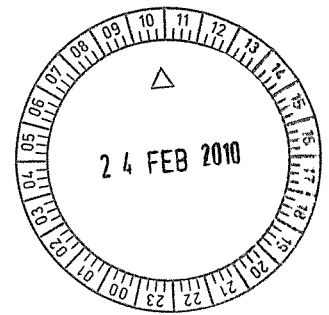


PUBLIC



Simon Woodings  
24 February 2010

Chair of the Legislation Committee  
Legislative Council  
Parliament House  
PERTH WA 6000

Submission re: Criminal Investigation Amendment Bill 2009

Dear Chairman,

I disagree with the proposed amendments to the act and request that they be abandoned.

There have been several excellent submissions to the Committee that articulate why the proposed laws are undesirable. I endorse and adopt the submissions of Hylton Quail and the Law Society (18/1/2010), the Australian Association of Social Workers (18/1/2010) and Ben Watson (4/12/2009).

I would like to add some additional points.

It would appear that the impetus for these changes has come from politicians reacting to media reports, and wishing to be seen to be tough on crime.

Looking and being tough on crime can be achieved without infringing upon civil liberties. Increasing police presence, and implementing a no-tolerance policy to violence and antisocial behaviour are two examples of excellent measures that have recently been implemented to reduce crime and which have resulted in "some encouraging signs" (Superintendent Budge, verbal submissions to the standing committee 02/02/2010).

Consistent with the political origin of the proposed changes, there has been no clear definition of the problem, no gathering of evidence to demonstrate the problem, and no evidence demonstrating that the laws will achieve the desired solution (via a limited pilot program for example). The legislative amendments have been driven by political desire; Not police need or public need.

Similar laws have been recently introduced in other jurisdictions however, as reported in The Telegraph (13 January 2010), the UK laws have recently been ruled illegal. The European Commission for Human Rights said that the powers were "neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse". "They are not, therefore, 'in accordance with the law' and it follows that there has been a violation of Article 8 (right to respect private and family life) of the Convention."

The Western Australian police department is expected to work at maximum efficiency. It is well known that the government recently imposed a mandatory 3% pay cut on the police budget. It would be grossly inefficient to search everyone in or entering a large area as the majority will be innocent civilians with nothing incriminating to find. Therefore the new measures will either be hugely expensive which is unthinkable in the current financial climate, or they will be random in which case most people will remain unsearched, or they will be targeted so as to maintain efficiency and effectiveness. As such they should be targeted on merit - based on reasonable suspicion that the person has been involved in the commission of an offence (for example *weapons act* 7(1) "...a person who, without a lawful excuse, carries or possesses a controlled weapon commits an offence". Since this power already exists within the Criminal Investigation Act, this conclusion would make these legislative amendments unnecessary.

So is there any other system of targeting that is intended to be used? If so, it should be included in the legislation. However, I am concerned that any method of targeting police searches other than based on reasonable suspicion, will

amount to unwarranted discrimination.

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.

The intent of the laws may be good. But when considering legislation we should also consider the unintended consequences.

Borrowing from A C Grayling - these laws represent a fundamental negative change in the relationship of citizens with the State, a change that diminishes our individual liberty by making us conscripts rather than volunteers in our own land.

We will have changed from 'presumed innocent' to 'presumed potentially guilty'. The legislative direction, and the precedent that will surely follow, will further erode the presumption of innocence that protects citizens within our system of justice.

It must also be remembered that police officers are human and in some cases young and inexperienced. Despite the professional and high quality performance of most police officers, sometimes some officers will succumb to poor judgment. Or a rush of emotion (pride, lust, revenge etc). An example is the recent conviction of Constable Andrew McLeod for assault (The West Australian 20/2/2010). By removing a significant layer of protection we will increase the temptation on officers to stray outside the law. And for the rare occasions that an officer does stray, the victim will have almost no recourse and no ability to demonstrate that they have been unlawfully treated. After all, there will be no limitations on a police officer touching, interfering with, and searching anyone.

Quis custodiet ipsos custodes?

Yours sincerely,

Simon Woodings

Citizen