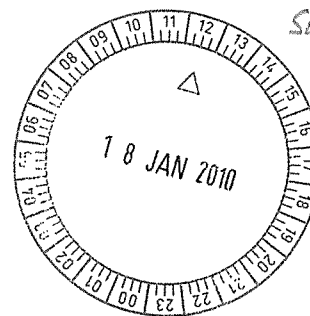




## Australian Association of Social Workers

WESTERN AUSTRALIA BRANCH



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Mr Mark Warner  
Committee Clerk  
Legislation Committee  
Legislative Council  
Parliament House  
PERTH WA 6000

### **Re: Criminal Investigation Amendment Bill 2009**

The Australian Association of Social Workers (WA Branch) appreciates the opportunity that has been provided for public submissions in relation to this significant legislation.

The Association acknowledges the serious issues of public safety to which the proposed legislative amendments are directed and understands the need to protect the community from acts of serious violence often associated with illicit drug use and the concealment of dangerous weapons in public venues. We strongly endorse the right of law abiding citizens to attend public venues free from the fear of violence.

We note that the current provisions of Section 69 of the Criminal Investigations Act 2006 provide for search powers in respect of public places that are prescribed or subject to a declaration by a senior police officer. The major differences between the current legislation and the proposed amendments are that currently:

- an officer must reasonably suspect that it is necessary to exercise the powers in order to safeguard the place or people; and
- a person with respect to whom the powers have been invoked must consent to a search being carried out and may be refused entry to or required to leave the place if consent is withheld.

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Under the proposed provisions the requirement for reasonable suspicion is removed and a search may be carried out without consent.

Effectively this means that individuals may be targeted for searches without any requirement for justification as to why the particular individual was targeted and with no right to refuse a search and agree to depart the venue.

The chief concern of the Association is that there is potential for marginalised and vulnerable groups in our community to be unfairly targeted in the use of these provisions, without any need to provide justification for a significant intrusion into their personal privacy.

We acknowledge that a further amendment contained in the Bill elevates the authority to declare a place in which the powers may be exercised to the Commissioner, with the approval of the Minister, however this additional protection is not sufficient to effectively counter the inherent dangers of such arbitrary powers.

We are aware that it has been argued that citizens routinely accept similar intrusive measures on entry to airports, however there is one very significant difference. All persons entering an airport are subject to similar measures. These proposed legislative amendments enable arbitrary selection of individuals to be subject to searches without any requirement for accountability in relation to those selections.

We believe that the proposed provisions are potentially in breach of Article 12 of the Universal Declaration of Human Rights:

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

We believe that the proposed laws may be reasonably construed as constituting arbitrary interference with the privacy of individuals.

As stated earlier, we share the concerns of parliamentarians about an escalating culture of violence among some sections of our community and support the need for Police to have adequate powers to protect the community from that violence. However unaccountable powers bring with them the potential for serious abuses and historically it tends to be the marginalised and disadvantaged who are most likely to be the subject of those abuses.

We therefore urge the Committee to reconsider the current amendments, particularly those that allow for arbitrary, unaccountable decision-making affecting the rights of individual citizens.

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. Given the time at which much serious violence occurs, earlier closing times may well provide part of the

solution, though longer term solutions are more likely to rest with earlier prevention measures including increased support to vulnerable families and young people.

Once again we thank you for the opportunity to comment on these proposals.

Yours sincerely,



Nic Hastings-James  
President, WA Branch.  
15 January 2010