATA ANALYSIS - 10/12/2009

**SIXTEENTH REPORT**

**TABLE 7**

**STATE ISSUES**

**WEIGHTS:** Weights Matrix

<table>
<thead>
<tr>
<th>AGE</th>
<th>GENDER</th>
<th>AREA</th>
<th>FEDERAL VOTING INTENT</th>
<th>NORT</th>
<th>FED/ LIBS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>UP</td>
<td>35+</td>
<td>MALE FEM</td>
<td>METZ COUN</td>
<td>NAT LIBS RGRD CTTE UND</td>
</tr>
<tr>
<td>YRS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-6</td>
<td>-6</td>
<td>70</td>
<td>YRS</td>
<td>-6</td>
<td>-6</td>
</tr>
</tbody>
</table>

**RESPONDENTS**  
463 | 198 | 295 | 202 | 202 | 303 | 100 | 199 | 161 | 33 | 17 | 23 | 5 | 154 |

**WTD. RESP.**  
463 | 112 | 291 | 159 | 204 | 314 | 89 | 170 | 159 | 33 | 17 | 24 | 5 | 154 |

**Q1-4b. Do you think the police stop and search powers will make Northbridge a safer place for ordinary people to have a night out?**

<table>
<thead>
<tr>
<th></th>
<th>Yes, will make</th>
<th>It's safer</th>
<th>No difference</th>
<th>W'll not</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, will make</td>
<td>223</td>
<td>57%</td>
<td>36%</td>
<td>5%</td>
<td>3%</td>
</tr>
<tr>
<td>It's safer</td>
<td>67</td>
<td>40%</td>
<td>61%</td>
<td>64%</td>
<td>61%</td>
</tr>
<tr>
<td>No difference</td>
<td>175</td>
<td>54%</td>
<td>15%</td>
<td>21%</td>
<td>9%</td>
</tr>
<tr>
<td>W'll not</td>
<td>104</td>
<td>40%</td>
<td>32%</td>
<td>39%</td>
<td>32%</td>
</tr>
<tr>
<td>Don't Know</td>
<td>125</td>
<td>54%</td>
<td>12%</td>
<td>55%</td>
<td>12%</td>
</tr>
</tbody>
</table>

**TOTALS**  
463 | 112 | 291 | 159 | 204 | 314 | 89 | 170 | 159 | 33 | 17 | 24 | 5 | 154
## FlashPoll December 2005 Data Analysis - 10/12/2005

**Table 9**

Standard Banner Federal - WSTPOLL **TV** Q1-5. Do you agree with the legislation?

<table>
<thead>
<tr>
<th></th>
<th>TOTAL</th>
<th>UP TO 30 YRS</th>
<th>35 PLUS</th>
<th>FEWEST CITY</th>
<th>MENT COUN</th>
<th>NEW LIB</th>
<th>GREY GREEN</th>
<th>OTHER URBAN</th>
<th>NEW E</th>
<th>E-ED</th>
<th>E-ALONE</th>
<th>ALONE ALONE</th>
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</thead>
<tbody>
<tr>
<td><strong>RESPONDENTS</strong></td>
<td>403</td>
<td>108 295</td>
<td>206</td>
<td>303</td>
<td>100</td>
<td>169</td>
<td>311 111</td>
<td>11 12</td>
<td>19</td>
<td>5</td>
<td>105</td>
<td>695</td>
</tr>
<tr>
<td><strong>WTD. RESP.</strong></td>
<td>403</td>
<td>112 251</td>
<td>100</td>
<td>150</td>
<td>100</td>
<td>170</td>
<td>18 24</td>
<td>33</td>
<td>12</td>
<td>3</td>
<td>29</td>
<td>444</td>
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<td><strong>Q1-5. Do you agree with the legislation?</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agree with</td>
<td>264</td>
<td>75 189</td>
<td>17 141</td>
<td>24 111 58</td>
<td>116</td>
<td>111</td>
<td>11 12</td>
<td>19</td>
<td>5</td>
<td>105</td>
<td>695</td>
<td>695</td>
</tr>
<tr>
<td>Disagree with</td>
<td>120</td>
<td>34 86</td>
<td>6 55</td>
<td>24 52 42 6</td>
<td>18 5 4</td>
<td>42</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Don't Know</td>
<td>19</td>
<td>19 4</td>
<td>7 4</td>
<td>10 9 6 5</td>
<td>1 1</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td>403</td>
<td>112 251</td>
<td>204</td>
<td>314</td>
<td>89</td>
<td>170</td>
<td>33 17</td>
<td>24</td>
<td>5</td>
<td>105</td>
<td>695</td>
<td>695</td>
</tr>
</tbody>
</table>
APPENDIX 8

QUESTIONS, ANSWERS AND DEMOGRAPHIC INFORMATION FROM
WHAT MATTERS TO THE WEST SURVEY,
FEBRUARY 2010
APPENDIX 8
QUESTIONS, ANSWERS AND DEMOGRAPHIC INFORMATION
FROM WHAT MATTERS TO THE WEST SURVEY,
FEBRUARY 2010

What matters to the West

<table>
<thead>
<tr>
<th>1. Are you</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>58.8%</td>
<td>2,053</td>
</tr>
<tr>
<td>Female</td>
<td>41.2%</td>
<td>1,439</td>
</tr>
<tr>
<td>answered question</td>
<td>3,492</td>
<td></td>
</tr>
<tr>
<td>skipped question</td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Are you aged</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 25</td>
<td>9.5%</td>
<td>331</td>
</tr>
<tr>
<td>25 to 40</td>
<td>26.6%</td>
<td>930</td>
</tr>
<tr>
<td>40 to 60</td>
<td>39.1%</td>
<td>1,387</td>
</tr>
<tr>
<td>Over 60</td>
<td>24.7%</td>
<td>864</td>
</tr>
<tr>
<td>answered question</td>
<td>3,492</td>
<td></td>
</tr>
<tr>
<td>skipped question</td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>
### 3. Who is your preferred Premier?

<table>
<thead>
<tr>
<th>Premier</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colin Barnett</td>
<td>36.5%</td>
<td>1,232</td>
</tr>
<tr>
<td>Eric Ripper</td>
<td>5.5%</td>
<td>185</td>
</tr>
<tr>
<td>Brendon Grylls</td>
<td>5.7%</td>
<td>191</td>
</tr>
<tr>
<td>Ben Wyatt</td>
<td>5.6%</td>
<td>189</td>
</tr>
<tr>
<td>None of the above</td>
<td>46.8%</td>
<td>1,580</td>
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</tbody>
</table>

Answered question: 3,377

Skipped question: 119

### 4. Do you have confidence in the Liberal-National Government to efficiently run the State?

<table>
<thead>
<tr>
<th>Confidence</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
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<tr>
<td>Yes</td>
<td>43.0%</td>
<td>1,471</td>
</tr>
<tr>
<td>No</td>
<td>56.4%</td>
<td>1,899</td>
</tr>
</tbody>
</table>

Answered question: 3,370

Skipped question: 126
5. Who is your preferred Prime Minister?

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kevin Rudd</td>
<td>34.9%</td>
<td>1,117</td>
</tr>
<tr>
<td>Tony Abbott</td>
<td>33.1%</td>
<td>1,061</td>
</tr>
<tr>
<td>Julie Bishop</td>
<td>4.2%</td>
<td>136</td>
</tr>
<tr>
<td>Joe Hockey</td>
<td>14.9%</td>
<td>478</td>
</tr>
<tr>
<td>Julia Gillard</td>
<td>12.8%</td>
<td>411</td>
</tr>
</tbody>
</table>

answered question: 3,203
skipped question: 293

6. If Kevin Rudd was to step down as Labor leader, who should replace him?

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Julia Gillard</td>
<td>39.2%</td>
<td>1,276</td>
</tr>
<tr>
<td>Wayne Swan</td>
<td>7.2%</td>
<td>234</td>
</tr>
<tr>
<td>Lindsay Tanner</td>
<td>4.7%</td>
<td>154</td>
</tr>
<tr>
<td>Stephen Smith</td>
<td>14.7%</td>
<td>480</td>
</tr>
<tr>
<td>Peter Garrett</td>
<td>3.5%</td>
<td>115</td>
</tr>
<tr>
<td>None of the above</td>
<td>30.6%</td>
<td>998</td>
</tr>
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</table>

answered question: 3,255
skipped question: 241
### 7. Who do you think should be the leader of the Liberal Party?

<table>
<thead>
<tr>
<th>Option</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malcolm Turnbull</td>
<td>13.3%</td>
<td>430</td>
</tr>
<tr>
<td>Julie Bishop</td>
<td>6.4%</td>
<td>207</td>
</tr>
<tr>
<td>Joe Hockey</td>
<td>22.7%</td>
<td>734</td>
</tr>
<tr>
<td>Tony Abbott</td>
<td>27.6%</td>
<td>890</td>
</tr>
<tr>
<td>Peter Costello</td>
<td>13.9%</td>
<td>449</td>
</tr>
<tr>
<td>None of the above</td>
<td>16.1%</td>
<td>519</td>
</tr>
</tbody>
</table>

- **answered question**: 3,229
- **skipped question**: 297

### 8. If an election was held tomorrow, which party would you give your first preference to?

<table>
<thead>
<tr>
<th>Option</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liberal</td>
<td>45.1%</td>
<td>1,464</td>
</tr>
<tr>
<td>Labor</td>
<td>20.8%</td>
<td>699</td>
</tr>
<tr>
<td>National</td>
<td>3.6%</td>
<td>116</td>
</tr>
<tr>
<td>Greens</td>
<td>15.1%</td>
<td>492</td>
</tr>
<tr>
<td>Other party/independent</td>
<td>9.5%</td>
<td>307</td>
</tr>
</tbody>
</table>

- **answered question**: 3,248
- **skipped question**: 248
9. Do you think Australia should become a republic?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>48.6%</td>
<td>1,569</td>
</tr>
<tr>
<td>No</td>
<td>51.4%</td>
<td>1,659</td>
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</table>

Answered Question: 3,228

Skipped Question: 266

10. What should be done with the influx of boatpeople trying to come to Australia?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Send them back where they came from</td>
<td>65.3%</td>
<td>2,112</td>
</tr>
<tr>
<td>Bring them to the Australian mainland and process them here</td>
<td>25.0%</td>
<td>608</td>
</tr>
<tr>
<td>Pay Indonesia to process them on our behalf</td>
<td>6.1%</td>
<td>196</td>
</tr>
<tr>
<td>Welcome them to Australia with open arms</td>
<td>3.7%</td>
<td>120</td>
</tr>
</tbody>
</table>

Answered Question: 3,226

Skipped Question: 266
### 11. Do you support extended weekday trading hours to

<table>
<thead>
<tr>
<th>Time</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>7pm</td>
<td>19.6%</td>
<td>624</td>
</tr>
<tr>
<td>8pm</td>
<td>16.6%</td>
<td>527</td>
</tr>
<tr>
<td>9pm</td>
<td>39.8%</td>
<td>1,270</td>
</tr>
<tr>
<td>Not at all</td>
<td>24.1%</td>
<td>789</td>
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</table>

**Answered question:** 3,189  
**Skipped question:** 307

### 12. Have you attended a church service in the past 12 months?

<table>
<thead>
<tr>
<th>Answer</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>28.1%</td>
<td>904</td>
</tr>
<tr>
<td>No</td>
<td>71.9%</td>
<td>2,312</td>
</tr>
</tbody>
</table>

**Answered question:** 3,216  
**Skipped question:** 280

### 13. Do you consider yourself religious?

<table>
<thead>
<tr>
<th>Answer</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>33.8%</td>
<td>1,086</td>
</tr>
<tr>
<td>No</td>
<td>66.2%</td>
<td>2,123</td>
</tr>
</tbody>
</table>

**Answered question:** 3,209  
**Skipped question:** 287
14. Should cannabis be legalised?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, completely</td>
<td>18.3%</td>
<td>585</td>
</tr>
<tr>
<td>Yes but only for medical purposes</td>
<td>38.8%</td>
<td>1,242</td>
</tr>
<tr>
<td>No</td>
<td>43.0%</td>
<td>1,278</td>
</tr>
</tbody>
</table>

answered question 3,205

15. What is the number one thing Perth needs to make it a better city?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Longer shopping hours/deregulated trading</td>
<td>26.2%</td>
<td>821</td>
</tr>
<tr>
<td>Daylight saving</td>
<td>13.3%</td>
<td>415</td>
</tr>
<tr>
<td>Redeveloped waterfront</td>
<td>16.6%</td>
<td>528</td>
</tr>
<tr>
<td>More nightlife (bars, restaurants, pubs, etc)</td>
<td>5.7%</td>
<td>179</td>
</tr>
<tr>
<td>More events (sporting, music, cultural, etc)</td>
<td>37.9%</td>
<td>1,188</td>
</tr>
</tbody>
</table>

answered question 3,134

skipped question 362
16. What do you do to address climate change? Check one or more of the following

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comply with water restrictions</td>
<td>81.5% 2,608</td>
</tr>
<tr>
<td>Use energy efficient appliances</td>
<td>74.4% 2,379</td>
</tr>
<tr>
<td>Re-use water by placing a bucket in the shower</td>
<td>16.1% 516</td>
</tr>
<tr>
<td>Plant a waterwise garden</td>
<td>41.0% 1,311</td>
</tr>
<tr>
<td>Recycle</td>
<td>81.7% 2,613</td>
</tr>
<tr>
<td>Use public transport or walk rather than drive</td>
<td>34.9% 1,116</td>
</tr>
</tbody>
</table>

answered question 3,199
skipped question 297

17. Do you believe in euthanasia?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>81.4% 2,568</td>
</tr>
<tr>
<td>No</td>
<td>18.6% 586</td>
</tr>
</tbody>
</table>

answered question 3,154
skipped question 342
18. What addiction causes a greater burden on the community?

<table>
<thead>
<tr>
<th>Addiction</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illicit drugs</td>
<td>36.9%</td>
<td>1,157</td>
</tr>
<tr>
<td>Tobacco</td>
<td>11.8%</td>
<td>379</td>
</tr>
<tr>
<td>Alcohol</td>
<td>48.4%</td>
<td>1,556</td>
</tr>
<tr>
<td>Gambling</td>
<td>3.8%</td>
<td>121</td>
</tr>
</tbody>
</table>

answered question 3,213
skipped question 283

19. What area of health are you most concerned about in terms of lack of resources and its impact?

<table>
<thead>
<tr>
<th>Health Area</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital emergency department care</td>
<td>35.5%</td>
<td>1,136</td>
</tr>
<tr>
<td>Mental health services</td>
<td>21.1%</td>
<td>687</td>
</tr>
<tr>
<td>Aged care</td>
<td>13.7%</td>
<td>438</td>
</tr>
<tr>
<td>Access to GFs</td>
<td>13.6%</td>
<td>435</td>
</tr>
<tr>
<td>Elective surgery waiting lists</td>
<td>15.8%</td>
<td>506</td>
</tr>
</tbody>
</table>

answered question 3,202
skipped question 284
20. Which language should children be taught in schools?  

<table>
<thead>
<tr>
<th>Language</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>French</td>
<td>18.1%</td>
<td>515</td>
</tr>
<tr>
<td>Italian</td>
<td>12.8%</td>
<td>366</td>
</tr>
<tr>
<td>Mandarin</td>
<td>46.2%</td>
<td>1,310</td>
</tr>
<tr>
<td>Indian</td>
<td>1.7%</td>
<td>46</td>
</tr>
<tr>
<td>Indigenous</td>
<td>21.2%</td>
<td>604</td>
</tr>
</tbody>
</table>

answered question 2,852  
skipped question 644

21. Should uniforms be compulsory in schools?  

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>84.6%</td>
<td>2,793</td>
</tr>
<tr>
<td>No</td>
<td>15.4%</td>
<td>493</td>
</tr>
</tbody>
</table>

answered question 3,190  
skipped question 300
### 22. How old should children be before they are allowed a mobile phone?

<table>
<thead>
<tr>
<th>Age</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>2.7%</td>
<td>87</td>
</tr>
<tr>
<td>10</td>
<td>11.7%</td>
<td>371</td>
</tr>
<tr>
<td>13</td>
<td>36.6%</td>
<td>1,165</td>
</tr>
<tr>
<td>15</td>
<td>36.6%</td>
<td>1,165</td>
</tr>
<tr>
<td>18</td>
<td>12.4%</td>
<td>395</td>
</tr>
</tbody>
</table>

answered question 3,183
skipped question 313

### 23. Where do you think children get a better education?

<table>
<thead>
<tr>
<th>Type</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public school</td>
<td>21.2%</td>
<td>678</td>
</tr>
<tr>
<td>Private school</td>
<td>50.3%</td>
<td>1,607</td>
</tr>
<tr>
<td>Don't know</td>
<td>28.4%</td>
<td>907</td>
</tr>
</tbody>
</table>

answered question 3,192
skipped question 304
### 24. If you had a spare 30 mins, what would you do with your time?

<table>
<thead>
<tr>
<th>Activity</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Watch TV</td>
<td>24.3%</td>
<td>764</td>
</tr>
<tr>
<td>Read a book</td>
<td>36.0%</td>
<td>1,134</td>
</tr>
<tr>
<td>Go for a walk</td>
<td>31.5%</td>
<td>993</td>
</tr>
<tr>
<td>Sleep</td>
<td>8.2%</td>
<td>257</td>
</tr>
<tr>
<td><strong>answered question</strong></td>
<td><strong>3,148</strong></td>
<td></td>
</tr>
<tr>
<td><strong>skipped question</strong></td>
<td><strong>348</strong></td>
<td></td>
</tr>
</tbody>
</table>

### 25. How often would you partake in 20 minutes or more of exercise?

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily</td>
<td>33.7%</td>
<td>1,071</td>
</tr>
<tr>
<td>3 to 5 times a week</td>
<td>38.5%</td>
<td>1,221</td>
</tr>
<tr>
<td>Once a week</td>
<td>13.9%</td>
<td>442</td>
</tr>
<tr>
<td>A couple of times a month</td>
<td>5.0%</td>
<td>150</td>
</tr>
<tr>
<td>Rarely</td>
<td>8.9%</td>
<td>232</td>
</tr>
<tr>
<td><strong>answered question</strong></td>
<td><strong>3,175</strong></td>
<td></td>
</tr>
<tr>
<td><strong>skipped question</strong></td>
<td><strong>221</strong></td>
<td></td>
</tr>
</tbody>
</table>
### 26. Which is your favourite WA sporting team?

<table>
<thead>
<tr>
<th>Team</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Coast Eagles (AFL)</td>
<td>39.8%</td>
<td>1,218</td>
</tr>
<tr>
<td>Fremantle Dockers (AFL)</td>
<td>16.1%</td>
<td>584</td>
</tr>
<tr>
<td>Perth Glory (soccer)</td>
<td>7.0%</td>
<td>215</td>
</tr>
<tr>
<td>Western Force (rugby union)</td>
<td>7.6%</td>
<td>234</td>
</tr>
<tr>
<td>Western Warriors (cricket)</td>
<td>4.4%</td>
<td>135</td>
</tr>
<tr>
<td>West Coast Fever (netball)</td>
<td>1.2%</td>
<td>38</td>
</tr>
<tr>
<td>Perth Wildcats (men's basketball)</td>
<td>2.9%</td>
<td>89</td>
</tr>
<tr>
<td>Perth Lynx (women's basketball)</td>
<td>0.5%</td>
<td>14</td>
</tr>
<tr>
<td>Other</td>
<td>17.4%</td>
<td>534</td>
</tr>
</tbody>
</table>

**Total answered question: 3,061**

**Total skipped question: 435**

### 27. What would you prefer the State Government invested their money in?

<table>
<thead>
<tr>
<th>Investment</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>A new football stadium</td>
<td>22.5%</td>
<td>700</td>
</tr>
<tr>
<td>A new museum</td>
<td>12.4%</td>
<td>385</td>
</tr>
<tr>
<td>Attracting quality events</td>
<td>36.1%</td>
<td>1,122</td>
</tr>
<tr>
<td>Improving the river front</td>
<td>28.1%</td>
<td>905</td>
</tr>
</tbody>
</table>

**Total answered question: 3,112**

**Total skipped question: 384**
### 28. In the past 12 months have you worked for a company that has benefited from the mining industry?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, directly</td>
<td>15.6%</td>
<td>491</td>
</tr>
<tr>
<td>Yes, indirectly</td>
<td>15.5%</td>
<td>489</td>
</tr>
<tr>
<td>Not at all</td>
<td>68.8%</td>
<td>2,166</td>
</tr>
</tbody>
</table>

- Answered question: 3,146
- Skipped question: 350

### 29. Have you lost your job or had your working hours cut in the past 12 months?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>16.0%</td>
<td>900</td>
</tr>
<tr>
<td>No</td>
<td>84.0%</td>
<td>2,623</td>
</tr>
</tbody>
</table>

- Answered question: 3,123
- Skipped question: 373

### 30. If yes, by how much have you had your hours cut?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than an hour a week</td>
<td>9.4%</td>
<td>49</td>
</tr>
<tr>
<td>Between one and three hours a week</td>
<td>9.6%</td>
<td>50</td>
</tr>
<tr>
<td>Between three and five hours a week</td>
<td>14.4%</td>
<td>75</td>
</tr>
<tr>
<td>Between five and 10 hours a week</td>
<td>16.3%</td>
<td>95</td>
</tr>
<tr>
<td>More than 10 hours a week</td>
<td>60.4%</td>
<td>263</td>
</tr>
</tbody>
</table>

- Answered question: 922
- Skipped question: 2,074
### 31. Is your home life compromised by the amount of time you spend working?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, all the time</td>
<td>22.1%</td>
<td>666</td>
</tr>
<tr>
<td>Yes, infrequently</td>
<td>22.0%</td>
<td>716</td>
</tr>
<tr>
<td>No</td>
<td>54.9%</td>
<td>1,711</td>
</tr>
</tbody>
</table>

answered question: 3,115
skipped question: 381

### 32. Should parents be allowed to smack their children?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, parents should be allowed to discipline their children as they please</td>
<td>30.1%</td>
<td>926</td>
</tr>
<tr>
<td>Yes, but only with an open hand</td>
<td>58.5%</td>
<td>1,823</td>
</tr>
<tr>
<td>No</td>
<td>11.4%</td>
<td>355</td>
</tr>
</tbody>
</table>

answered question: 3,114
skipped question: 382
### 33. What do you think about Australia’s troop presence in Afghanistan?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>They should be pulled out immediately</td>
<td>20.9%</td>
<td>647</td>
</tr>
<tr>
<td>They should be withdrawn gradually</td>
<td>40.3%</td>
<td>1,526</td>
</tr>
<tr>
<td>We have the right number there now</td>
<td>22.1%</td>
<td>685</td>
</tr>
<tr>
<td>The number of troops should be increased</td>
<td>7.8%</td>
<td>242</td>
</tr>
</tbody>
</table>

**Answered question:** 3,102  
**Skipped question:** 394

### 34. Should military service be compulsory?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, for 3 months</td>
<td>5.6%</td>
<td>175</td>
</tr>
<tr>
<td>Yes, for 6 months</td>
<td>11.6%</td>
<td>363</td>
</tr>
<tr>
<td>Yes, for 1 year</td>
<td>35.5%</td>
<td>1,199</td>
</tr>
<tr>
<td>No</td>
<td>47.3%</td>
<td>1,479</td>
</tr>
</tbody>
</table>

**Answered question:** 3,126  
**Skipped question:** 370
### 35. Where do you obtain the most news and current affairs?

<table>
<thead>
<tr>
<th>Source</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Radio</td>
<td>10.7%</td>
<td>334</td>
</tr>
<tr>
<td>Television</td>
<td>32.6%</td>
<td>1,020</td>
</tr>
<tr>
<td>Newspaper</td>
<td>19.7%</td>
<td>617</td>
</tr>
<tr>
<td>Online</td>
<td>37.0%</td>
<td>1,159</td>
</tr>
</tbody>
</table>

answered question: 3,120

skipped question: 366

---

### 36. Should WA’s new gas hub be located at James Price Point on the Kimberley coast?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, the government has made the right decision.</td>
<td>27.6%</td>
<td>857</td>
</tr>
<tr>
<td>No, it is a pristine environment which should not be touched.</td>
<td>23.6%</td>
<td>731</td>
</tr>
<tr>
<td>No, it should be located elsewhere.</td>
<td>15.0%</td>
<td>466</td>
</tr>
<tr>
<td>I don't mind where it is located</td>
<td>33.7%</td>
<td>1,046</td>
</tr>
</tbody>
</table>

answered question: 3,100

skipped question: 396
### 37. Interest rates are expected to rise. How much will a rate increase affect you?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
<td>33.9%</td>
<td>1,051</td>
</tr>
<tr>
<td>Hurt a little</td>
<td>37.5%</td>
<td>1,164</td>
</tr>
<tr>
<td>Help a little</td>
<td>9.1%</td>
<td>201</td>
</tr>
<tr>
<td>Hurt a lot</td>
<td>15.8%</td>
<td>480</td>
</tr>
<tr>
<td>Help a lot</td>
<td>3.8%</td>
<td>117</td>
</tr>
<tr>
<td><strong>Total Responded</strong></td>
<td><strong>3,103</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Skipped Question</strong></td>
<td><strong>393</strong></td>
<td></td>
</tr>
</tbody>
</table>

### 38. How confident are you about the economy over the next 12 months?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not confident at all</td>
<td>13.1%</td>
<td>408</td>
</tr>
<tr>
<td>Not much will change</td>
<td>29.7%</td>
<td>828</td>
</tr>
<tr>
<td>A little confident that things will improve</td>
<td>41.3%</td>
<td>1,282</td>
</tr>
<tr>
<td>Very confident things will improve</td>
<td>18.9%</td>
<td>588</td>
</tr>
<tr>
<td><strong>Total Responded</strong></td>
<td><strong>3,106</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Skipped Question</strong></td>
<td><strong>390</strong></td>
<td></td>
</tr>
</tbody>
</table>
### 39. How do you intend to fund your retirement?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self funded retiree</td>
<td>55.1%</td>
<td>1,655</td>
</tr>
<tr>
<td>Government funded pension</td>
<td>26.5%</td>
<td>766</td>
</tr>
<tr>
<td>I haven’t thought about it</td>
<td>19.4%</td>
<td>596</td>
</tr>
<tr>
<td>Answered question</td>
<td></td>
<td>3,077</td>
</tr>
<tr>
<td>Skipped question</td>
<td></td>
<td>419</td>
</tr>
</tbody>
</table>

### 40. Should uranium mining be permitted in WA?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>61.6%</td>
<td>1,885</td>
</tr>
<tr>
<td>No</td>
<td>38.4%</td>
<td>1,176</td>
</tr>
<tr>
<td>Answered question</td>
<td></td>
<td>3,061</td>
</tr>
<tr>
<td>Skipped question</td>
<td></td>
<td>435</td>
</tr>
</tbody>
</table>

### 41. Is Western Australia suitably prepared to cope with another resources boom brought on by the Gorgon project?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>40.7%</td>
<td>1,249</td>
</tr>
<tr>
<td>No</td>
<td>59.3%</td>
<td>1,821</td>
</tr>
<tr>
<td>Answered question</td>
<td></td>
<td>2,070</td>
</tr>
<tr>
<td>Skipped question</td>
<td></td>
<td>426</td>
</tr>
</tbody>
</table>
### 42. Do you support the Barnett Government’s proposed stop and search powers for WA Police?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>47.5%</td>
<td>1,449</td>
</tr>
<tr>
<td>No</td>
<td>44.1%</td>
<td>1,346</td>
</tr>
<tr>
<td>Don't care</td>
<td>8.3%</td>
<td>254</td>
</tr>
</tbody>
</table>

- answered question: 3,040
- skipped question: 447

### 43. When would you go to Northbridge with friends or family?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anytime</td>
<td>17.0%</td>
<td>521</td>
</tr>
<tr>
<td>Only during the day</td>
<td>25.2%</td>
<td>772</td>
</tr>
<tr>
<td>Not after 11pm</td>
<td>29.3%</td>
<td>822</td>
</tr>
<tr>
<td>Never</td>
<td>37.5%</td>
<td>1,148</td>
</tr>
</tbody>
</table>

- answered question: 3,863
- skipped question: 433
### 44. Do you feel safe in your home?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, I have alarms and security screens installed</td>
<td>36.6%</td>
<td>1,103</td>
</tr>
<tr>
<td>Yes, but I could feel safer</td>
<td>51.6%</td>
<td>1,553</td>
</tr>
<tr>
<td>Not entirely – I only feel safer when someone else is home with me</td>
<td>8.9%</td>
<td>268</td>
</tr>
<tr>
<td>No, not at all</td>
<td>2.9%</td>
<td>87</td>
</tr>
</tbody>
</table>

Answered question: 3,011
Skipped question: 485

### 45. Do you feel safe on public transport?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, day and night</td>
<td>18.7%</td>
<td>564</td>
</tr>
<tr>
<td>Yes but only during the day</td>
<td>59.9%</td>
<td>1,806</td>
</tr>
<tr>
<td>No</td>
<td>21.4%</td>
<td>645</td>
</tr>
</tbody>
</table>

Answered question: 3,015
Skipped question: 481

### 46. Do you think the quality of policing in WA has been affected by the 3 per cent budget cuts?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>67.6%</td>
<td>2,043</td>
</tr>
<tr>
<td>No</td>
<td>32.1%</td>
<td>968</td>
</tr>
</tbody>
</table>

Answered question: 3,011
Skipped question: 485
### 47. Has your house ever been burgled?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, once</td>
<td>30.9%</td>
<td>344</td>
</tr>
<tr>
<td>Yes, three times or more</td>
<td>8.7%</td>
<td>265</td>
</tr>
<tr>
<td>No</td>
<td>60.4%</td>
<td>1,042</td>
</tr>
</tbody>
</table>

*answered question 3,051; skipped question 445*

### 48. Should the Government create a public sex offender register?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>77.9%</td>
<td>2,500</td>
</tr>
<tr>
<td>No</td>
<td>22.1%</td>
<td>681</td>
</tr>
</tbody>
</table>

*answered question 3,034; skipped question 462*

### 49. If so, should it list:

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>The offender's name</td>
<td>12.6%</td>
<td>302</td>
</tr>
<tr>
<td>Their photograph</td>
<td>5.5%</td>
<td>131</td>
</tr>
<tr>
<td>The suburb they live in</td>
<td>4.7%</td>
<td>112</td>
</tr>
<tr>
<td>All of the above</td>
<td>77.3%</td>
<td>1,855</td>
</tr>
</tbody>
</table>

*answered question 2,400; skipped question 1,096*
50. Do you think Rottnest has become a holiday haven for the rich?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absolutely, it has become too expensive</td>
<td>61.2%</td>
<td>1,774</td>
</tr>
<tr>
<td>for our family to go</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes but we still holiday there</td>
<td>6.9%</td>
<td>236</td>
</tr>
<tr>
<td>No</td>
<td>30.0%</td>
<td>860</td>
</tr>
</tbody>
</table>

answered question: 2,991
skipped question: 595

51. What is Perth's best tourist attraction?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Swan River</td>
<td>13.7%</td>
<td>410</td>
</tr>
<tr>
<td>Beaches</td>
<td>41.4%</td>
<td>1,237</td>
</tr>
<tr>
<td>Kings Park</td>
<td>39.2%</td>
<td>1,173</td>
</tr>
<tr>
<td>Observation</td>
<td>0.2%</td>
<td>5</td>
</tr>
<tr>
<td>Belltower</td>
<td>0.3%</td>
<td>10</td>
</tr>
<tr>
<td>Perth Zoo</td>
<td>5.2%</td>
<td>155</td>
</tr>
</tbody>
</table>

answered question: 2,990
skipped question: 595

23 of 20
### 52. What annual event provides Perth residents with the greatest return (personally, financially, to the rest of the world etc)?

<table>
<thead>
<tr>
<th>Event</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hopman Cup</td>
<td>36.2%</td>
<td>1,020</td>
</tr>
<tr>
<td>Red Bull Air Race</td>
<td>39.0%</td>
<td>1,108</td>
</tr>
<tr>
<td>Australia Day Skyworks</td>
<td>18.1%</td>
<td>511</td>
</tr>
<tr>
<td>Perth Cup</td>
<td>6.7%</td>
<td>189</td>
</tr>
</tbody>
</table>

answered question: 2,620

skipped question: 676

### 53. In the past twelve months, where have you holidayed?

<table>
<thead>
<tr>
<th>Location</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within WA</td>
<td>43.5%</td>
<td>1,253</td>
</tr>
<tr>
<td>To other states of Australia</td>
<td>18.8%</td>
<td>543</td>
</tr>
<tr>
<td>Overseas, to Asia</td>
<td>10.5%</td>
<td>302</td>
</tr>
<tr>
<td>Overseas, other than Asia</td>
<td>8.7%</td>
<td>251</td>
</tr>
<tr>
<td>Within Australia as well as overseas</td>
<td>18.6%</td>
<td>533</td>
</tr>
</tbody>
</table>

answered question: 2,882

skipped question: 614
54. What is WA’s best tourist destination?

<table>
<thead>
<tr>
<th>Destination</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>South-west</td>
<td>66.9%</td>
<td>1,971</td>
</tr>
<tr>
<td>Goldfields</td>
<td>4.0%</td>
<td>29</td>
</tr>
<tr>
<td>Kimberley</td>
<td>16.6%</td>
<td>577</td>
</tr>
<tr>
<td>North-West</td>
<td>8.0%</td>
<td>235</td>
</tr>
<tr>
<td>Mid-west</td>
<td>1.7%</td>
<td>51</td>
</tr>
<tr>
<td>South-east</td>
<td>2.6%</td>
<td>83</td>
</tr>
</tbody>
</table>

answered question: 2,946
skipped question: 550

55. Do you subscribe to The West Australian?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>27.5%</td>
<td>602</td>
</tr>
<tr>
<td>No</td>
<td>72.5%</td>
<td>1,391</td>
</tr>
</tbody>
</table>

answered question: 2,193
skipped question: 1,303
55. If you would like to subscribe to thewest.com.au newsletters, please enter your email address and check the appropriate boxes.

<table>
<thead>
<tr>
<th>Category</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>News</td>
<td>82.4%</td>
<td>150</td>
</tr>
<tr>
<td>Business</td>
<td>44.6%</td>
<td>86</td>
</tr>
<tr>
<td>Sport</td>
<td>49.9%</td>
<td>79</td>
</tr>
<tr>
<td>Entertainment/Life + Style</td>
<td>46.6%</td>
<td>90</td>
</tr>
<tr>
<td>Email</td>
<td></td>
<td>104</td>
</tr>
<tr>
<td><strong>answered question</strong></td>
<td></td>
<td>193</td>
</tr>
<tr>
<td><strong>skipped question</strong></td>
<td></td>
<td>3,303</td>
</tr>
</tbody>
</table>

57. Are you interested in footy tipping? In 2019, The West Australian will run WA's Richest Footy Tipping Competition. If you would like to be notified when registration opens, please enter your email address below.

<table>
<thead>
<tr>
<th>Response</th>
<th>Response Percent</th>
<th>Response Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>15.3%</td>
<td>334</td>
</tr>
<tr>
<td>No</td>
<td>84.7%</td>
<td>1,850</td>
</tr>
<tr>
<td>Email</td>
<td></td>
<td>317</td>
</tr>
<tr>
<td><strong>answered question</strong></td>
<td></td>
<td>2,184</td>
</tr>
<tr>
<td><strong>skipped question</strong></td>
<td></td>
<td>1,312</td>
</tr>
</tbody>
</table>
APPENDIX 9

QUESTIONS, ANSWERS AND DEMOGRAPHIC INFORMATION FROM WA’S BIGGEST LAW AND ORDER SURVEY 2010
### APPENDIX 9

**QUESTIONS, ANSWERS AND DEMOGRAPHIC INFORMATION FROM WA’S BIGGEST LAW AND ORDER SURVEY 2010**

The Sunday Times & 9 News

**WA's Biggest Law and Order Survey 2010 - Results**

<table>
<thead>
<tr>
<th>Q1. Which of the following crimes/incidents have you been a victim of in the past 12 months?</th>
<th>Occurrences</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>1083</td>
</tr>
<tr>
<td>Vandalism to car/bike/vehicle</td>
<td>106</td>
</tr>
<tr>
<td>Vandalism to home</td>
<td>135</td>
</tr>
<tr>
<td>Arson</td>
<td>7</td>
</tr>
<tr>
<td>Home burglary</td>
<td>111</td>
</tr>
<tr>
<td>Home invasion (break-in while at home)</td>
<td>50</td>
</tr>
<tr>
<td>Car break-in</td>
<td>144</td>
</tr>
<tr>
<td>Car/vehicle theft</td>
<td>34</td>
</tr>
<tr>
<td>Identity theft</td>
<td>21</td>
</tr>
<tr>
<td>Mugging</td>
<td>9</td>
</tr>
<tr>
<td>Attempted theft</td>
<td>59</td>
</tr>
<tr>
<td>Physical assault</td>
<td>53</td>
</tr>
<tr>
<td>Road rage</td>
<td>406</td>
</tr>
<tr>
<td>Bag snatch</td>
<td>21</td>
</tr>
<tr>
<td>Sexual assault</td>
<td>2</td>
</tr>
<tr>
<td>Rape</td>
<td>3</td>
</tr>
<tr>
<td>Internet crime/scam</td>
<td>61</td>
</tr>
<tr>
<td>Attempted murder</td>
<td>2</td>
</tr>
<tr>
<td>Bike related crime</td>
<td>14</td>
</tr>
<tr>
<td>Other</td>
<td>95</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1916</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q2. How safe do you feel in the following places? - In your house (day)</th>
<th>Results in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Safe</td>
<td>41.01</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>52.41</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>4.46</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>1.27</td>
</tr>
<tr>
<td>Don't know</td>
<td>0.86</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q2. How safe do you feel in the following places? - In your house (night)</th>
<th>Results in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Safe</td>
<td>26.21</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>59.97</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>0.43</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>3.37</td>
</tr>
<tr>
<td>Don't know</td>
<td>1.02</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q2. How safe do you feel in the following places? - In your suburb (day)</th>
<th>Results in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Safe</td>
<td>28.87</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>59.49</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>8.67</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>2.26</td>
</tr>
<tr>
<td>Don't know</td>
<td>0.72</td>
</tr>
<tr>
<td>Question</td>
<td>Results in %</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - In your suburb</td>
<td></td>
</tr>
<tr>
<td>(night)</td>
<td></td>
</tr>
<tr>
<td>Very Safe</td>
<td>13.11</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>51.47</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>23.90</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>8.62</td>
</tr>
<tr>
<td>Dont know</td>
<td>2.89</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - In your car (road</td>
<td></td>
</tr>
<tr>
<td>rage)</td>
<td></td>
</tr>
<tr>
<td>Very Safe</td>
<td>9.29</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>51.87</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>26.17</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>7.84</td>
</tr>
<tr>
<td>Dont know</td>
<td>4.83</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - In pubs or clubs</td>
<td></td>
</tr>
<tr>
<td>Very Safe</td>
<td>3.21</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>27.98</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>23.90</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>17.20</td>
</tr>
<tr>
<td>Dont know</td>
<td>27.71</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Using ATMs (day)</td>
<td></td>
</tr>
<tr>
<td>Very Safe</td>
<td>10.81</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>51.50</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>21.78</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>10.13</td>
</tr>
<tr>
<td>Dont know</td>
<td>5.77</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Using ATMs (night)</td>
<td></td>
</tr>
<tr>
<td>Very Safe</td>
<td>3.14</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>16.71</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>31.61</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>33.48</td>
</tr>
<tr>
<td>Dont know</td>
<td>15.06</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - In taxis (day)</td>
<td></td>
</tr>
<tr>
<td>Very Safe</td>
<td>17.31</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>50.00</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>8.09</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>2.89</td>
</tr>
<tr>
<td>Dont know</td>
<td>21.70</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - In taxis (night)</td>
<td></td>
</tr>
<tr>
<td>Very Safe</td>
<td>9.72</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>37.12</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>17.88</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>8.97</td>
</tr>
<tr>
<td>Dont know</td>
<td>28.31</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Northbridge (day)</td>
<td>Results in %</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Very Safe</td>
<td>9.20</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>40.01</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>13.96</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>11.21</td>
</tr>
<tr>
<td>Don't know</td>
<td>25.72</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Northbridge (night)</td>
<td>Results in %</td>
</tr>
<tr>
<td>Very Safe</td>
<td>2.33</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>8.07</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>22.21</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>37.81</td>
</tr>
<tr>
<td>Don't know</td>
<td>29.58</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Fremantle (day)</td>
<td>Results in %</td>
</tr>
<tr>
<td>Very Safe</td>
<td>18.25</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>56.10</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>8.73</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>3.21</td>
</tr>
<tr>
<td>Don't know</td>
<td>13.70</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Fremantle (night)</td>
<td>Results in %</td>
</tr>
<tr>
<td>Very Safe</td>
<td>3.63</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>18.59</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>29.97</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>20.38</td>
</tr>
<tr>
<td>Don't know</td>
<td>27.43</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Mandurah (day)</td>
<td>Results in %</td>
</tr>
<tr>
<td>Very Safe</td>
<td>21.41</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>48.44</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>5.63</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>2.20</td>
</tr>
<tr>
<td>Don't know</td>
<td>22.32</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Mandurah (night)</td>
<td>Results in %</td>
</tr>
<tr>
<td>Very Safe</td>
<td>4.19</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>23.18</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>22.47</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>10.77</td>
</tr>
<tr>
<td>Don't know</td>
<td>39.39</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Perth city (day)</td>
<td>Results in %</td>
</tr>
<tr>
<td>Very Safe</td>
<td>22.71</td>
</tr>
<tr>
<td>Quite Safe</td>
<td>56.48</td>
</tr>
<tr>
<td>Quite Unsafe</td>
<td>7.96</td>
</tr>
<tr>
<td>Very Unsafe</td>
<td>3.79</td>
</tr>
<tr>
<td>Don't know</td>
<td>9.06</td>
</tr>
<tr>
<td>Question</td>
<td>Results in %</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Q2. How safe do you feel in the following places? - Perth city (night)</td>
<td>Very Safe: 3.58, Quite Safe: 15.05, Quite Unsafe: 35.06, Very Unsafe: 23.43, Dont know: 22.89</td>
</tr>
<tr>
<td>Q3. Do you think we have enough police in WA?</td>
<td>Yes: 12.04, No: 80.57, Dont know: 7.49</td>
</tr>
<tr>
<td>Q4. How successful do you think WA police have been in reducing crime?</td>
<td>Very successful: 3.91, Quite successful: 41.60, Quite unsuccessful: 35.01, Very unsuccessful: 10.10, Dont know: 9.39</td>
</tr>
<tr>
<td>Q5. Do you respect the WA police force?</td>
<td>Yes: 81.72, No: 13.77, Dont know: 4.51</td>
</tr>
<tr>
<td>Q6. Do you trust WA police?</td>
<td>Yes: 70.78, No: 19.58, Dont know: 9.64</td>
</tr>
<tr>
<td>Q7. Is Commissioner Karl O’Callaghan doing a good, fair or poor job?</td>
<td>Good: 47.89, Fair: 37.92, Poor: 8.91, Dont know: 5.29</td>
</tr>
<tr>
<td>Q8. Do you think Police Minister Rob Johnson should be replaced?</td>
<td>Yes: 51.29, No: 18.81, Dont know: 29.90</td>
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<tr>
<td>Q9. Do you support the push for stop and search powers for WA police?</td>
<td>Yes: 66.26, No: 20.49, Dont know: 5.24</td>
</tr>
<tr>
<td>Q10. Do you agree with mandatory jailing of people who cause police and public officers bodily harm?</td>
<td>Yes: 85.81, No: 11.83, Dont know: 2.37</td>
</tr>
<tr>
<td>Question</td>
<td>Results in %</td>
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<tr>
<td>-------------------------------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Q11. Should ambulance officers, like police, be afforded the same protection against people who assault?</td>
<td>Yes 90.29, No 7.80, Don't know 1.91</td>
</tr>
<tr>
<td>Q12. Do you think wealthy people receive a better outcome in our courts?</td>
<td>Yes 77.49, No 11.18, Don't know 11.33</td>
</tr>
<tr>
<td>Q13. Do you think sports stars and celebrities receive a better outcome in our courts?</td>
<td>Yes 77.60, No 10.92, Don't know 11.47</td>
</tr>
<tr>
<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Drug possession</td>
<td>Tougher 77.00, More lenient 6.44, Same 15.10, Don't know 1.46</td>
</tr>
<tr>
<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Drug trafficking</td>
<td>Tougher 93.42, More lenient 1.36, Same 4.62, Don't know 0.60</td>
</tr>
<tr>
<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Drug manufacture</td>
<td>Tougher 94.89, More lenient 1.01, Same 3.67, Don't know 0.50</td>
</tr>
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<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Murder</td>
<td>Tougher 94.83, More lenient 0.65, Same 4.21, Don't know 0.30</td>
</tr>
<tr>
<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Manslaughter</td>
<td>Tougher 84.09, More lenient 3.01, Same 11.04, Don't know 1.86</td>
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<tr>
<td>Question</td>
<td>Results in %</td>
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<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Sexual assault</td>
<td></td>
</tr>
<tr>
<td>Tougher</td>
<td>93.32</td>
</tr>
<tr>
<td>More lenient</td>
<td>0.95</td>
</tr>
<tr>
<td>Same</td>
<td>5.12</td>
</tr>
<tr>
<td>Don't know</td>
<td>0.60</td>
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<tr>
<td>Results in %</td>
<td></td>
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<tr>
<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Arson</td>
<td></td>
</tr>
<tr>
<td>Tougher</td>
<td>92.22</td>
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<tr>
<td>More lenient</td>
<td>0.85</td>
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<tr>
<td>Same</td>
<td>5.02</td>
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<td>Don't know</td>
<td>1.30</td>
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<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Rape</td>
<td></td>
</tr>
<tr>
<td>Tougher</td>
<td>95.34</td>
</tr>
<tr>
<td>More lenient</td>
<td>0.65</td>
</tr>
<tr>
<td>Same</td>
<td>3.51</td>
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<tr>
<td>Don't know</td>
<td>0.50</td>
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<tr>
<td>Results in %</td>
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<tr>
<td>More lenient</td>
<td>0.65</td>
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<tr>
<td>Same</td>
<td>3.91</td>
</tr>
<tr>
<td>Don't know</td>
<td>0.55</td>
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<tr>
<td>Results in %</td>
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<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Paedophilia</td>
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</tr>
<tr>
<td>More lenient</td>
<td>0.55</td>
</tr>
<tr>
<td>Same</td>
<td>4.47</td>
</tr>
<tr>
<td>Don't know</td>
<td>0.55</td>
</tr>
<tr>
<td>Results in %</td>
<td></td>
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<tr>
<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Drink-driving (no injury)</td>
<td></td>
</tr>
<tr>
<td>Tougher</td>
<td>56.66</td>
</tr>
<tr>
<td>More lenient</td>
<td>11.39</td>
</tr>
<tr>
<td>Same</td>
<td>29.06</td>
</tr>
<tr>
<td>Don't know</td>
<td>1.46</td>
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<tr>
<td>Results in %</td>
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<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Drink-driving (causing injury)</td>
<td></td>
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<tr>
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<td>More lenient</td>
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<td>8.90</td>
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<tr>
<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Drug-driving</td>
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<tr>
<td>Question</td>
<td>Results in %</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
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| Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Speeding | Tougher: 53.50  
More lenient: 15.37  
Same: 30.18  
Don't know: 0.96 |
| Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - High-speed chases | Tougher: 83.01  
More lenient: 3.12  
Same: 11.66  
Don't know: 2.21 |
| Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Theft | Tougher: 82.04  
More lenient: 2.26  
Same: 14.04  
Don't know: 0.65 |
| Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Burglary | Tougher: 86.68  
More lenient: 1.51  
Same: 11.01  
Don't know: 0.80 |
| Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Home invasion (break-in while at home) | Tougher: 96.59  
More lenient: 0.45  
Same: 2.86  
Don't know: 0.10 |
| Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Vandalism/graffiti | Tougher: 85.30  
More lenient: 3.46  
Same: 10.19  
Don't know: 1.05 |
| Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Vehicle theft | Tougher: 83.32  
More lenient: 2.21  
Same: 13.71  
Don't know: 0.75 |
| Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Prostitution | Tougher: 40.75  
More lenient: 21.51  
Same: 31.26  
Don't know: 6.48 |
<table>
<thead>
<tr>
<th>Question</th>
<th>Results in %</th>
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<tr>
<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Computer crime</td>
<td></td>
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<tr>
<td>Tougher</td>
<td>81.48</td>
</tr>
<tr>
<td>More lenient</td>
<td>3.06</td>
</tr>
<tr>
<td>Same</td>
<td>12.05</td>
</tr>
<tr>
<td>Don’t know</td>
<td>3.11</td>
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<tr>
<td>Q14. In sentencing offenders, should judges/magistrates be tougher, more lenient or the same? - Road rage</td>
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<tr>
<td>Tougher</td>
<td>87.41</td>
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<td>More lenient</td>
<td>2.56</td>
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<tr>
<td>Same</td>
<td>8.63</td>
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<td>1.40</td>
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<td>Q15. In general, do you think prisons rehabilitate offenders?</td>
<td></td>
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<tr>
<td>Yes, most offenders</td>
<td>4.40</td>
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<tr>
<td>Yes, some offenders</td>
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<tr>
<td>No, very few offenders</td>
<td>47.30</td>
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<td>No, never</td>
<td>7.23</td>
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<td>Don’t know</td>
<td>7.73</td>
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<tr>
<td>Q16. Do you think jurors should always be told of an accused persons prior convictions?</td>
<td></td>
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<tr>
<td>Yes</td>
<td>86.43</td>
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<td>No</td>
<td>9.43</td>
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<td>4.14</td>
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<tr>
<td>Q17. If a persons found not guilty of a crime should the government compensate them for their legal fees?</td>
<td></td>
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<tr>
<td>Yes</td>
<td>62.61</td>
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<tr>
<td>No</td>
<td>22.05</td>
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<td>14.34</td>
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<tr>
<td>Q18. Do you think an independent official should be in the jury room to help a jury reach a verdict?</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>53.13</td>
</tr>
<tr>
<td>No</td>
<td>34.46</td>
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<tr>
<td>Don’t know</td>
<td>12.41</td>
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<tr>
<td>Q19. Should WAs worst murderers, who are jailed for life, ever be eligible to apply for parole?</td>
<td></td>
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<tr>
<td>Yes</td>
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<tr>
<td>No</td>
<td>91.23</td>
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<td>1.97</td>
</tr>
<tr>
<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Vandalism to</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>75.73</td>
</tr>
<tr>
<td>No</td>
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<td>3.03</td>
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<tr>
<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Vandalism to home</td>
<td></td>
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<tr>
<td>Yes</td>
<td>80.95</td>
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<tr>
<td>No</td>
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<tr>
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<tr>
<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Arson</td>
<td>Yes: 92.78</td>
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<tr>
<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Home burglary</td>
<td>Yes: 88.78</td>
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<tr>
<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Home invasion (break-in</td>
<td>Yes: 94.35</td>
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<td>No: 4.84</td>
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<tr>
<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Car break-in</td>
<td>Yes: 77.91</td>
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<tr>
<td></td>
<td>No: 18.22</td>
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<tr>
<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Car/vehicle theft</td>
<td>Yes: 86.26</td>
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<tr>
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<td>No: 11.47</td>
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<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Identity theft</td>
<td>Yes: 87.65</td>
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<td>No: 9.48</td>
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<td>Don't know: 2.87</td>
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<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Mugging</td>
<td>Yes: 94.26</td>
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<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Attempted theft</td>
<td>Yes: 75.24</td>
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<td>Q20. Should juvenile offenders be treated as adults for the following crimes? - Physical assault</td>
<td>Yes: 93.31</td>
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<tr>
<td>Q20. Should juvenile offenders be treated as adults for the following</td>
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<td>crimes? - Road rage</td>
<td>Yes 88.22</td>
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<tr>
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<td>No 9.56</td>
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<td>crimes? - Bag snatch</td>
<td>Yes 86.74</td>
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<td>No 10.89</td>
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<td>Q20. Should juvenile offenders be treated as adults for the following</td>
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<td>crimes? - Sexual assault</td>
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<td>Q20. Should juvenile offenders be treated as adults for the following</td>
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<td>crimes? - Rape</td>
<td>Yes 97.04</td>
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<tr>
<td>crimes? - Internet crime/scam</td>
<td>Yes 81.33</td>
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<td>No 13.32</td>
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<td>Q20. Should juvenile offenders be treated as adults for the following</td>
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<td>crimes? - Attempted murder</td>
<td>Yes 96.83</td>
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<td>No 2.96</td>
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<tr>
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<td>Q20. Should juvenile offenders be treated as adults for the following</td>
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<td>crimes? - Murder</td>
<td>Yes 96.68</td>
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<td></td>
<td>No 2.66</td>
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<tr>
<td></td>
<td>No 88.82</td>
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<td></td>
<td>Don't know 1.94</td>
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<tr>
<td>Q22. Should residents be informed if a convicted paedophile moves into their suburb?</td>
<td>Yes 84.29</td>
</tr>
<tr>
<td></td>
<td>No 7.73</td>
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### SIXTEENTH REPORT

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<td>Q23. Do you think WA is a terrorist target?</td>
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<td>Yes</td>
<td>42.84</td>
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<tr>
<td>Q24. Since the Liberal-National Government came to power in 2008, has Western Australia?</td>
<td></td>
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<tr>
<td>Become safer</td>
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<td>Become less safe</td>
<td>29.25</td>
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<tr>
<td>Is just as safe as it was before 2008</td>
<td>51.63</td>
</tr>
<tr>
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<td>Q25. Do you believe people who assault or harm others while defending their properties should be treated severely?</td>
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<td>Yes</td>
<td>2.87</td>
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<tr>
<td>No</td>
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<td>Q26. Should all nightclubs be forced to install metal detectors?</td>
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<td>Q27. Should drinking glasses be banned in pubs and clubs and patrons forced to drink from plastic cups?</td>
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<tr>
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</tr>
<tr>
<td>No</td>
<td>35.17</td>
</tr>
<tr>
<td>Don’t know</td>
<td>9.13</td>
</tr>
<tr>
<td>Q28. Has the State Governments efforts to combat bikie gangs been?</td>
<td></td>
</tr>
<tr>
<td>Very successful</td>
<td>2.98</td>
</tr>
<tr>
<td>Quite successful</td>
<td>37.72</td>
</tr>
<tr>
<td>Quite unsuccessful</td>
<td>23.10</td>
</tr>
<tr>
<td>Very unsuccessful</td>
<td>14.62</td>
</tr>
<tr>
<td>Don’t know</td>
<td>21.58</td>
</tr>
<tr>
<td>Q29. Do you support the State Governments proposed anti-association laws that would prevent bikie gangs?</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>61.19</td>
</tr>
<tr>
<td>No</td>
<td>24.04</td>
</tr>
<tr>
<td>Don’t know</td>
<td>14.77</td>
</tr>
<tr>
<td>Q30. Do you fear the illegal activities of bikie gangs?</td>
<td></td>
</tr>
<tr>
<td>All the time</td>
<td>20.19</td>
</tr>
<tr>
<td>A lot</td>
<td>19.09</td>
</tr>
<tr>
<td>Sometimes</td>
<td>35.01</td>
</tr>
<tr>
<td>Never</td>
<td>18.83</td>
</tr>
<tr>
<td>Don’t know</td>
<td>6.88</td>
</tr>
<tr>
<td>Question</td>
<td>Results in %</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Q31. Do you view bikie gangs as social clubs or as conduits for organised crime?</td>
<td>Yes: 66.47, No: 13.16, Don't know: 20.37</td>
</tr>
<tr>
<td>Q32. Should bikies be barred from wearing their club patches (insignia) in public?</td>
<td>Yes: 39.20, No: 47.91, Don't know: 12.89</td>
</tr>
<tr>
<td>Q33. Should road rage be treated as a more serious crime than it currently is?</td>
<td>Yes: 87.58, No: 7.74, Don't know: 4.68</td>
</tr>
<tr>
<td>Q34. Do you think the hoon driving laws have been?</td>
<td>Too strong: 7.00, Just right: 21.19, In need of minor tweaking to solve anom: 32.31, Too weak: 38.70, Don't know: 0.81</td>
</tr>
<tr>
<td>Q35. Do you think police use Multanovas too often for revenue raising?</td>
<td>Yes: 56.00, No: 38.89, Don't know: 5.12</td>
</tr>
<tr>
<td>Q36. Should Multanovas only be installed at accident blackspots?</td>
<td>Yes: 42.21, No: 53.18, Don't know: 4.61</td>
</tr>
<tr>
<td>Q37. Should motorists be warned where Multanovas are?</td>
<td>Yes: 31.11, No: 64.43, Don't know: 4.46</td>
</tr>
<tr>
<td>Q38. Should P-plate drivers caught speeding automatically lose their licences?</td>
<td>Yes: 66.78, No: 27.04, Don't know: 6.17</td>
</tr>
<tr>
<td>Q39. Should P-plate drivers be restricted from using V8 and other high-powered vehicles?</td>
<td>Yes: 92.64, No: 6.06, Don't know: 1.30</td>
</tr>
<tr>
<td>Question</td>
<td>Results in %</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Q40. Should P-plate drivers be forced to have a zero blood alcohol limit?</td>
<td>Yes 91.23</td>
</tr>
<tr>
<td></td>
<td>No 7.07</td>
</tr>
<tr>
<td></td>
<td>Don't know 1.70</td>
</tr>
<tr>
<td>Q41. Should the blood alcohol limit for fully licensed drivers be decreased from 0.05 to 0.02?</td>
<td>Yes 33.73</td>
</tr>
<tr>
<td></td>
<td>No 62.16</td>
</tr>
<tr>
<td></td>
<td>Don't know 4.11</td>
</tr>
<tr>
<td>Q42. Should the age of getting an L-plate licence be raised from 16?</td>
<td>Yes 68.56</td>
</tr>
<tr>
<td></td>
<td>No 28.58</td>
</tr>
<tr>
<td></td>
<td>Don't know 2.86</td>
</tr>
<tr>
<td>Q43. Do you think current road safety advertising campaigns are effective?</td>
<td>Yes 18.17</td>
</tr>
<tr>
<td></td>
<td>No 69.70</td>
</tr>
<tr>
<td></td>
<td>Don't know 12.19</td>
</tr>
<tr>
<td>Q44. Should road safety advertising campaigns be more graphic and confronting?</td>
<td>Yes 71.36</td>
</tr>
<tr>
<td></td>
<td>No 19.06</td>
</tr>
<tr>
<td></td>
<td>Don't know 9.58</td>
</tr>
<tr>
<td>Q45. Should the 110km/h speed limit be reduced to 100km/h on country roads?</td>
<td>Yes 27.69</td>
</tr>
<tr>
<td></td>
<td>No 69.35</td>
</tr>
<tr>
<td></td>
<td>Don't know 2.96</td>
</tr>
<tr>
<td>Q46. Should the $250 fine and three demerit points for using a mobile phone whilst driving be increased?</td>
<td>Yes 53.43</td>
</tr>
<tr>
<td></td>
<td>No 44.11</td>
</tr>
<tr>
<td></td>
<td>Don't know 2.46</td>
</tr>
<tr>
<td>Q47. Do you support random roadside drug testing for THC on drivers?</td>
<td>Yes 91.32</td>
</tr>
<tr>
<td></td>
<td>No 6.88</td>
</tr>
<tr>
<td></td>
<td>Don't know 1.81</td>
</tr>
<tr>
<td>Q48. Should police ever engage in high speed car chases?</td>
<td>Yes 78.80</td>
</tr>
<tr>
<td></td>
<td>No 12.92</td>
</tr>
<tr>
<td></td>
<td>Don't know 8.28</td>
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</tbody>
</table>
APPENDIX 10

EXCERPT FROM THE WESTERN AUSTRALIAN POLICE TRAINING CURRICULUM ENTITLED
‘REASONABLY SUSPECTS’
Reasonably Suspects

Section 4 of the Criminal Investigation Act provides a definition of "reasonably suspects" as meaning

"For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable".

While the act provides a definition of reasonably suspects and therefore reasonable suspicion, it is the development of the reasonable that is crucial.

There are two elements to be considered:

First is suspicion, the MacQuarie Dictionary (revised third edition) defines suspicion as "imagination of the existence of guilt, fault, falsity, defect or the like on slight evidence or without evidence"

In Hussein (1970) Lord Devlin described suspicion as being "a state of conjecture or surmise where proof is lacking, "I suspect but cannot prove".
Hussein (1970) A.C. 942

"It must be remembered that whilst suspicion falls short of actual proof, there must still be some factual basis upon which the suspicion is grounded".

In Dumbell v Roberts it was stated, "before making an arrest the police officer must satisfy himself that there are in fact, reasonable grounds to suspect guilt but this does not have to amount to evidence of a prima facie case".
Dumbell v Roberts(1971) ALJR 353

Although Dumbell v Roberts refers to suspicion sufficient to justify an arrest, the principle can equally be applied to the development of suspicion to justify a search.

In other words, a police officer’s suspicion may be right, but then again, it may be wrong. Provided such suspicion is reasonable it can be expected to be supported. This applies to exercising powers of search as much as to powers of arrest.

Second is what amounts to a suspicion being reasonable?

"Reasonable" means not immoderate, not excessive, not unjust, tolerable".
There is no standard or fixed rule as to what are reasonable grounds for suspicion which can be laid down as applicable to all cases. The test is “What would a reasonable person acting without passion or prejudice fairly suspect from the circumstances?”

In Hughes v Dempsey 17 W.A.L.R. 81, held that:

“Reasonable suspicion means that there must be something more than imagination or conjecture. It must be the suspicion of a reasonable man warranted by facts from which inference can be drawn, but it is something which falls short of legal proof.”
Hughes v Dempsey 17 W.A.L.R. 81

The law requires only that the police officer is aware of some reasons giving rise to the suspicion, which can later be comprehended by a court. The police officer need not have a concluded belief nor must there be sufficient evidence to prove a prima facie case.

Again Hussein (1970) provides some direction on this matter, Lord Devlin continued

“that it was not required that the suspicion be based on admissible evidence. Therefore, it is possible for reasonable suspicion to be founded on such things as hearsay evidence and previous convictions.”
Hussein (1970) A.C. 942

If information given to the police is flimsy or inherently not credible, further inquiries should be made by the police officer to confirm or dispel the suspicion.

In Dumbell v Roberts it was further stated,

Police officers have a duty to make such inquiries as are practical under the circumstances and in doing so, should be observant, receptive and open minded.
Dumbell v Roberts (1971) 111ER 353

**Development of Reasonable Suspicion**

The development of that suspicion may come from any source, and as can be seen from Hussein (1970) even evidence which would not be permitted to be used in a later trial may be used for the development of reasonable suspicion.

**Similar fact**

Where a set of circumstances are similar in nature to those surrounding a previous offence or group of offences there may be grounds to assist in the development of reasonable suspicion.

**Hearsay**

Information that comes to hand from an unconfirmed source, for example an overheard conversation can be used.
Antecedents
A person’s prior criminal history may also be taken into account.

An example of how these fit together to form reason suspicion may be, a person speaks to you and tells you that he overheard a conversation in a hotel that two men intended to commit a burglary that night.

There have been a number of burglaries on electrical stores in the area in the early hours of the morning, witnesses have reported seeing a white van parked in the vicinity at the time of the burglaries. You are called to attend an alarm at an electrical store, as you travel into the area you observe a white van leaving the area.

You stop the van and find the driver is known to you and you are aware that he has prior convictions for burglary.

Although none of the above information may be admitted as evidence in court, the combined effect of it would be sufficient to allow the development of a reasonable suspicion which would be sufficient to search the vehicle.

Time Place and Circumstance
Time, place and circumstance is also used in the development of reasonable suspicion and may maybe used independently or in conjunction with the above mentioned types of information.

In employing time place and circumstance in the development of reasonable suspicion one should consider

(1) Time
   Would certain acts done in the night be more suspicious than during the day?
   Was there only a short time between the offence and the cause for suspicion?

(2) Place
   How innocent is the place?
   Where is the person in relation to the place of the offence?

(3) Circumstances
   Were there furtive activities?
   Did the person have motive, means or opportunity?
   Was the person/place/car of similar description?
APPENDIX 11

SUMMARY OF THE EVIDENCE IN THE TRIAL OF DARREN VAN DONGAN
SUMMARY OF THE EVIDENCE IN THE TRIAL OF DARREN VAN DONGAN

1. Darren Van Dongan was charged with resist public officer, hinder public officer and possession of methylamphetamine and proceeded to a summary trial before Magistrate Roberts in the Midland Magistrates court on 9 February 2006.

2. The salient facts of the alleged offences were as follows:
   ▪ On 2 August 2005 Senior Constables Hush and Webb of the Gang Crime Squad were travelling in a marked police vehicle on Great Northern Highway near Bullbrook. They met with other police officers who had set up a road block in order to conduct random breath tests on passing motorists. At that location police signalled a group of six motor cycle riders, one of whom included the Defendant Darren Van Dongan. The Defendant was duly breathalysed and then told he was free to go.
   ▪ Shortly thereafter Senior Constable Hush recognised the Defendant, approached him and said words to the effect of “Darren I am going to search you for drugs”. There was some preliminary searching of the Defendant’s clothing before an argument commenced between Senior Constable Hush and the Defendant about, firstly, the search of the Defendant’s “colours” and then secondly, about the search of his wallet. The Defendant refused to allow the search of his wallet prompting Senior Constable Hush to reply “we’ve been through this before Darren”.
   ▪ Senior Constable Hush then advised the Defendant that if he did not comply with the search he would be arrested. When the Defendant stated “well then arrest me” Senior Constable Hush proceeded to attempt to place the Defendant in handcuffs. A short struggle then ensued between the Defendant and other police officers during the course of which a ‘Taser’ gun was deployed on the Defendant. The Defendant’s conduct during the course of the search and subsequent struggle constituted the charges of hinder public officer and resist public officer.
   ▪ After the Defendant was placed in handcuffs his wallet was searched and was said to contain a small amount of methylamphetamine inside a clipper bag. That amount constitutes the charge of possession of a prohibited drug.

MANNER IN WHICH THE SUMMARY TRIAL PROCEEDED

3. The first thing to note is that prior to the commencement of the summary trial there was no issue raised by the defence as to the lawfulness of the search of
the Defendant. It is unclear from the transcript whether the prosecutor was on
notice that the lawfulness of the search was going to be disputed.

4. In his evidence in chief Senior Constable Hush did not state what "reasonable
grounds" he had to search the Defendant. He was not asked to state those
grounds by the prosecutor. The evidence was simply that Senior Constable
Hush was stationed at Gang Crime Squad, that he recognised the Defendant
and that the Defendant was a member of the Gypsy Jokers Motor Cycle Club.
Having recognised the Defendant Senior Constable Hush then said "Darren I
am going to search you for drugs".

5. In cross-examination of Senior Constable Hush defence put to him that there
was a history between Hush and the Defendant. There was evidence that Hush
had a prior dealing with him concerning drugs. It is apparent from the cross-
examination that the prior incident involved charges that were heard in the
Armadale court and that the Defendant was ultimately acquitted of those
charges. Hush said "That's why I had the experience and I'm aware that he...
has a dealing for drugs and so on". During the course of the cross-
examination the Magistrate intervened asking defence counsel "do you want
to go down this road?" In re-examination Senior Constable Hush was not
asked about what reasonable suspicion or reasonable grounds he had in
regards to the Defendant prior to searching him.

6. Several other police witnesses present at the time were called to give evidence
however none of that evidence really impacts upon the question of Senior
Constable Hush's "reasonable grounds" or "reasonable suspicion". The
remaining evidence concentrated on the manner in which the 'Taser gun' was
deployed and other supposed inconsistencies in the officers' recollections of
events.

7. The Defendant gave evidence and denied resisting arrest and hindering the
Police. He denied that the methamphetamine was in his wallet and
effectively alleged that the Police planted the drugs on him. The Defendant
was asked in examination in chief whether he had had any dealings with
Senior Constable Hush before to which he replied that he had, "about 2 years
ago". He was not asked any further details about that prior dealing (that
centered a drug matter heard in the Armadale Magistrates Court involving
Senior Constable Hush) and in cross-examination of the Defendant he was not
asked anything about the prior dealing between himself and Senior Constable
Hush.

COUNSEL'S FINAL SUBMISSIONS AND THE
MAGISTRATE'S DECISION

8. During the course of defence counsel's submissions he stated the following;

- "But they're the ones (the prosecution) that need to show that they
  have reasonable grounds".
9. The issue of whether the search was lawful and proper on the basis that Senior Constable Hush did or did not have a reasonable suspicion and/or reasonable grounds for conducting the search, having been raised for the first time in defence counsel’s closing address, was then further discussed between defence counsel, the prosecutor and the Magistrate.

10. The Magistrate then asks the prosecutor “How can you establish that there is a reasonable suspicion?” to which the prosecutor concedes that if the court is not satisfied on the evidence of Senior Constable Hush that he had sufficient reason to search him on the evidence then the case would fail.

11. His Honour then raised the issue that the police have to have reason other than the fact that they are “a marked group” (referring here to the Defendant’s membership of the Gypsy Jokers Motor Cycle Club) that often come to the attention of police. The prosecutor then states “I suppose the suspicion is by reputation more than anything, ...but I’m not sure in the identification. But no specific evidence was given to us to why Senior Constable Hush had that...”.

12. After that exchange the Magistrate gives his reasons. He states the following as to the issue of the lawfulness of the search;

   - “But the threshold question at the moment, without delving into all the facts and what transpired, is did Senior Constable Hush have reasonable grounds for requiring the accused person to empty his pockets and search for drugs. He was not examined on that and didn’t give the information that would assist me in working out whether he did have reasonable grounds for suspicion.”

   - “As I say, there does not appear to be any grounding at all from Senior Constable Hush as to why he wanted to search him for drugs, and accordingly that raises the issue that the subsequent arrest and dealings were unlawful and that the accused was entitled to resist and not comply with the police requests”.

   - “So having regard to all of those factors I do not believe I should exercise my discretion to allow the tainted evidence in under Bunning and Cross Principles. I believe that it should be disallowed. I have
heard the police must have good grounds to carry out searches and did not have good grounds on the day in question. Well, they may well have but they didn’t give evidence of and, of course, the onus is on the prosecution to prove the case beyond reasonable doubt.”

13. Prior to the trial there was no indication that defence were disputing the admissibility of the search of the Defendant. That issue was first raised by defence counsel in his closing address and then that theme was taken up by the Magistrate in his reasons. The question of the admissibility of the search should have been raised prior to the trial and then in those circumstances Senior Constable Hush could have been asked and would have had the opportunity of giving further and more detailed evidence as to what the grounds were for his suspicion that the Defendant had, for example, drugs on his person. The prosecutor in his examination in chief did not canvass that issue and in fact in cross-examination, when Senior Constable Hush raised the fact that he had dealt with the Defendant previously in relation to drugs, the Magistrate actually intervened by asking “Do you want to go down this road?” There was no further cross-examination or re-examination of Senior Constable Hush as to the grounds creating his suspicion.

14. The Magistrate appears to have ruled by going to the conclusion that he did. The issue of the lawfulness of the search ought to have been raised prior to the trial as a matter of fairness and then that issue could have been fully canvassed. The issue was first raised by defence in their closing address and in those circumstances it was too late for the prosecution to present the evidence of the ‘reasonable grounds’.
APPENDIX 12

PAST USES OF SECTION 69 OF THE

CRIMINAL INVESTIGATION ACT 2006
APPENDIX 12

PAST USES OF SECTION 69 OF THE
CRIMINAL INVESTIGATION ACT 2006

<table>
<thead>
<tr>
<th>Locality</th>
<th>Public Place</th>
<th>Number of Occasions</th>
<th>Start Date</th>
<th>Start Time</th>
<th>End Date</th>
<th>End Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perth</td>
<td>Perth Train Station</td>
<td>1</td>
<td>31/10/2007</td>
<td>12:00</td>
<td>01/11/2007</td>
<td>04:00</td>
</tr>
<tr>
<td>Stirling</td>
<td>Civic Gardens and Train Station</td>
<td>1</td>
<td>25/02/2008</td>
<td>18:00</td>
<td>25/02/2008</td>
<td>22:00</td>
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<tr>
<td>Perth</td>
<td>Cultural Centre</td>
<td>1</td>
<td>16/05/2008</td>
<td>23:30</td>
<td>17/05/2008</td>
<td>03:30</td>
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<td>Craigie</td>
<td>Craigie Sports and Leisure Centre</td>
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<td>18/10/2008</td>
<td>16:00</td>
<td>19/08/2008</td>
<td>04:00</td>
</tr>
<tr>
<td>Narrogin</td>
<td>Narrogin Eagles Sporting Complex</td>
<td>2</td>
<td>14/11/2008</td>
<td>12:00</td>
<td>16/11/2008</td>
<td>12:00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>13/11/2009</td>
<td>12:00</td>
<td>15/11/2009</td>
<td>12:00</td>
</tr>
<tr>
<td>Joondalup</td>
<td>The Arena</td>
<td>1</td>
<td>08/03/2009</td>
<td>08:00</td>
<td>09/03/2009</td>
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</tr>
<tr>
<td>Mount Claremont</td>
<td>Challenge Stadium</td>
<td>1</td>
<td>26/04/2009</td>
<td>08:00</td>
<td>27/04/2009</td>
<td>08:00</td>
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<td>Subiaco</td>
<td>Subiaco Square</td>
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<td>14/08/2009</td>
<td>18:00</td>
<td>14/08/2009</td>
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<td>Claremont</td>
<td>Public Transport Authority Land</td>
<td>1</td>
<td>29/11/2009</td>
<td>07:00</td>
<td>30/11/2009</td>
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Source: WA Police, Criminal Investigation System and Police Operations Centre.
**SECTION 69(2)**  
*Criminal Investigation Act 2006*  

**SENIOR POLICE OFFICER DECLARATION**

<table>
<thead>
<tr>
<th>Declaration</th>
</tr>
</thead>
<tbody>
<tr>
<td>I, THOMAS KIM FERGUSON, Inspector / 14/140016, am of the opinion that it is necessary, to safeguard a public place or people who are in or near the public place, to declare the following public place to be a place to which the powers in s 69 of the Criminal Investigations Act 2006 may be exercised by a police officer.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public place to which this declaration applies.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PERTH TRAIN STATION, 376 WELLINGTON STREET, PERTH.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period declaration is in force for (time and date if relevant).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start Date: 22/12/2007</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reason for making this declaration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>I have received intelligence indicating that between the above dates and times that a large group of violent vandals are planning to access the metropolitan passenger railway network and its infrastructure with the intention of committing various acts of criminal damage.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Senior police officer's details</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Rank</th>
<th>Inspector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>THOMAS KIM FERGUSON</td>
</tr>
<tr>
<td>Phone</td>
<td>14/140016</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date and time of execution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date: 22/12/2007</td>
</tr>
</tbody>
</table>

**Senior police officer's signature**  

RECEIVED TIME  23 FEB, 15:39
<table>
<thead>
<tr>
<th>Public place to which this declaration applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>All park land south of Cedric Street known as &quot;Stirling Civic Gardens&quot; and all Parkland north of Cedric Street known as &quot;Hertha Reserve&quot;</td>
</tr>
</tbody>
</table>

**Seniors Police Officer Declaration**

<table>
<thead>
<tr>
<th>Date and Time of Declaration</th>
<th>Date: 23/02/2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time:</td>
<td>18:00 hrs</td>
</tr>
</tbody>
</table>

**Signature:**

- **Name:** Inspector Richard Robert Corkill
- **Police Number:** PD06151
- **Significant Event:**

The powers in s 69 of the Criminal Investigation Act 2006 may be exercised by a police officer.

**Remarks:**

I have received intelligence indicating that between the above dates and times a large group of people intend to attend the above locations for the purposes of conducting a party. The party is not authorized by the local council and the intelligence indicates the party is directed at anti social behaviour with some of the attendees intending to incite Police using missiles and possibly a firearm.

**End Date:** 23 February 2008
**End Time:** 16:00 pm

- **Start Date:** 22 February 2008
- **Start Time:** 06:00 pm
## SENIOR POLICE OFFICER DECLARATION

### Declaration
1. **PAUL CHRISTOPHER FERGUSON** (INSPECTOR / FDO 470) am of the opinion that it is necessary, to safeguard a public place or people who are in or may enter the public place, to declare the following public place to be a place to which the powers in s 69 of the Criminal Investigation Act 2006 may be exercised by a police officer.

### Public place to which this declaration applies.
(The public place or places to be declared under the legislation)
- The pedestrian oversways between Wellington Street and James Street, Perth, including the pedestrian walkway between Bennelong Street and William Street, Perth (known as the Cultural Centre) and the pedestrian entrance to the Wellington Street Train Station situated above the platforms leading to the Cultural Centre bounded by Wellington and Roe Street, Perth.

### Period declaration is in force
(Must not be more than 48 hours)
- Start Date: 16/05/2008
- Start Time: 11:00:00 PM
- End Date: 17/05/2008
- End Time: 2:00:00 AM

### Reasons for making the declaration.
- An application has been approved by the Criminal Investigation Act 2006 to conduct an operation in the above-mentioned location, within the Northbridge precinct relating to anti-social behavior and recorded violent offenses, including robbery, assault and drug dealing. The operations will commence at 11:00 PM on 16 May 2008 and conclude at 12:00 AM on 17 May 2008 and police will be seeking on suspicion of persons carrying weapon which could be used to facilitate their crimes. As an aid to the operation, police will be utilizing a metal detector to screen persons entering the area.

### Date and time of authorisation
(Date: 16/05/2008, Time: 12:43:50 PM)

### Station/Section/Beat
- Central Metropolitan District Office

### Senior police officer’s signature

---

###Searching People & Vehicles

#### IN PUBLIC PLACES FOR SECURITY PURPOSES REF: 3517
### SECTION 69(2) - Criminal Investigation Act 2006

#### SENIOR POLICE OFFICER DECLARATION

**Declaration:**

1. GARY PAUL LEWIS (INSPECTOR / PDD57554)

are of the opinion that it is necessary, to safeguard a public place or people who are in or may enter the public place, to declare the following public place to be a place to which the powers in s 69 of the Criminal Investigation Act 2006 may be exercised by a police officer.

**Public place to which this declaration applies:**

Craighall Sport 2 Leisure centre, Whitfield Ave CRAIGHE

**Description of public place in detail:**

**Period declaration is in force:**

- **Start Date:** 18/10/2008
- **Start Time:** 4:00:00 PM
- **End Date:** 19/10/2008
- **End Time:** 4:00:00 AM

Reasons for making the declaration. S 69(3)(d):

- The Sports Centre is hosting a Martial Arts Fight night. The event has been held here previously with no occurrence of disorderly behaviour.
- Total crowd numbers have shown that on the last fight night a table of 8-10 members were sighted.
- On Sunday 12 October 2008, an alleged member was sighted as well as 2 others and others were subject to a major shooting incident at The Lords. This has been linked to an alleged member, who is a member of the gang.
- Members of the gang have prior history of attending Fight Night and attacking other gangs that they have issues with.

- To prevent injury to the public and reduce the opportunity of weapons, two mobile units through metal detector scanners will be placed at the entry to the venue. Police will enforce all conditions and powers made through these.

### Senior Police Officer's Details

- **Rank:** Inspector
- **Name:** GARY PAUL LEWIS
- **Registration number:** PDD57554

### Date and Time of Authorization

- **Date:** 17/10/2008
- **Time:** 9:57:55 AM

- **Station/Service Unit:** NORTH WEST METROPOLITAN DISTRICT OFFICE

**Signature:**

__________________________
**SECTION 69(2)**

**Criminal Investigation Act 2005**

**SENIOR POLICE OFFICER DECLARATION**

- **Name:** KEVIN ALBERT DALE (Inspector / FD00249)
- **Date:** 14/7/2008
- **Time:** 11:46:19 AM
- **Location:** GREAT SOUTHERN DISTRICT OFFICE

**Description:**

The “Narrows’” Event is licensed at the Narrows Eagle Shooting Complex situated on Bannister Road, Narrows, and will encompass the Throsby Sports Oval, Motorcross track facility, velodrome and Camping area North of Bannister Road.

**Period declared is to be in force (must not be more than 48 hours):**

- **Start Date:** 14/7/2008
- **Start Time:** 12:00:00 PM
- **End Date:** 15/7/2008
- **End Time:** 12:00:00 PM

**Reasons for making the declaration:**

- “Narrows’” is an Annual Motor Vehicle Event celebrating live bands, beer, wine, wine, beer, blow-out competitions and activities. 4000 - 5000 spectators. Event is held and supplied throughout by event organisations, however, uncontrollable elements demand on the areas and previous behaviour/behavioural issues indicate that Liquor, Wine, Drugs, Weapons and Explosives (Fireworks) Items are plentiful, consumed, or used and has the capacity to endanger the safety of other persons attending and/or camping in the area.

**Senior police officer’s signature:** [Signature]

**Police Inspector:** KEVIN ALBERT DALE

**Registered number:** FD00249
SENIOR POLICE OFFICER DECLARATION

1. DAVID RICHARD PICTON-KING (INSPECTOR/FOUNDER)

It is the opinion of the owner, DAVID RICHARD PICTON-KING, that it is necessary, to safeguard a public place or people who are in or may enter the public place, to declare the following public place to be a place to which the powers in s 69 of the Criminal Investigation Act 2006 may be exercised by a police officer.

Public place in which this declaration applies:
The "Wattlebird Street" is located at the Narrogin Eagle Sporting Complex situated on Thomas Road, Narrogin and will encompass the Thomas Tipp Oval, Memorial Park facility, velodrome and designated parking areas north of Thomas Road. The area subject to this approval is the Narrogin Eagle Sporting Complex as determined by the Liquor Licensing and Inspection for the Narrogin event.

Period declaration is in force:

<table>
<thead>
<tr>
<th>Start Date</th>
<th>Start Time</th>
<th>End Date</th>
<th>End Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>13/11/2009</td>
<td>12:00:01 PM</td>
<td>13/11/2009</td>
<td>12:05:00 AM</td>
</tr>
</tbody>
</table>

Reason for making this declaration:

"Wattlebird Street" is an annual event which sees over 4000-5000 people over the two days. Liquor is sold and supplied throughout the event, and some unfavorable elements depend on the area. Previous intelligence suggests that liquor, illegal drugs, weapon and explosives (fireworks/shots) may be present, consumed and/or used at the event, and this has the capacity to endanger the safety of other persons attending and/or camping.

Senior Police

<table>
<thead>
<tr>
<th>First Name</th>
<th>Last Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>DAVID</td>
<td>RICHARD</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rank</th>
<th>DAVID RICHARD PICTON-KING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered number:</td>
<td>PD4768</td>
</tr>
</tbody>
</table>

Date and time of witnessing:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>13/11/2009</td>
<td>23:07:13 PM</td>
</tr>
</tbody>
</table>

Senior police officer's signature:

______________________________
This is a signed version of the declaration commencing on 13 November 2009 and relating to the Narrogin Eagles Sporting Complex.
### SIXTEENTH REPORT

#### SECTION 69(2)

**Criminal Investigation Act 2006**

**SENIOR POLICE OFFICER DECLARATION**

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declaration</td>
<td>John Robertson (Inspector / FD06118) are of the opinion that it is necessary to safeguard a public place or people who are in or may enter the public place, to declare the following public place to be a place to which the powers in s 69 of the Criminal Investigation Act 2006 may be exercised by a police officer.</td>
</tr>
<tr>
<td>Public place to which this declaration applies</td>
<td>The Arena Footy and the surrounding area bounded by Moore Drive, Washby Way, Kennedy Drive and Footy Drive, Footy</td>
</tr>
<tr>
<td>Period declaration is in force (Must not be more than 48 hours)</td>
<td>Start Date: 23/02/2009, Start Time: 8:00:00 AM, End Date: 24/02/2009, End Time: 8:00:00 AM</td>
</tr>
<tr>
<td>Reasons for making the declaration s 69(2)(a)</td>
<td>Intelligences from previous such events have shown that illicit drugs for distribution and personal use have been consumed on the person, along with weapons of all descriptions. Historically this results in injury if not death to individuals attending such events, and there is a need for tight policing security measures to mitigate these tragic outcomes.</td>
</tr>
</tbody>
</table>

**Senior police officer’s details**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Inspector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>John Robertson</td>
</tr>
<tr>
<td>Station/Section/Unit</td>
<td>NORTH WEST METROPOLITAN DISTRICT OFFICE</td>
</tr>
</tbody>
</table>

**Date and time of authorisation**

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>23/02/2009</td>
<td>2:34:09 PM</td>
</tr>
</tbody>
</table>

**Senior police officer’s signature**

<table>
<thead>
<tr>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Signature]</td>
</tr>
</tbody>
</table>
### SENIOR POLICE OFFICER DECLARATION

**Declaration**

1. **VICTOR HUSSEY (INSPECTOR / PDA00576)**

   am of the opinion that it is necessary, to safeguard a public place or people who are in or may enter the public place, to declare the following public place to be a place to which the powers in s 69 of the Criminal Investigation Act 2006 may be exercised by a police officer.

**Public place to which this declaration applies.**

Area bounded by Underwood Avenue, Stephen Avenue, Brookway Road, McGillivray Road, Mount Cremorne, including the Challenge Stadium Complex.

**Period declaration is in force**

| Start Date: | 26/04/2009 |
| Start Time: | 8:00:00 AM |
| End Date: | 27/06/2009 |
| End Time: | 8:00:00 AM |

**Reasons for making the declaration**

Members of the gang and their associates, will be attending the Challenge Stadium for the Danny Green fight. Current tensions between the gang/associates give cause to suspect that there may be a violent confrontation/incident at or near the venue. Previous violent incidents between these gangs/associates have involved the use of concealed weapons.

**Senior police officer’s signature**

[Signature]

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**SECTION 69(2) Criminal Investigation Act 2006 SEARCHING PEOPLE & VEHICLES IN PUBLIC PLACES FOR SECURITY PURPOSES REF: 18073**
**SECTION 69(2) | Criminal Investigation Act 2006 | SEARCHING PEOPLE & VEHICLES IN PUBLIC PLACES FOR SECURITY PURPOSES REP:12720**

**SENIOR POLICE OFFICER DECLARATION**

<table>
<thead>
<tr>
<th>Declaration</th>
</tr>
</thead>
<tbody>
<tr>
<td>I, PETER GEORGE DE LA MOUTIE (INSPECTOR) / ID: 12720</td>
</tr>
</tbody>
</table>

am of the opinion that it is necessary, to safeguard a public place or people who are in or may enter the public place, to declare the following public place to be a place to which the powers in s 69 of the Criminal Investigation Act 2006 may be exercised by a police officer.

<table>
<thead>
<tr>
<th>Public place to which this declaration applies.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sobisac Square, Sobisac, the area bounded by Sobisac Square Road (a circular road).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period declaration is in force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start Date: 14/08/2009</td>
</tr>
<tr>
<td>Start Time: 6:00:00 PM</td>
</tr>
<tr>
<td>End Date: 14/08/2009</td>
</tr>
<tr>
<td>End Time: 10:00:00 PM</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Reasons for making the declaration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>At 1045hrs 12/08/09 Senior Sergeant Vla Honey OIC Sobisac Police Station provided the following information in support of this application.</td>
</tr>
<tr>
<td>Between 6th August 2009 and 9th August 2009 there have been a significant increase in the number of unlawful concealed weapons discovered on persons in proximity to Sobisac Square, Sobisac (a public place). One of these incidents resulted in persons being threatened with the weapon and subsequently assulted.</td>
</tr>
<tr>
<td>In order to ensure the safety of the public and detect any weapons unlawfully possessed by persons in this area, permission is sought to declare the area bounded by Sobisac Square Road (a circular road), a Prescribed Area under 69 (2) Criminal Investigation Act for Friday 14 August 2009 between 6 and 10 pm to facilitate searches of persons entering the area.</td>
</tr>
<tr>
<td>I will provide the officers managing this action all relevant material regarding their powers in respect to persons entering the area and provide an action plan. A briefing note will be submitted on conclusion of the operation.</td>
</tr>
<tr>
<td>Based on the information provided the application is approved for a period of 4 hrs at the place described below.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Senior police officer’s details (name, rank, date and time of certification)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank: Inspector</td>
</tr>
<tr>
<td>Name: PETER GEORGE DE LA MOUTIE</td>
</tr>
<tr>
<td>Registration number: FD06298</td>
</tr>
<tr>
<td>Date and time of authorisation</td>
</tr>
<tr>
<td>Date: 14/08/2009</td>
</tr>
<tr>
<td>Time: 12:16:15 PM</td>
</tr>
<tr>
<td>Station/Section/Unit: CENTRAL METROPOLITAN DISTRICT OFFICE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature:</th>
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</thead>
<tbody>
<tr>
<td>[Signature]</td>
</tr>
<tr>
<td>Declaration</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Public place to which this declaration applies.</td>
</tr>
<tr>
<td>Period declaration is in force (must not be more than 48 hours)</td>
</tr>
<tr>
<td>Reasons for making the declaration.</td>
</tr>
</tbody>
</table>
SIXTEENTH REPORT

In November 2006, Operation Trackside 19 was implemented over a three hour period at the Eglinton Train Station. Police intercepted commuters exiting trains some of whom were attending the nearby 'Global Gathering' dance festival.

During that time 34 people were charged totalling 47 charges of possessing illicit drugs. Two of these charges were in possession of a significant amount of ecstasy tablets intended for supply to patrons at the event. In total 179 ecstasy tablets, 1 gram benzedrine, 0.62 gram Cannabis, 35 Cannabis cigarettes were seized.

In January 2006, Operation Trackside 52 was implemented over a six hour period at the Eglinton Train Station and Perth Underground Station. Police intercepted commuters exiting trains some of whom were attending the nearby 'Summerstice' dance festival.

During this time 130 people were charged with a total of 162 charges, one of whose had possession of a controlled weapon, 415 ecstasy tablets, 13.7 grams of Cannabis, 10 Cannabis cigarettes, 26 Cannabis cigarettes, 15 smoking implements, 5.2 grams of Methamphetamine, 8 Dexamfetamine tablets, 22 grams white powder RBTB Heroin.

In February 2006, Operation Trackside 1 was implemented over a four hour period at the Showgrounds Train Station. Police intercepted commuters exiting trains to attend the nearby 'Big Day Out' festival.

During this time numerous people were charged totalling 64 drug related offenses, two charges of possessing a controlled weapon and 74 ecstasy tablets, 5 grams of Methamphetamine, 30 grams of Cannabis, 20 Cannabis cigarettes, 37 Dexamfetamine tablets and 3 smoking implements were seized.

Of particular significance, at the 'Big Day Out' festival drug consumption contributed to the death of a teenage girl. Our success during last year's operations indicates patterns are now likely to consume the drugs prior to attending the event to avoid detection. This was apparently the case which contributed to the death of the teenager at the 'Big Day Out' festival.

It should also be noted that when these events occur at Claremont Showgrounds, almost all commuters exiting the Lock Street, Showgrounds and Claremont Train Stations do so to attend the festival.

Experience while implementing these operations highlights a significant difference in the success of operations implemented at the Eglinton and Perth Underground stations compared with that at the Showgrounds Station, namely, that operations at the showgrounds were less effective.

This was caused by an inability to effectively limit commuter access to the showgrounds as operators exited the Showgrounds Train Station. The countermeasures evidenced by the operational strategy were a contributing factor. Also, commuters could exit at train stations either side of the Showgrounds Train Station. At such a point commutes avoid being detected by the Police Drug Detection Dogs (PDDO).

As part of our commitment to community safety it would be advantageous to maximize our ability to detect commuters carrying illicit drugs into the venue and punish such drug prior to entering, by intensifying Lock Street Train Station, Showgrounds Train Station and Claremont Train Station to a written declaration utilizing the provisions of 69(2) of the Criminal Investigation Act.

Police Transport Division will only be provided with two PDDOs for Operation Transit 1, as such, the PDDO will need to be rotated so they can only perform their function for approximately 30 - 45 minutes at a time. The weather will be a key factor, if the temperature is hot, it will diminish the PDDO capabilities to search for illicit drugs.

Therefore, by "Prescribing" Lock Street, Showgrounds and Claremont Train Stations under a 69(2) CIA, it would greatly enhance Police capability to stop, search and detain persons suspected of carrying illicit drugs. This "Stop and Search" technique can be utilized without the use of the PDDO, and will increase the opportunity to locate and seize illicit drugs from the "party-goers", thus largely reducing the sourcing of illicit drugs into the Summerstice Music Festival.

As outlined prior, the results of Operations of a similar nature have been significant and it is in the interest of public safety for Police to continue to make a "hard" stance and safeguard the community and public transport users against the supply and distribution of illicit drugs at these events of events.

Date and Time: Thursday, November 9 2006,

Place to be searched: As stated above

Period of enforcement: Saturday 29 November 1999 - 0200 hrs
### Legislation Committee

<table>
<thead>
<tr>
<th>Senior police officer's details</th>
<th>Rank:</th>
<th>Name:</th>
<th>Registered number:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Inspector</td>
<td>FERG ROBERT ARANCINI</td>
<td>PD09021</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date and time of authorisation</th>
<th>Date:</th>
<th>Time:</th>
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<tbody>
<tr>
<td></td>
<td>10/11/2009</td>
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</table>

<table>
<thead>
<tr>
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</tr>
</thead>
</table>
## SIXTEENTH REPORT

### SECTION 69(2) - Criminal Investigation Act 2006

#### SEARCHING PEOPLE & VEHICLES IN PUBLIC PLACES FOR SECURITY PURPOSES REF: 17498

<table>
<thead>
<tr>
<th>DECLARATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong> PETER GEORGE DE LA MOTTE (SUPERINTENDENT GRADE II (S.I.O.))</td>
</tr>
<tr>
<td>am of the opinion that it is necessary, to safeguard a public place or people who are in or may enter the public place, to declare the following public place to be a place to which the powers in s 69 of the Criminal Investigation Act 2006 may be exercised by a police officer.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PUBLIC PLACE TO WHICH THIS DECLARATION APPLIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>The area bounded by Underwood Avenue, Stephens Avenue, Brookway Road, McGilliveray Road, Mount Clarence, including the Challenge Stadium Complex and carpark.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PERIOD DECLARATION IS IN FORCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start Date: 16/04/2019</td>
</tr>
<tr>
<td>Start Time: 8:00:00 AM</td>
</tr>
<tr>
<td>End Date: 15/04/2019</td>
</tr>
<tr>
<td>End Time: 8:00:00 AM</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REASONS FOR MAKING THE DECLARATION. S 69(3)(A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members of several violent organisations and their associates will be attending the Challenge Stadium, Mount Clarence, for the Danny Green fight on Wednesday 14 April 2016. There are tensions between these organisations and their associates, which may give cause to suspect that there could be a violent confrontation incident at or near the venue which may involve the use of concealed weapons. Previous violent incidents between have involved the use of concealed weapons.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SENIOR POLICE OFFICER DECLARATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RANK:</strong> Superintendnet Grade II</td>
</tr>
<tr>
<td><strong>NAME:</strong> PETER GEORGE DE LA MOTTE</td>
</tr>
<tr>
<td><strong>REGISTRATION NUMBER:</strong> P106208</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DATE AND TIME OF AUTHORIZATION</th>
</tr>
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<tbody>
<tr>
<td>Date: 13/04/2019</td>
</tr>
<tr>
<td>Time: 10:12:41 AM</td>
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</table>

<table>
<thead>
<tr>
<th>SENIOR POLICE OFFICER'S SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Signature]</td>
</tr>
</tbody>
</table>
APPENDIX 13

OUTCOMES OF PAST USES OF SECTION 69 OF THE CRIMINAL INVESTIGATION ACT 2006
<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Copy Attached</th>
<th>Signed (Y/N)</th>
<th>Success of Declarations/Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>31/10/2007</td>
<td>Perth Train Station</td>
<td>No (previously supplied)</td>
<td>Y</td>
<td>No offence was recorded during the time frame/designated area. The order was based on intelligence regarding an expected group expected to be traveling into the Perth train station armed with weapons. I expect that through mobile phones by friends of the group would have alerted them to our operation. No weapons were seized however the impact of the operation drew no criticism from any member of the public and was supported by the PTA.</td>
</tr>
<tr>
<td>23/02/2008</td>
<td>Stirling Civic Gardens</td>
<td>No (previously supplied)</td>
<td>Y</td>
<td>As the target area was declared a 'Prescribed Place' via the authority of Section 69 Criminal Investigation Act, a number of persons in possession of un-opened canisters of alcohol left the area on being advised that their alcohol would be confiscated if they entered the 'Prescribed Place'. The utilisation of this legislative authority had a strong positive impact in policing the potentially anti-social environment thereby reducing the risk to Police and other persons of projectiles being thrown. Additionally, as a no tolerance approach was adopted towards alcohol consumption, potential party patrons soon left the area when confronted by police and advised of this policing strategy. 3 move-on Notices issued. 3 Liquor Infringement Notices issued. Nil arrests. 1 gram o' cannabis seized [Cannabis Infringement Notice issued]. Approx 80 vehicle stops conducted with various traffic contacts (infringements/cautions) issued.</td>
</tr>
<tr>
<td>16/05/2008</td>
<td>Perth Cultural Centre/train Station</td>
<td>Yes</td>
<td>Y</td>
<td>2 persons charged with possess weapon. 1 person charged with possess prohibited drug. A further 2 persons carrying knives (including 12 inch long carving knife) not proceeded with as they had a lawful excuse. 1 person carrying a plastic replica hand gun to a fancy dress party.</td>
</tr>
<tr>
<td>18/10/2008</td>
<td>Craigie Sports Centre</td>
<td>Yes</td>
<td>N</td>
<td>The use of scanners at the main door of the event was a significant deterrent and impacted on the numbers entering the event premises. No unlawful items located.</td>
</tr>
<tr>
<td>Date</td>
<td>Location</td>
<td>Result</td>
<td>Violation</td>
<td>Description</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------</td>
<td>--------</td>
<td>-------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>14/12/2008</td>
<td>Revheads 2008 - Narrogin</td>
<td>Yes</td>
<td>Y</td>
<td>Information was received that two feuding groups of teenagers from the Narrogin SHS were going to bring weapons to Revheads. Identified ring leaders were stopped and searched when located at event. As a result of this there were 12 searches with 1 person charged with being in possession of an offensive weapon (knife) which was located in his backpack.</td>
</tr>
<tr>
<td>28/03/2009</td>
<td>Arena Joondalup</td>
<td>Yes</td>
<td>N</td>
<td>CI 166 people searched during Operation Tracks de 5 ('Rock-H'); approximately 8% of people searched were found to be in possession of prohibited drugs. Patrons attending event: Approximately 30,000 people. Total patrons searched: 164 (92 male 72 female). Total persons charged: 1. Total liquor infringements: 1. Breakdown of charges: Possess Prohibited Drug (Ecstasy) 2 persons. Possess Drug (Dexamphetamine) 4 persons. Possess Drug (Cannabis) 3 persons (CIN issued). 1 person Possess Prohibited Drug (Ecstasy), intent self-supply.</td>
</tr>
<tr>
<td>26/04/2009</td>
<td>Challenge Stadium</td>
<td>Yes</td>
<td>Y</td>
<td>Not implemented and no persons searched</td>
</tr>
<tr>
<td>14/08/2009</td>
<td>Subiaco Square</td>
<td>Yes</td>
<td>Y</td>
<td>Prescribed area declared in Subiaco for 4 hours in response to incidents involving weapons &amp; weapons discovered</td>
</tr>
<tr>
<td>13/11/2009</td>
<td>Revheads 2009 - Narrogin</td>
<td>Yes</td>
<td>(poor copy)</td>
<td>The Revheads event was significantly quieter than the previous year. One arrest only was effected for disorderly conduct. The operation was scaled down due to an unrelated double shooting occurring from Aboriginal fighting which occupied all available police staff. This prevented staff from exercising the powers available from the declaration.</td>
</tr>
<tr>
<td>29/12/2009</td>
<td>Loch Street Train Station</td>
<td>Yes</td>
<td>N</td>
<td>Stats for Transit: 7 - Stereosonde event at Claremont Showground on 29/12/2009 subject of Section 69(2) CIA Declaration. Seizure: 27 MDMA Tablets, 2.5 gms of Cannabis. Charges: 1 person charged Possess MDMA W/ Self-Supply, 6 persons charged possess MDMA. 2 persons received cannabis infringement notices. 30 name checks. 2 Move On Notices. 2 liquor raids. 20 negative searches.</td>
</tr>
</tbody>
</table>
APPENDIX 14

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

TERMS OF REFERENCE
The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“3. Joint Standing Committee on Delegated Legislation

3.1 A Joint Delegated Legislation Committee is established.

3.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.

3.3 A quorum is 4 Members of whom at least 1 is a Member of the Council and 1 a Member of the Assembly.

3.4 A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.

3.5 Upon its publication, whether under section 41(1)(a) of the Interpretation Act 1984 or another written law, an instrument stands referred to the Committee for consideration.

3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –

(a) is authorized or contemplated by the empowering enactment;

(b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;

(c) ousts or modifies the rules of fairness;

(d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;

(e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or

(f) contains provisions that, for any reason, would be more appropriately contained in an Act.

3.7 In this clause –
“adverse effect” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;

“instrument” means –

(a) subsidiary legislation in the form in which, and with the content it has, when it is published;

(b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;

“subsidiary legislation” has the meaning given to it by section 5 of the Interpretation Act 1984.”
APPENDIX 15
SEARCH NOTICE ISSUED IN VICTORIA
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SEARCH NOTICE ISSUED IN VICTORIA

YOU AND/OR YOUR VEHICLE ARE BEING SEARCHED FOR WEAPONS BY VICTORIA POLICE

REASON

IT IS AN OFFENCE FOR YOU TO OBSTRUCT OR HINDER A MEMBER OF THE POLICE FORCE PERFORMING THIS SEARCH

ATTENTION

1. An Authorising Search is being conducted under section 35 of the Control of Weapons Act 1990. If you are 18 years, this is a Designated Area.
2. When you and/or your vehicle are in a Designated Area, the police have the power to search:
   - Anything in your possession or control and/or
   - Your vehicle.