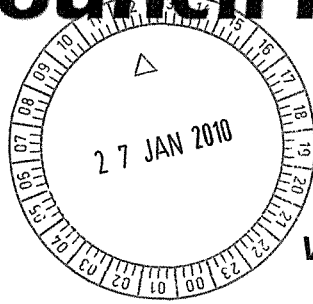




Council for Civil Liberties in Western Australia Inc.



PUBLIC

G.P.O. Box T1816, Perth W.A. 6845
Telephone (08) 9384 1196, 0421 443 376
Fax (08) 9384 1196
e-mail info@civillibertieswa.org

Visit us on the web at www.civillibertieswa.org

25th January 2010

To: Parliamentary Committee

Please consider the attached documents as our submission against the “mother of all attacks on our civil liberties in Western Australia”, the proposed Stop and Search laws. This is an attack on the most fundamental civil liberty, namely, the right for decent, innocent, law-abiding citizens to be left alone.

If you have any questions or comments, we can expand on these documents further in person or over the phone.

Yours sincerely,

Peter Weygers J.P.

Peter Weygers J.P., President

'Search powers will kill Barnett'

By **BRET CHRISTIAN**

Random stop and search powers for police will eventually spell the death knell of the Barnett government, says Council for Civil Liberties president Peter Weygers.

"Any government that has restricted freedom of movement has fallen. Mr Barnett clearly has not remembered history," Mr Weygers said.

"No people, anywhere in the world, have stood for this type of repressive law."

The laws have passed the lower house of Parliament and are now being debated in the Legislative Council.

It emerged this week that people who resist searches can be jailed for up to three years.

Mr Weygers said the Claremont-based civil liberties group had been swamped with protests, mostly from older people and ex-servicemen.

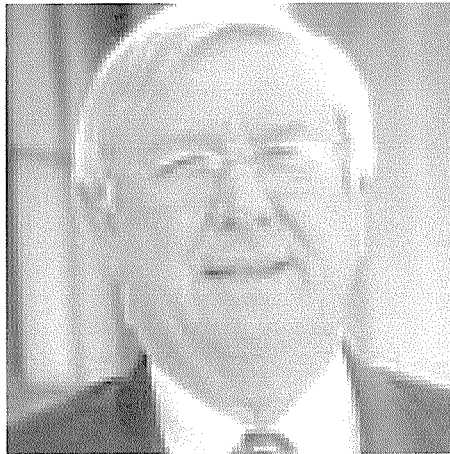
"One young former serviceman said 'what's the point of fighting for freedom overseas if you come home to see our liberties taken away?'" Mr Weygers said.

He said nobody could predict how the powers would be used.

All officers were not the same. Recent cases had shown that some were prepared to abuse their powers.

All the assurances from Mr Barnett and Police Minister Rob Johnson were meaningless, he said.

"Police Commissioner Karl O'Callaghan may have the best of



Peter Weygers

intentions," he said. "But he and his officers will not always be in these positions."

"Mr O'Callaghan does not even appear to need the powers that are being thrust upon him. He had written that they would be used only when necessary."

"This means that the present law, which permits search when there is a reasonable suspicion, is quite adequate."

"The commissioner says police will mainly use metal detectors. But the legislation does not even mention them."

Mr Weygers said he was surprised business people had not protested loudly about the laws.

"The effect on tourism will be catastrophic," he said. "Would you take your family to a country where you could be stopped and frisked in the street for no reason?"

"You could be humiliated in front of a crowd, have your wallet or handbag contents emptied on the footpath."

"There is nothing in the legislation to stop it. The police officer would be acting completely within the law."

"Word will soon spread to potential tourists. They will see this as a police state. They will just stop coming."

Mr Weygers said Mr Barnett was reported as saying that loss of civil liberties was a small price to pay for safety and security.

"He has sold out the principles of liberal democracy that he was elected to represent," Mr Weygers said.

"You will now be more likely to be assaulted by a policeman than by a private citizen."

"How many of us have personally been assaulted by a stranger in the street? Hardly any."

"Now it will be a real possibility, and the assault will be by a policeman. Remember that they don't need any reason."

"Be warned. It's the path to a dictatorship."

"This year everybody has been too busy trying to keep their jobs and make a living."

"But when the reality strikes home, the voters won't stand for it. This will be a one-term government."

'Pen-pushing will not stop crime'

By ROMY RANALLI

Colin Barnett's get-tough stance on law and order will not make Perth safer, says Law Society president - elect Hylton Quail.

Mr Quail is among lawyers and civil rights advocates getting frustrated at the Premier's push for tougher crime laws since he was elected a year ago.

Mr Quail said the crackdown was Mr Barnett's express agenda during the election campaign, but the government should instead be putting resources into helping people most at risk of ending up before the courts.

"Getting tough by changing laws is easy and cheap - all it takes is the stroke of a pen and a vote," Mr Quail said.

"What we really need to see from our politicians is a will to address the real causes of most crime, which are social disadvantage and family breakdown.

"Tougher penalties and new laws won't prevent crime.

"Many of the government's proposals, though, will significantly erode the fundamental rights and civil liberties we all hold dear."

The government has so far passed mandatory sentencing laws for assaults on public officers, repealed truth in sentencing laws by abolishing the one-third discount people sentenced to imprisonment were automatically getting, and introduced tough graffiti laws.

But more measures are in the pipeline, including:

- Giving police the power to randomly stop and search people;
- Limiting the right to silence;
- Further reform to parole laws;
- Prohibited behaviour orders, which would prevent a particular person from walking through an area like Northbridge or owning a spray can;
- Changing the double jeopardy law; and

- Tightening marijuana laws that currently turn a blind eye to the growing of two cannabis plants per person, per household.

Criminal Lawyers' Association president Richard Utting said the changes were political.

"This is not being driven by logic or need but a perception that there are votes in it for the government," he said.

"They sound like great ideas but when you look at the detail it will catch people walking around with fountain pens.

"What they are proposing is that if I'm walking along the street minding my own business, the police can stop and search me and that will create more problems than it solves.

"The police will take as much power as you give them.

"And looking at the way the parole system is at the moment, we may as well have one."

The changes to the right to silence were of major concern, Mr Utting said.

"The Attorney General favours the approach in the UK where people who don't talk to police face adverse comment made in court," he said.

"However, in the UK there is a safeguard because lawyers are available to talk to people and sit in during interviews; the problem in WA is that there are not enough lawyers and too great a geographical area to cover.

"This government has not provided any logical argument for these serious incursions on civil liberties."

Young people were also being targeted, the Youth Affairs Council of Western Australia (YACWA) said.

"The government is encroaching on children and young people's rights by pushing its aggressive and punitive law and order agenda," said YACWA executive officer Lisa Laschon.

Ms Laschon said she was worried that a raft of legislation already passed, plus upcoming bills, presumed that all young people were criminals.



Colin Barnett

"Instead of ploughing money into quick-fix solutions the government should be investing in things that actually work - early intervention education programs, diversionary programs and youth services that support our most at-risk young people," she said.

"All these new laws will do is add to the burgeoning number of young people in detention, which costs the community more than what it would to tackle the problem at its roots."

Perth Children's Court president Denis Reynolds told the POST in July that most of the children who came before the court were from socially disadvantaged backgrounds and broken homes.

"These children lack the necessary support and nurturing and we need systemic improvements and a collaborative approach," she said.

"It won't be solved short-term but we need to start the process."

Top judge slams video justice

By **BRET CHRISTIAN**

Video footage of violent crime, combined with talkback radio hype, have contributed to the wrong perception that crime is increasing and punishment decreasing, says Supreme Court Chief Justice Wayne Martin.

What people thought was an increase in crime was simply an increase in media access to videos of crime, the judge told a criminology conference this week.

Their broadcast led to an auction between political parties to appear to be the toughest on law and order.

Politicians were swept up in "a game of chicken" where neither side was game to be branded soft on crime.



Chief Justice Wayne Martin.

"Media reporting suggests that crime is rising when it is falling, that sentences are soft when they are becoming increasingly harsh, and that prisons are easy when they are desperately overcrowded and grim," Chief Justice Martin said.

Combined with a tougher sentence by judges, these factors were contributing to the overcrowding of WA's jails, he said.

"More and more people are being sent to prison for longer.

"It seems to me at least likely that judges are just as influenced as politicians and police by their perception of community standards and expectations."

He said judges must lead rather than follow.

"It seems a significant component of the dramatic increase in prisoner numbers over the past 18 months is very likely due to the sentencing practices of the courts," he said.

He revealed there had been an explosion in WA's prison population in 2008-2009.

There had been an increase of 1000 prisoners from the middle of last year to about 4700 today.

No new prisons had opened since 2001, he said.

"Overcrowding in the prison system of WA is chronic," he said.

Four new medium-sized prisons would be needed to adequately house those extra 1000 prisoners. And the prisons would



The head-butt to constable Matthew Butcher, right, was recorded on a phone video and accessed thousands of times.

cost \$600 million to build.

It cost \$100,000 a year to keep each prisoner in jail, he said. On top of that were the indirect costs, social and financial, and disruption to family life - and this was money that could go to hospitals and education.

Chief Justice Martin said there appeared to be a belief that increasing the rate of sending people to jail and increasing the length of jail terms would reduce criminal behaviour.

"But the data does not support that proposition," he said.

Released prisoners kept returning to jail - 40% of male adult non-Aboriginals, and 70% of male adult Aboriginals, he said.

A much higher success was achieved with non-custodial sentences; the drug court re-offending rate was one-third lower, he said.

Despite public perceptions, crime - except for assaults - had dropped by 10,000 offences in the past 10 years. This included murder, rape, burglary, robbery and car theft.

Assaults had increased by 27%.

"It seems distinctly possible that the greater impact on prison numbers comes from courts sending a greater number of offenders to prison, and for longer," he said.

But, he said, "the impression I get from talkback radio, bloggers and media reports is that the general perception in this state is that crime is increasing and punishment is decreasing.

"Neither of these things is true," he said.

He said the media concentrated on crimes involving violence and sex. They were sensationally reported with video and photos shown on TV, websites and newspapers.

Outraged victims of crime and relatives of victims were interviewed outside the courts calling for tougher penalties, he said.

"So the nature of news distorts the public perception of what is actually happening in our community," he said.

"Readers and viewers are led to believe that their own risk of victimisation is far higher than it actually is.

"Politicians who wish to be successful package their ideas in sound bites rather than engage in reasoned and measured public discussion."

In the law and order auction, "politicians endeavour to outbid each other on a scale of sentencing severity".

He said they played chicken, taking increasingly extreme views, daring the other to drop out of the bidding war at the price of electoral failure.

In WA, laws were toughened because of this process, regardless of which party was in power, he said.

Attacks on judges were becoming more direct and personal. One judge's associate had received hundreds of hateful and offensive emails after a blog site published the email address, he said.

He said the media could have a beneficial impact on the criminal justice system.

Some media outlets played a constructive role in highlighting miscarriages of justice, creating political pressure to have cases referred to the appeal courts where wrongful convictions were overturned, he said.

Publicity had also recently led to the withdrawal of the Freddo Frog charges against a 12-year-old boy, he said.

Search laws to erode 'all civil liberties'

AMANDA BANKS
LEGAL AFFAIRS EDITOR

Proposed laws which will give police unprecedented stop and search powers are likely to unfairly target minority groups such as Aboriginals and Muslims and would be more at home in a fascist regime, the Law Society of WA warned yesterday.

Society president Hylton Quail said the plan to give police unqualified powers to stop and search people in designated areas would risk undignified intrusions on law-abiding citizens' rights and lacked appropriate safeguards and statutory checks.

He said the Law Society was not suggesting police would deliberately target specific groups but it was inevitable that young, disadvantaged Aboriginals who were over-represented in the justice system and known to spend time in Northbridge, and members of the Muslim community were susceptible to being unfairly targeted.

Mr Quail said the Government had failed to justify the need for expanding the stop and search powers.

"These laws are commonly found in police states, historically and around the world, and fundamentally

erode all of our civil liberties," Mr Quail said.

But the society, which has made a written submission to an Upper House standing committee investigating the laws, has drawn the ire of the WA Police Union.

Union president Russell Armstrong accused lawyers of scare-mongering, saying police would be trained in the new laws and strict guidelines would be introduced to govern the exercise of the powers.

"Any officer who steps outside those guidelines will be dealt with," Mr Armstrong said.

"This is not targeting any ethnic group. This is targeting people in entertainment areas who we are having major problems with."

The controversial legislation was referred to the Upper House legislation committee the day that Parliament broke for the summer recess after Police Minister Rob Johnson made the 11th-hour concession that the laws would not be passed before the end of 2009.

Mr Johnson said yesterday that the rigorous guidelines governing existing search powers would apply to the new laws but they would not be used to target specific groups.



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G.P.O. Box T1816, Perth W.A. 6845, Australia
Telephone: (08) 9371 8925 or (08) 9384 1196 Fax: (08) 9384 1196
e-mail: info@civillibertieswa.org

Visit us on the web at www.civillibertieswa.org

The Council for Civil Liberties in Western Australia is an independent group of people dedicated to the age-old principles of liberty and justice. Our mission is to serve as *Watchdog and Conscience* in a society which abuse, misuse and non-use of power, at all levels of the legal system, law enforcement and government bureaucracy have drastic impact on individuals. To members suffering injustice, the Council provides support, time effort and expertise, without charge.

If you want to contribute to the work of the Council or are seeking our advice or support please feel free to e-mail us at info@civillibertieswa.org, fax us at **9384 1196**, or contact one of the following:

Peter Weygers J.P.	President	9384 1196
Thomas A. Lawson	Senior Vice President	9228 3416

If the matter is general urgent and you cannot get through on these numbers, you may send us an SMS at **0421 443 376**.

Please clip the application and post with payment to **GPO Box T1816 Perth, WA, 6845**. On receipt of a new application we will send you a copy of the *CCLWA Constitution*. You may withdraw your membership within 14 days and obtain a full refund. Memberships fall due on the 31st of March and must be paid prior to the Annual General Meeting.

Membership Application: Council for Civil Liberties in Western Australia (Inc.)

Category	One Year	Three Years
Standard - employed	<input type="checkbox"/> \$40.00	<input type="checkbox"/> \$100.00 (save \$20.00)
Concession - retired/unemployed/student	<input type="checkbox"/> \$20.00	<input type="checkbox"/> \$60.00
(Optional) I wish to make a contribution to the work of the Council:		
<input type="checkbox"/> \$5.00	<input type="checkbox"/> \$10.00	<input type="checkbox"/> \$ _____
<input type="checkbox"/> \$25.00	<input type="checkbox"/> \$50.00	
(Optional) I am especially interested in supporting:		Total: \$ _____

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Home Phone:	Mobile Phone:	Fax:	e-mail Address:	
Street Address:			Suburb:	Postcode:
I have the right to review the CCLWA Constitution for 14 days. If in this time I wish to withdraw my membership, you will provide me with full refund. My continued membership certifies that I undertake to support the <i>CCLWA Constitution</i> and Council policy during my membership.				
Signature:	Do you wish to be sent a receipt? Yes / No	Are you renewing your membership? Yes / No	Date:	