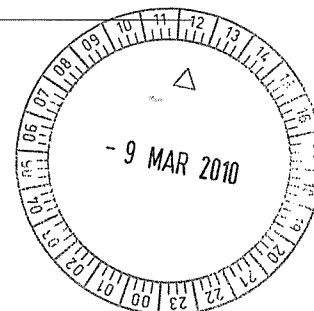


8 March 2010



The Clerk  
Standing Committee on Legislation  
Legislative Council of Western Australia  
Parliament House  
PERTH WA 6000

Dear Ms Jewell

## **INQUIRY INTO THE CRIMINAL INVESTIGATION AMENDMENT BILL 2009**

I refer to my attendance before the Standing Committee on 9 February 2010 and as requested provide my further advice concerning the *Control of Weapons Act 1990 (Victoria)* ("the Act").

Although both the Act and the Western Australian Bill provide for substantially increased police powers of stop and search, there are a number of important differences between the two. The main additional restrictions on the exercise of power under the Act are:-

- Designation of a search area is dependent on prior violence in the area or the likelihood that violence will occur.
- Limitation on size of designated area.
- Limitation on period of designation (12 hours).
- Widespread prior publication of designated search area (planned).
- Prescription of reasons for search, namely a search for weapons.
- Prescription of a regime for provision of information to people prior to searching.

The restrictions in the Act are necessary checks and balances intended to prevent abuse of what would otherwise be unfettered police power. The Bill does not include any of these checks and balances and would be much improved if it did.

In my view, the Victorian checks and balances although commendable, do not go quite far enough and consideration ought be given to those additional matters identified in the Law Society's submission of 23 February. Most importantly, proper parliamentary supervision of powers as wide as contemplated by the Bill should occur via the office of a parliamentary inspector.

Further, the requirement to provide information under Section 10I of the Act should be a mandatory requirement, as it is in the United Kingdom, rather than an

obligation that arises only if a police officer is requested to provide the information. It is important also that information be provided clearly in a way that is understood by the person that is to be searched. This is particularly important for people who do not speak English as a first language, aborigines and children.

The Act also requires in Section 10D and 10E that the maximum period of either planned or unplanned designation of a search area is 12 hours. This is a sensible limitation for weapons searches and one that ought to be enacted if Section 70A and 70B are legislated. Similarly, the Bill should be confined to weapons searches, given the Government's attempted public justification of the need for the legislation by reference to weapons in Northbridge.

I would also suggest that the Committee obtain evidence from Victoria on the operation of the Act so as to properly assess its practical effect.

Both the Law Society and I remain opposed to the Bill, for the reasons I gave in evidence. My endorsement of the checks and balances in the Act should not be interpreted as support for the erosion of civil liberties contemplated by the Bill.

I thank you for the opportunity to make further submissions.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'H. Quail', written in black ink.

**HYLTON QUAIL**