

STANDING COMMITTEE ON LEGISLATION

CRIMINAL INVESTIGATION AMENDMENT BILL 2009

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 5 MAY 2010**

Members

**Hon Michael Mischin (Chairman)
Hon Sally Talbot (Deputy Chair)
Hon Mia Davies
Hon Helen Morton
Hon Alison Xamon**

Hearing commenced at 10.15 am**MORGAN, DR FRANK****Director, Crime Research Centre,
University of Western Australia,
sworn and examined:****INDERMAUR, ASSOCIATE PROFESSOR DAVID****Associate Professor, Crime Research Centre,
University of Western Australia,
sworn and examined:**

The CHAIRMAN: Of behalf of the committee I would like to welcome you to our meeting. Before we begin, I shall ask you to take either the oath or affirmation as you prefer.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: For the record, would each of you please state your full name, contact address, and the capacity in which you appear before us today?

Dr Morgan: My full name is Francis Hamilton Morgan. The name of the organisation is the Crime Research Centre at the University of Western Australia, 35 Stirling Highway, Crawley—how is that?

The CHAIRMAN: That is fine, yes.

Professor Indermaur: Associate Professor Indermaur, Crime Research Centre, Law School, University of Western Australia, 35 Stirling Highway, Crawley, Western Australia.

Dr Morgan: I should say also that my capacity is as a criminologist; I am not speaking on behalf of the Crime Research Centre or the law school or whatever.

Professor Indermaur: I am the same.

The CHAIRMAN: Thank you. Just so that you know who you are appearing before, my name is Michael Mischin, MLC for the North Metropolitan Region, and I am chairman of this committee. To my right is Hon Helen Morton; to my further right is Hon Mia Davies; to my left is Denise Wong, who is the legal advisor to the committee; to her left is Hon Alison Xamon, MLC, and to her left is Hon Sally Talbot, MLC, who is the deputy chairman of the committee. You have signed a document entitled “Information for Witnesses”. Have each of you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and to assist Hansard in taking an accurate record, would you please quote the full title of any document that you refer to during the course of the hearing. Please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make any noises near them that may obscure the recording. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during the proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing; the hearing, at present, is a public hearing. Please note that until such time as the transcript of your public evidence is finalised it should not be made public. I advise you that the publication or disclosure of the uncorrected transcript of the evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

I think both of you gentlemen will have received a letter from the committee setting out, essentially, what it is that we are seeking your assistance on, and a list of proposed questions as an indication of the sorts of areas that we would like you to help us out with. Would either of you like to make an opening statement to the committee? Dr Morgan?

Dr Morgan: I am happy to talk to a number of those questions in the “Proposed Questions for Criminologists”, but perhaps as an overview I would say that I do oppose the amendments in the bill because of their potential to be discriminating with respect to stereotypes who might be regarded as the usual suspects, I guess, with respect to crime, in particular young people, Indigenous people, and perhaps people of Middle Eastern European appearance as well. I should also just say that while I have expertise and quite a bit of experience in the evaluation of criminal justice initiatives and quantitative indicators in criminology—I chair the National Crime Statistics Advisory Group, which is an advisory group to the Australian Bureau of Statistics on the national crime statistics needs—and I have conducted a number of evaluations and research with respect to crime prevention, the spatial distribution of crime, repeat victimisation, and victim-based prevention as well, I have not, myself, conducted research on police powers. My concern about the bill as it is at the moment is based a lot on the civil liberties aspects of it, but also regarding the potential for the legislation to bring police more into contact with some of the marginal groups in a confrontational way. I am concerned that that be minimised. I am conscious of the fact that with groups such as the ones I have mentioned 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. That is perhaps a little background statement from me.

Professor Indermaur: Yes, I would certainly support everything that the director of the Crime Research Centre said there. From a criminologist’s point of view—my point of view—in this regard, I remain sceptical of the amendments to this bill being able to do anything substantial in terms of preventing crime. One of my principal concerns, that I am sure will come out of the questioning because it is the last question in the list of “Proposed Questions for Criminologists” is how will the bill, if enacted be evaluated or reviewed: I could not find, in my readings, any stated purpose of the amendments. I think it is very important that when we bring in changes to the criminal law, you state very clearly what the purpose of those amendments are, particularly where the changes to the law invite and involve the implementation of what are, I consider, very substantial restrictions and reductions in the rights of citizens of this state. I feel quite strongly that there is always a balance between civil liberties and safety, and I am assuming that behind this bill is a concern for safety. I would be very happy if there was some statement to the effect of this bill is being introduced to increase safety. That then gives us some grounds for evaluating whether the amendments to the bill actually achieve its stated purpose. But as it stands, I am afraid that this seems to be a proposal without any stated purpose—without any clear purpose. Thank you.

The CHAIRMAN: Perhaps we will commence by getting, for the record, some information about yourselves and your qualifications and experience. Dr Morgan, could you please outline for us your qualifications and experience? If you have a CV that you can present as part of your evidence that will shorten the process, and it would be of assistance if that could be tabled, but otherwise, in a nutshell, tell us about your expertise.

Dr Morgan: I have not brought a CV. Basically, I am the director of the Crime Research Centre, which is a research unit within the law school at the University of Western Australia. The kind of research that I have had quite a bit of experience with is the distribution of crime spatially and temporally and trends over time. As I said before, I chair a group for the Australian Bureau of Statistics called the National Crime Statistics Advisory Group, which advises the Australian Bureau of Statistics on the advantages and limitations of its national crime statistics publications.

I am not sure if I mentioned that I have a PhD in criminology. That was on the topic of repeat victimisation, so I am interested in, I guess, the role of victims in the criminal justice process and their ability to reduce their own risk with respect to crime. I applied that particularly to burglary in my PhD thesis. I have conducted a number of evaluations, for instance the evaluation of changes in parole legislation in South Australia going back to the late 1980s. I am interested in the criminal justice system in general and in criminal justice legislation. I am interested in crime prevention but particularly what is often called “situational crime prevention” which is reducing opportunities for crime. That is a rather different approach from purely criminal justice driven policing approaches, although it does tie in with an approach to reducing crime called “problem oriented policing”, whereby police look at specific problems in specific places and analyse what is seen to be the causes of this particular problem here and now and design their interventions in a way that tries to maximise their effectiveness.

A number of evaluations recently have done some research on assaults on police officers for the Office of Crime Prevention, just now within the WA Police service, looking at, I guess, the amount of repeat victimisation that officers suffer in terms of assaults. That is a recent sort of project I have been involved in. It was a lot of research and evaluation on criminal justice initiatives to reduce crime, with a particular angle on situational crime prevention and the sort of things that victims themselves might be able to do, which in some ways is outside the criminal justice system. Maybe that is a —

The CHAIRMAN: Can I just unpack a little bit of that? How long have you been qualified in your field?

Dr Morgan: I have been working in the area of criminology for 25 years.

The CHAIRMAN: Where did you obtain your qualifications?

Dr Morgan: I have a PhD in criminology. I have got a strong statistical background, so that I have an MSc in mathematical physics—do not ask me—and I have got a diploma in applied statistics as well in terms of qualification.

The CHAIRMAN: They are from which institution?

Dr Morgan: I have a DipEd as well; that is from Melbourne University. I have a BSc Hons from Adelaide University, an Msc from Adelaide University, and a PhD from the University of Western Australia.

The CHAIRMAN: The PhD, or your qualifications in the criminology, that is actually an academic degree in criminology, or is it in psychology or some other field that then becomes a speciality in criminology?

Dr Morgan: It is criminology oriented. I suppose that once you do a PhD, you —

The CHAIRMAN: Which discipline is it attached to; is it law or is it some other discipline?

Dr Morgan: My discipline was very much criminology. I guess that once you get to the PhD level, there is something at the university called the Graduate School of Research that somehow divorces itself from the multiple disciplines that give rise to it. Technically, a PhD is not a PhD in anything; it is a PhD—a doctor of philosophy, of all things.

The CHAIRMAN: Sorry, go on; I interrupted you.

Dr Morgan: But the disciplines that I was working in were very much criminology.

The CHAIRMAN: Do you have any legal qualifications, or were any legal units part of your qualifications?

Dr Morgan: No, I am not a lawyer.

The CHAIRMAN: You said that the Crime Research Centre is within the University of WA law school?

Dr Morgan: Yes.

The CHAIRMAN: How is it funded?

Dr Morgan: The Crime Research Centre was initially funded by a capital grant from the WA government. Its role is to produce crime and justice statistics for Western Australia, and also to conduct policy research—relevant research—relating to Western Australia but not just Western Australia. We survive through—we are pretty much an independent unit within the law school, so there is still some interest coming in the original grant. We apply for research grants and contracts from funding agencies, like, for example, the Australian Research Council, like most academics do. We also have attracted funding from government agencies in Western Australia. Then another source of funding for us is our teaching activities, so the centre teaches a little bit at undergraduate level but mostly at masters level, and we also have PhD students as well.

Hon SALLY TALBOT: Professor Morgan, when you talk about your research background and your interest in victims, are you talking about victims of crime or victims of the criminal justice system?

Dr Morgan: Mainly crime, but there is that sense of double victimisation.

Hon SALLY TALBOT: Because in your opening statement you talked very much about your fears that this kind of legislation targets certain stereotypical groups who are presumably victims of the criminal justice system potentially, rather than victims of crime.

Dr Morgan: Probably the best example of victim-based crime prevention, for example, would be—I think there have been quite substantial reductions in burglary in Western Australia and I think one of main reasons for that is that potential victims have conducted a lot of prevention efforts on their own. They are concerned about their risks of burglary, so they have installed a number of things like alarms and so on. That is one of the things that has reduced the burglary rate in Western Australia, which is totally outside the criminal justice system. Getting back to your question about bringing young people into contact with the criminal justice system, I am not necessarily saying that contact with police is victimisation in any way, but I think the group of people we are talking about are the most marginalised people. Offenders are a group that has a higher degree of victimisation as well, and they do not mix in the best company so they are likely to be victimised as well. There is an overlap between those things.

Also, I think that the groups that I fear might be brought into conflict with police are the ones that, in a way, police need to have the confidence of particularly because it is okay for me to sort of think the police are doing a good job, but I do not have a lot of contact with police in everyday life apart from going on the odd meeting with them; I do not get into situations of confrontation with police. It is more important for them that they have positive contacts with police than it is for me just because they have so much more contact.

The CHAIRMAN: Professor Indermaur, can you please outline for the record your qualifications and experience?

Professor Indermaur: In terms of qualifications, I have three major academic qualifications, which are a BSc Hons—I can send the committee a copy of my CV, if you like—that was awarded in 1976. I got a MPsych Clinical in 1979, and my PhD from the law school of the University of Western Australia was in 1997. My PhD was in the field of criminology as well; I was looking at trends in violent crime and the decision making of violent offenders. I looked at both those aspects—the quantitative and the qualitative aspect—in my PhD.

My experience really starts in 1976, when I first started working in the prisons in Western Australia. I worked for a year before I went back to university and did two years of a masters course in clinical

psychology. I am a registered clinical psychologist still. I worked as a clinical psychologist in the prison system here in Western Australia for two or three years and got involved in some initial criminological research with a colleague from the Department of Corrective Services at the end of the 1970s—it was Rod Broadhurst—and we investigated public perceptions of crime and justice in Western Australia. That was the first piece of research on that topic here in this state. That was the subject of a Criminology Research Council grant at that time and led to a publication in 1982 in the *Australian and New Zealand Journal of Criminology* on public perceptions of crime and justice in Western Australia. I believe that was the first such publication in this state.

I took up further studies in Canada and looked at public attitudes to sentencing in Canada for two years at Simon Fraser University. I taught criminology at Simon Fraser University. I returned to Western Australia in 1985 and worked as a coordinator of a youth welfare agency for a year—YouthCARE—and then rejoined the Department of Corrective Services as a clinical psychologist and served for some time as senior clinical psychologist at Fremantle Prison. I then went to the policy section of the Department of Corrective Services and was principal planning and research officer for two or three years up at the Department of Corrective Services. I oversaw the evaluation of a number of initiatives within the Department of Corrective Services. I initiated—again with a grant from the Criminology Research Council—a review of prisoners' drug and alcohol use patterns in 1987. It was published in the *Australian and New Zealand Journal of Criminology* in 1988. Again, that was the first such study in Western Australia.

I then went to Edith Cowan University to help establish the degree in crime and justice—I cannot remember the exact title of it. It was a new degree designed for prison officers and police officers at Edith Cowan University. That was in 1989. I stayed at Edith Cowan University for three or four years before joining the Crime Research Centre in 1993 to undertake a research project, funded by the Minister for Police, into violence in the course of a property crime, which led to the publication of a book in 1995 called *Violent Property Crime*, so that was about violence in the course of a property crime. In that process I started my investigation into various forms of violent crime and I have sort of spent about a decade really immersed in the area of violent crime, interested in looking at both the trends but also—I guess maybe because of my psychological background—into the decision making of offenders in terms of how they come to do violent crime and what goes through their minds at the time and so forth. That also led to an interest in domestic violence, which I see as probably the most pernicious and damaging form of violent crime in this state, as in other states. Through the work at the Crime Research Centre we conducted a number of projects looking at domestic violence in Western Australia and looking at ways to prevent domestic violence through intervention with young people. In around about 2000 we were contracted by the family and community services department at the federal level to conduct a major survey of young people's attitudes and experiences of domestic violence around Australia. That involved a survey of 5 000 young Australians and their experiences of witnessing domestic violence and experiencing violence in their own personal relationships. I did a lot of research on violent crime, particularly domestic violence.

Since 2000, I have been involved in the evaluation of a number of interventions to prevent crime, such as the evaluating of the effectiveness of the Perth Drug Court and looking at various initiatives through the Office of Crime Prevention. I chaired the Western Australian Community Safety and Crime Prevention Council for a number of years. It was initiated under the previous Labor government. I was a member of that council from the very beginning, and after two chairs had come and gone, I was elected chair of that council for two years, until it was disbanded by the current Minister for Police. I felt that the Community Safety and Crime Prevention Council was a good initiative; it was trying to bring some focus to efforts at preventing crime in this state, but inevitably—as I have had previous experience working on state government councils—they often rise and fall with governments, and that was my experience there.

I have worked at a number of international levels. My biggest area of research now is public perceptions of crime. That was my first initiation into the field of criminology, trying to understand public perceptions of crime and justice, what drives crime and justice perceptions, beliefs, knowledge about crime and justice. I have kept up that interest. I was part of an international team that collaborated to publish a book called *Penal Populism and Public Opinion*, which came out in about 2003, with leading scholars from around the world. Since that time I have been involved in analysing Australian social science survey results. Two years ago I was part of a team that got a major Australian Research Council grant to look more deeply at the nature of public attitudes to crime and punishment, what actually drives those, how they can be changed, how we can measure informed public opinion rather than top-of-the-head public opinion, and how we can perhaps engage the public more actively in matters to do with crime and justice so that they can be informed and deliberate on these matters and come to some informed position, if you like, with regard to crime and justice reforms.

The CHAIRMAN: You mentioned early in the piece that you had seen no stated purpose for this legislation. Can you just outline for us, Dr Indermaur, what materials you have been able to read?

Professor Indermaur: Just what was sent to me by email, which was the explanatory memorandum and the criminal investigation bill.

The CHAIRMAN: Have you had a chance to peruse any of the transcripts on the website relating to the evidence that has been given to this committee?

Professor Indermaur: No.

[10.45 am]

The CHAIRMAN: Have you not had any opportunity to read any of the evidence of the Commissioner of Police as to what the objectives of the legislation are?

Professor Indermaur: No.

Hon SALLY TALBOT: If I can say, the policy of the bill is clearly set out in the explanatory memorandum and was quoted. Perhaps it would be appropriate to go over that with the witnesses.

The CHAIRMAN: I am trying to work out what the witnesses know. Dr Morgan, have you had an opportunity to read any of the evidence, or have you been following any of the evidence, that has been given before the committee on this legislation?

Dr Morgan: No, I have not looked at the evidence given to the committee. I have looked at the explanatory memorandum and—I am not sure whether I have it—the introduction of the bill to the upper house. I think there was something akin to the explanatory memorandum, but it was just slightly different.

Hon SALLY TALBOT: The second reading speech of Hon Peter Collier?

Dr Morgan: Yes, that is the one. In reading that, I suppose that I can see what this bill does, which the previous legislation does not do. However, I did not find a clear objective in the same way as Dr Indermaur regarding what kind of activities this is for. It is not in the written material for the bill as to what kinds of activities this bill is seeking to deter or to arrest people for over and on top of the existing legislation. I have read a little about the UK legislation. There are different powers in the United Kingdom. Some of those powers are in connection with knife carrying and so on. From what I have picked up, part of this is about that, but what I do not see in the written material is anything about deterring knife carrying and therefore presumably preventing offences like assaults and robbery from being committed. In the UK, the legislation has been used to pick up people in possession of illegal drugs. There are various things that stop-and-search legislation might pick up and lead to the arrests of people for, but I have not found anything so far that says this legislation is about preventing or deterring assaults and robberies, as opposed to the illegal possession of drugs,

or that it is aiming at preventing assaults and robberies because of the connection with the carrying of weapons and that kind of thing.

The CHAIRMAN: All right, you have not quite seen that in the legislation. Can you say in a paragraph what your understanding of the purpose of the legislation is?

Dr Morgan: My guess is that it is about the carrying of weapons and that by deterring or arresting people for carrying a weapon, that would reduce violent crime.

The CHAIRMAN: Are there any particular circumstances? In your understanding, is it confined to a particular scenario or context?

Dr Morgan: It is obviously to do with public places. Mainly through the newspapers, I believe that it is for situations such as nightclubs or nightclub districts and so on. It is aimed at preventing violence in those areas. I do not see that very clearly set out in the legislation. My perception of that is pretty much based on newspaper reports.

The CHAIRMAN: Professor Indermaur, can you summarise what you understand to be the objectives of the legislation, whatever the source of your understanding happens to be?

Professor Indermaur: My understanding of the purpose of the legislation, as it is portrayed to and understood by the public, is that it would increase public safety in specified areas like Northbridge. I think Northbridge has been mentioned a number of times in relation to stop-and-search laws.

Hon SALLY TALBOT: "Entertainment precincts" is the modern term.

Professor Indermaur: For people in Western Australia, Northbridge has become representative of the entertainment precincts. Because Northbridge has been mentioned a number of times in the newspaper reports, people already have a view on safety in Northbridge. We know that from various surveys that have been conducted. In the public's eye, there is a sense that the crime rate is very high in Northbridge and that it is a dangerous place to be after midnight. I am also aware from the various things I have read that the police should have more powers to police people who are up to no good or who are likely to commit a violent crime in a place like Northbridge. I know that the legislation is structured around specified areas, so it has to do with specified areas. I presume that this is about targeting specified areas and giving police more powers. However, it is very important, from a criminologist's point of view, to understand what the idea is and what is trying to be prevented. The idea in, the public's view, is that it is about public safety. Obviously, if I was asked to evaluate this or to make recommendations about how it should be evaluated, I would say that it is all about public safety. The legislation should rise or fall on whether it achieves the overarching objective of reducing violent crime in those specified areas like Northbridge.

The CHAIRMAN: Does anyone have any questions on that aspect, because there is something that I would like to go into, which is the scenarios. Does anyone want to ask any questions?

Hon SALLY TALBOT: I would not mind asking a quick couple of questions about the business of the community's perception of crime. If I understand you correctly, you are referring to the phenomenon known in some quarters as "moral panic". That is when people's perception of crime is coloured more by what they read in the newspapers or see on the six o'clock news than by their actual experience. Am I correct in understanding that distinction?

Professor Indermaur: Yes, that is a reasonable distinction.

Hon SALLY TALBOT: Is there implied in what you are saying an observation on your part that some of these community perceptions are in fact being fuelled by moral panic rather than being a legitimate fear? Presumably, none of us would argue that community safety is not a valid aspiration.

Professor Indermaur: That is right. Certainly it is my view that people overestimate their chances of victimisation. The legislation is being played out largely through individuals who are unlikely to be subject to this legislation. It is 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. To answer your question directly, 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.

Hon SALLY TALBOT: Do you then question the advice from the police and various other institutions in Western Australia that claim there is a proliferation of weapons, particularly on public transport and in entertainment precincts; that is, that there has been an escalation of weapons carrying and of violence and antisocial behaviour?

Professor Indermaur: There are two questions there. One about the weapons and the other is about the proliferation of antisocial behaviour and violent crime. We study and are trying to understand what is going on with crime rates. To answer that question, one would need to do a very thorough analysis of weapon carrying. I was actually on national radio yesterday talking about knife carrying in an Australian context. I have reviewed some research on that from Victoria. The Victorian study by Victoria Police was a cross-sectional study, which means that it was one snapshot in time. To understand whether something like that is increasing, you would need to do a reliable sample of weapon carrying over a number of years. Then you could answer the question of whether it has really increased? The best statement that I can make is I remain sceptical about whether such research has been conducted in Western Australia. I certainly have not seen that research. My experience is that people usually make statements about this, but that there is not enough of a critical audience in Western Australia to 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.

In relation to violent crime, I remain very sceptical about any claims there has been an increase in violent crime in Western Australia. There may have been an increase 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. 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.

Hon SALLY TALBOT: Would it be fair to say that it is too crude a measure, in terms of the carrying of weapons, to simply look at the number of detections made by the police over a certain number of years?

Professor Indermaur: Yes, because that is subject to police activity, for a start. If the police put in more activity, they will detect more weapons.

The CHAIRMAN: Dr Morgan, do you have anything to say on the issues of statistics, increases and trends in either violent crime or the incidences of weapons?

Dr Morgan: The weapons I will leave to Dr Indermaur. I will say that our data sources have been quite inadequate on getting information on this. The last time I looked at assaults in general was by looking at crime surveys up to 2005. There was some evidence of an increase in assaults. The main

area that I could detect for increases was something in the ABS surveys called “assaults in places of work or study”. What makes it so difficult to follow systemically across Australia is that in the national recorded crime collection, assaults have fallen off the radar because of the perceived non-comparability between the various states. The tables that were appearing until 2005 no longer appear at the national level, and they include tabulations on weapons as well. Because of the perceived non-comparability in the national recorded crime collection, it is much more difficult for people to look at things at a national level and then look at individual states in comparison to the national figures. That is one of our main sources of information in police recorded crime. Our second main source is on crime and safety surveys conducted by the ABS. They contain a lot of useful information. The most recent crime and safety survey of the ABS came out a couple of months ago. That also contained useful information but the ABS adopted a different methodology in its latest survey, so it is non-comparable with the previous ones up to 2005. It is extremely difficult to look at trends and they stated in the reports that they were non-comparable. While agreeing with Dr Indermaur about the knife comment—that it is difficult to get evidence about that—it is actually very difficult to get evidence about assaults in general because of our unfortunate situation that we have been lumbered with regarding the national crime statistics.

The CHAIRMAN: Correct me if I am wrong, but I sense from what both of you are saying—the only figures that you can really work from, and there may be inadequacies and questions about their reliability and the conclusions that one can draw from them—that you have only the arrest rates and charge rates from the police as to what they say they are dealing with and the number of people they are arresting for carrying weapons or for the various other types of offences of violence that they deal with and encounter. Other than that, you do not have any other source, do you?

Dr Morgan: I am saying that we should have.

The CHAIRMAN: I understand and accept that there may be other ways of measuring these things, but all you have to go on, even though there may be inadequacies in the data, and I am not disputing that because you may have different ways of looking at the issue and the reliability of the statistics, but the most reliable statistics would be only what the police have in terms of charges that they lay or the offences that are reported to them, whether or not they are proceeded with in due course. Would that be a fair summary?

Professor Indermaur: My comment on that is that when you say that is all you have to go on, I would have to respectfully disagree. I think there is actually much more to go on than just police figures but it takes a lot longer to dig into that. When we estimated the extent of domestic violence in Western Australia, the study that was funded by a government minister—the Minister for Community Services at the time—we started by looking at the police figures and then we looked at hospital figures and other indicators, and we conducted a community survey. If you really want to know what is going on, you can do it. We know how to do that but it will take more time and effort than simply relying on the police statistics. I disagree with that particular point that you made that this is all we have to go on.

The CHAIRMAN: I understand that. I am saying that there may be other sources and the like; do not get me wrong. I am not saying that it is comprehensive and that it is the only reliable method. I understand the difference between domestic violence, which tends to be covert rather than offences of violence in public places, where there are generally witness or someone would be less reluctant to report the incident to the police. If we are looking at areas of violence in public—this legislation is plainly not aimed at what happens behind closed doors in a domestic situation—and if you are looking at issues such as the carriage of concealed weapons in public and the question of violent crime in public places, would it be fair to say that one’s primary source of statistics for that would be the police encounter and arrest rates, or would you say that you are working on something else?

Professor Indermaur: If I were asked to evaluate this legislation —

The CHAIRMAN: I am not asking that; I am asking as a matter of principle —

Professor Indermaur: Specifically on this question, I will respond to a couple things that you said that need to be elucidated. It is not fair to assume that most assaults that occur in public places come to the attention of the police. Although certainly most domestic violence will not come to the attention of the police, many of the assaults that occur in a public place also will not come to the attention of the police. Therefore, it is subject to selective policing. The offences reported to and recorded by the police are not a reliable indicator of the amount of violence that goes on in public places. It may seem like we are pressing this point, but our familiarity with the crime statistics over the years means that we have to be very sceptical of the recorded crime statistics because we know, for example, that the crime and safety surveys indicate to us that fewer than 50 per cent of all assaults are reported to the police. There are many motivations for people who are assaulted in public places to not report the crime to the police. Often those assaults occur with weapons and between young males who are involved in altercations when neither party has much of an interest in reporting the crime to the police. A major study was done in Bristol that looked at people turning up at accident emergency rooms of the major hospital in Bristol. That study found that even people with major injuries from assault were turning up to the hospital and that most of them did not report the crime to the police. We need to be very sceptical about the assumptions that we make in this area.

The CHAIRMAN: So the crime rate may be a lot higher than the police statistics suggest.

Professor Indermaur: Possibly.

Hon ALISON XAMON: But we do not necessarily know whether it is rising or falling.

Professor Indermaur: No. That is why I mentioned the homicide rate. Homicide is the one crime that we know virtually everything about. We know about virtually all the homicides that occur. That is why I give quite a heavy weighting to the fact that the homicide rate in Western Australia is coming down. That gives an outside indicator as to what might be going on with the level of violence in this state.

The CHAIRMAN: Do you have any comments to make on that before we proceed to another area, Dr Morgan?

Dr Morgan: I agree with that completely. We know that a lot of domestic violence is not reported to police. Again, through the surveys, we know that even fewer young men report assaults to police than do domestic violence victims. According to the surveys, there is a bigger, dark figure of the number of public assaults on strangers—it may or may not be strangers—than with domestic violence. The reporting of domestic violence has got more into the public conscience than this other type of assault.

The CHAIRMAN: There are a number of other areas I want to touch on. I know that you gentlemen have commitments and we have probably spent more time than we had hoped to on the preliminary stuff. One area that we would like to get some guidance on, because we are looking at being able to get some assistance from the experience in other jurisdictions with similar common law traditions in the administration of criminal justice and principles, and also similar problems with concealed weapons and the carriage of weapons and assaults in public places and perhaps perceptions of safety—although that is a third priority—can you give us some guidance as to which jurisdictions we may be able to look at to get some guidance as to their experience with their current situation and perhaps with laws of a similar nature to what is being proposed in this bill? For example, we have heard about some legislation in Victoria that allows for stop-and-search powers that are analogous to what we are looking at here. Are there any other jurisdictions that you might be able to guide us towards?

Professor Indermaur: The major comparator, as far as I am concerned, is the United Kingdom. The UK brought in two stop-and-search provisions. I do not have the article with me, but I can send it to the committee. There were amendments made to the stop-and-search powers under the

Criminal Procedure Act, I think it was, in the UK, and more recent amendments to the Anti-Terrorism Act. I will focus on the former rather than the latter because it is more comparable.

The CHAIRMAN: Is this the PACE—Police and Criminal Evidence—legislation? Was it section 60?

Professor Indermaur: I think it was PACE. I cannot recall offhand but I will send the article. I will focus on the UK legislation because it was brought in under quite controversial services a few years ago and it attracted a lot of research. There have been some reviews of the legislation, and, as a criminologist, I look at the evidence to see how effective it has been. The article that I will send to the committee looks at the outcomes of the legislation. I do not think it found any evidence of a reduction in the type of crimes that were sought to be reduced, but they found that there was an increase in the number of stop and searches of people from minority groups. It picked up some of the feared outcomes, or negative outcomes, that Dr Morgan referred to earlier. A real fear of this legislation is that it will have unintended consequences and will result in a lot more negative contact with the police and individuals from marginalised groups. At the same time, it will not reduce any violent crime, which is supposedly the thing that most people would hope would be the positive outcome of the legislation. It will actually have a negative outcome by alienating more people in marginalised groups. In answer to your question, the UK experience is the one that I would go to because it is the most similar and relevant to the state.

Hon HELEN MORTON: Do you know of any other stop-and-search legislation anywhere in the world?

Professor Indermaur: I did a quick scan yesterday. I probably should say no. I know of various types of stop-and-search legislation but they are brought in in different ways in different areas and therefore I do not think it is necessarily comparable to what is being proposed here.

Hon HELEN MORTON: Are there other areas, and why are they not comparable?

Professor Indermaur: They were brought in in various jurisdictions in the United States to achieve certain outcomes within the constitutional constraints of the United States. Without going into any further detail, I would not want to make any further comments about that.

Hon ALISON XAMON: Professor Indermaur, are you familiar with the Victorian legislation?

Professor Indermaur: No.

Hon ALISON XAMON: That is the one that has been most often likened to this legislation. Dr Morgan, are you familiar with it?

Dr Morgan: I am not familiar with the Victorian legislation. It is not an area that I have any research to talk about. I was in New South Wales about six years ago after it had introduced some stop-and-search legislation based on minimising knife carrying. I was sitting in on what they call CompStat process where regional commanders sit down and are grilled by the commissioner and his deputy about the use of various pieces of legislation. They grilled regional commanders about their use of these powers. There seemed to be a reluctance by some of the regional commanders to use some of these powers to any great degree because there was a slow uptake. What the commissioner and his deputy were doing through that CompStat process, which was quite a drama, was reinforcing what was police department policy and putting quite a bit of pressure on the regional commanders to make use of the legislation. That may be an area that is worth the committee following up on. I do not have intimate knowledge of that legislation to say how comparable it is with the Western Australian legislation.

Hon HELEN MORTON: We had a lot of difficulty trying to find a criminologist who would be helpful to us. We wanted someone who had done some research on and was familiar with stop-and-search powers around the world. We assumed that people working in the area of criminology might have studied this area or done some particular research on it and was able to provide us with some

of the research and information that we were looking for. In the absence of you knowing that information, do you know of any other criminologists who can provide us with that information?

Professor Indermaur: I do not.

Dr Morgan: I do not directly. I would know where to look. There is a centre for excellence in policing studies at Griffith University, for example. They might be worth contacting. I can provide a contact name to the committee secretary if that would help.

The CHAIRMAN: We would be interested in that.

Dr Morgan: There may be some people in Australia who have looked at this. Charles Sturt University and Edith Cowan have policing studies. There may be some people there. I, personally, do not know, but I am happy to put the committee in contact with some contact people there who would be the most likely people to have conducted some research like that.

[11.15 am]

The CHAIRMAN: Professor Indermaur, you mentioned some articles regarding the United Kingdom experience. I will just let you know what we have.

Professor Indermaur: Maybe if I just send you a PDF of what I have, and you can add it to your collection.

The CHAIRMAN: Sure. We have the Home Office Police Research Series Paper 127, entitled “The Impact of Stops and Searches on Crime and the Community”—are you familiar with that one?

Professor Indermaur: No.

The CHAIRMAN: There is also a briefing note regarding “Police Stops and Searches: Lessons from a Programme of Research”, regarding Police Research Series Papers 127–132; a briefing note from the Home Office again authored by Joel Miller, Paul Quinton and Nick Bland.

Professor Indermaur: What year was that published?

The CHAIRMAN: September 2000.

Professor Indermaur: No; I only looked for the more recent stuff.

The CHAIRMAN: We have got a Home Office statistical bulletin, “Crime in England and Wales 2008/09”, which is headed “Volume 1 Findings from the British Crime Survey and Police Recorded Crime”, which was edited by Alison Walker, John Flatley, Chris Kershaw and Debbie Moon and published in July 2009. Does any of that ring a bell?

Professor Indermaur: Does that have anything to do with stop-and-search?

The CHAIRMAN: It just deals with crime issues generally including incidences of crime.

Professor Indermaur: Unless it has something to do with stop-and-search, I did not include it in my search.

The CHAIRMAN: I am sorry, there is no criticism, I am just curious as to whether you have something that we have not.

Professor Indermaur: Basically, it needed to be relevant and it needed to be a review of stop-and-search before I took a look at it.

The CHAIRMAN: I have another one here—“Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops & searches”, published in February 2010. You would not have looked at that, presumably, because it is mainly to do with the terrorism legislation.

Professor Indermaur: It might have been. Also, I have a preference for looking at the academic articles because they have been peer-reviewed.

The CHAIRMAN: Lastly, there is “Police Powers and Procedures England and Wales 2007/2008”, a Home Office statistical bulletin dated 30 April 2009, edited by Povey, Smith, Hand and Dodd.

Professor Indermaur: Does that have anything on stop-and-search?

The CHAIRMAN: It deals with their police powers and procedures, and it does have a chapter on stops and searches by one Timothy Hand and Lucy Dodd, an analysis.

Professor Indermaur: It might be relevant.

Hon ALISON XAMON: I am curious about pursuing this particular line of questioning when I can have the chance.

The CHAIRMAN: I will just ask about one further one. We have got an extract background note on an analysis of MPS knife crime data and the use of section 60 searches by Marian Fitzgerald of the University of Kent, published on 2 February 2010.

Professor Indermaur: I am not familiar with that, no.

Dr Morgan: If I could —

The CHAIRMAN: Otherwise, there is a Metropolitan Police Authority report of the stop-and-search practices, again from the United Kingdom.

Professor Indermaur: No, I have not conducted any special research on stop-and-search.

The CHAIRMAN: I see. Thank you.

Dr Morgan: If I could—sorry.

Hon ALISON XAMON: No, that is fine; please.

Dr Morgan: Just to follow that up: I also found one called “Regulating stop and search: a challenge for police and community relations in England Wales” from 2006. It is more generic about stop-and-search and its impact on community relations, and that is by a couple of authors, one of whom is someone called Rebekah Delsol. I think some of the information in there is probably relevant to some of the “Proposed Questions for Criminologists” that are on the sheet that we received as well. I am happy to send a copy of that through.

Hon ALISON XAMON: I am actually wanting to go off on quite a different area, if that is okay. I will start with Professor Indermaur, if that is all right. You mentioned, when you began, that you have a lot of research specifically looking at the decision making of offenders. I am particularly interested about the comments you made only a short while ago about your concerns about this legislation leading to alienation of particular groups. I want to be very clear on this: your understanding—if I have this wrong I would like to have that made very clear on the record, please—from what I understood you were saying is that your analysis of the UK legislation, or your understanding of the analysis, is that it did not lead to a reduction in, specifically, knife crime. Have I got that right or have I got that wrong?

Professor Indermaur: I could not answer that specifically because I did not look at—the article that is published on the effect of the stop-and-search legislation introduced in the UK, the previous one, not the anti-terrorism one, found a number of outcomes, but, as far as I recall, it did not actually look at a reduction in knife crime. I have to pass on that one.

Hon ALISON XAMON: The second thing is that you said that it did increase alienation of the particular groups that yourself and Dr Morgan had identified early on.

Professor Indermaur: Minority groups. Clearly, the major finding of that research—it was published in a leading law journal that I will send to the committee—found that the searches were disproportionately conducted on minority groups in the UK, and so it increased the number of searches on minority groups such as blacks and Caribbeans and various other minority groups in the UK. My understanding of how this would roll out in Western Australia is that there does not have to

be a suspicion of a particular crime being conducted, but it is conducted at the discretion of the police officer. From what we know about, generally, police decision-making behaviour is that some individuals will be more likely to be stopped and searched than others. I think it will bring, 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, a young person usually.

Hon ALISON XAMON: It is one thing to talk about increasing ill will, but it is another thing—are you suggesting that you think this will actually lead to an increase in criminal behaviour of certain groups?

Professor Indermaur: It will lead to an increase in charges, I believe. Assault figures, for example, are very sensitive to that. One of the things we have been very interested in understanding in assault rates is actually looking at “assault police officer” as a subset of all assault figures. If the police record more assaults against themselves over time than they previously did, we will see a jump in the assault figures because the police are recording more of these events—these altercations or confrontations with the public against themselves—as assaults. In that way you actually create more crime; you actually produce more crime. This is sometimes called “police productivity”, not in the usual way “productivity” is understood but in terms of productivity of producing offences.

Hon ALISON XAMON: What I am trying to pin down is that I understand a lot of the work you are doing is about interpreting statistics and talking about the way statistics can be altered or fudged or whatever; that is one thing. But I am interested in your suggestion that this legislation and the way it will be enacted could potentially lead to more criminal conduct actually occurring, not simply being placed within statistics. That is what I am interested in exploring. I would also like to know if you have any evidence to back up that assertion about increased criminalisation that can result from this.

Professor Indermaur: In terms of specific evidence, I could not quote it off the top of my head, but years and years of research—in Western Australia the biggest crime problem is by far Indigenous offending; 40 per cent or more of our prisoners in Western Australia are Indigenous but they make up only three per cent of the population. It is, by far and away, our biggest crime problem. I suspect that many individuals who will be policed on the streets of Northbridge are Indigenous individuals. To get to your specific question about increasing criminal activity: I have no comment about whether it would actually increase criminal activity outside of that criminal activity that has to do with the altercation or confrontation between the police officer and the individual being policed. Whilst I suspect there will be an increase in charges related to the confrontation between the police officer and the individual being apprehended or who has been subject to a stop-and-search, I do not know. I also suspect that this would—again from the general background of my studies in criminology and psychology—lead to increased alienation of minority groups from the police, and 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. I do not know whether that is going to translate to more criminal activity outside of that confrontation with the police.

Hon HELEN MORTON: Can I just follow up a little bit on that?

Hon ALISON XAMON: Please.

Hon HELEN MORTON: If a minority group, say an Asian group or a middle European—what did you call it?

The CHAIRMAN: Ethnic; cultural?

Hon HELEN MORTON: No, I thought he actually mentioned a group but I cannot remember what it is.

Dr Morgan: A Middle Eastern group.

Hon HELEN MORTON: Just say a Middle Eastern group. If they are being found to have a higher propensity for violence or weapon carrying or whatever and the police, therefore, are targeting them in the stop-and-search, is that discriminatory or is that using intelligence?

Professor Indermaur: I would not say that is discriminating against them as such, no. I think if the intention of the legislation was to detect weapons and the measure of its success was the number of weapons—however defined—seized, then that could be a good strategy. I do not have any comment about that. There are two things I would like to say about that though. Firstly, it is my understanding that the general purpose of the legislation that would be held in the minds of most Western Australians is that this is not about just simply seizing weapons but increasing public safety. Secondly, sometimes our strategies for doing things have unintended consequences. The history of criminology is replete with examples of bad unintended consequences. Whilst you might seize a certain number of weapons successfully, you might create a number of ripple effects—unintended consequences—that actually lead to an increase in violent crime eventually. That is why the arbiter, I believe, should actually be clearly stated about what you are trying to achieve here: is it an increase in public safety or is it simply seizing the number of weapons?

Hon HELEN MORTON: If it was about seizing the number of weapons, after your earlier comments—I cannot remember the words you used—that you were not supportive of the legislation or that you opposed it or whatever, would that give you cause to rethink your original comments?

Professor Indermaur: I would have to go back and think about the whole thing. My general sort of position is that I would not support any legislation that I thought led to an increase in harm in the community.

Hon HELEN MORTON: Regardless of whether it achieved whatever was intended?

Professor Indermaur: I think that sometimes objectives can be very narrowly defined and lead to an increase in harm that is not intended.

The CHAIRMAN: I take it that you do not accept that a reduction in the carriage of concealed weapons necessarily equates with an increase in public safety.

Professor Indermaur: That is correct.

The CHAIRMAN: Can you explain why?

Professor Indermaur: As I mentioned earlier, I have just had the opportunity to review some earlier Victorian study—again which I am happy to send to the community—looking at knife crime in Victoria. The authors of that study mentioned on the radio yesterday, on a *Life Matters* program on which I was part of the discussion panel, 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. 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 of individuals into the criminal justice system who would not otherwise have come there. Again, one needs to look very carefully at the consequences of legislation you are about to introduce and see whether the consequences of the outcome is what you really intend and want to achieve.

The CHAIRMAN: There is always that prospect, but also would you agree that if the objective is to reduce the incidents and the inclination of members of the public to arm themselves for, in inverted commas, self-defence purposes, then legislation aimed at that may have an initial broadening effect but ultimately reset the community standard as one of it is not right to carry weapons around whatever your excuse, and those who are carrying it for, in inverted commas, self-defence purposes will be disinclined to do so? Likewise, those who are carrying it for potentially aggressive purposes will also be disinclined to carry weapons because they know they are going to be caught or there is a better than even chance that they will be caught, and in that way it can try to re-establish a community standard.

Professor Indermaur: Can I answer that?

The CHAIRMAN: Sure; that is why I was posing the question.

Professor Indermaur: Basically, I would disagree with that. That sort of position depends upon a number of assumptions and makes a certain number of reasonable assumptions. This is generally the problem with perceived deterrents and how deterrence works. There has been a lot of research conducted on deterrence. It is a reasonable presumption and assumption that this is how things would work, but 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.

There are a number of assumptions in your statement. Basically, my position would be to investigate closely what you are intending to do, look for the unintended consequences, and look for the purported mechanisms you are thinking you will achieve. 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.

Hon ALISON XAMON: I suppose we are sort of starting to get to the pointy end then. One of the things I would like to ask both of you is what strategies would work in order to address these top-end offenders of violent crime, in your professional opinion?

Professor Indermaur: Just in terms of —

Hon ALISON XAMON: If we can avoid just sort of broad statements.

Professor Indermaur: This is the kind of business we are in all the time. That is why you need to very clearly state what the goal is first, then examine what the statistics are, and then examine what sorts of things we know are most likely to lead to that thing you are trying to prevent. You need a strategic approach. I still do not know exactly what the purpose of the legislation is.

Hon ALISON XAMON: We have obviously been privy to hearings and this has the subject of quite a bit of discussion, so let us assume that it is about trying to catch that high-end, hardcore criminal that you are referring to who will walk around in public precincts with quite serious weapons, potentially posing a threat to the safety of other people who happen to be in that area. What would be your suggestions about what strategies would work then?

Professor Indermaur: We take a strategic approach. We would actually look at the thing you are trying to prevent first and analyse it in detail so that we know exactly what the nature of that crime is. If it is violent crime involving knives in Northbridge, you would want to do a complete analysis of who is committing the crime, why they are committing a crime, where are they committing a crime and when are they committing a crime, so that you get a very accurate picture of that thing you are trying to prevent. Then you look at what we know about all those factors in driving that crime.

Dr Morgan: Yes, can I get to that in just a second, and, with your indulgence, just make a couple of comments on things that have gone before? I think one of the things that I wonder about this legislation is that the current legislation has not been evaluated, as far as I know, in any kind of systematic way.

The CHAIRMAN: What do you mean? Which aspect?

Dr Morgan: The current stop-and-search legislation.

Hon ALISON XAMON: Do you mean the one that was introduced in 2005?

Dr Morgan: It was introduced in 2006.

The CHAIRMAN: Are you talking about section 68 or section 69?

Hon ALISON XAMON: Or both?

Dr Morgan: Yes, I think they were both brought in in 2006 and then implemented in 2007.

The CHAIRMAN: Two distinct powers currently: there is the traditional, as it were, reasonable suspicion-based power to stop, search and seize, and then there is the section 69, which allows for a limited prescription of an area. It is actually a pretty broad one, but it requires consent to be searched indiscriminately. Are you talking about both of those?

Dr Morgan: Both of those. I think there was an idea that after five years, Parliament would revisit this legislation, but there is no need to wait for five years really. The reasonable suspicion aspect of it probably answers a question that Hon Helen Morton brought up, in the sense of it is no discrimination to stop a member of any particular ethnic group if there is a reasonable suspicion that they are committing an offence. So discrimination does not —

Hon HELEN MORTON: Is there a difference between having intelligence and being suspicious of somebody actually on the ground that particular day?

Dr Morgan: Probably. Intelligence, to the extent that I understand that word, is probably a bit broader and not related to a particular individual perhaps.

The CHAIRMAN: This is where part of the evidence of the police was quite significant, at least from my perspective. The area they seemed to be most concerned about—a variety of scenarios were put forward to us—was one where there is a suspicion, query whether based on reasonable ground, that in a particular context any one of number of people will be carrying weapons, but no particular suspicion as to an individual. What they would be looking at is, in limited circumstances, being able to have, over an area, the opportunity to say, “All right, anyone within that area is subject to an arbitrary search.” We may not have a particular suspicion that you, Dr Morgan, are carrying a weapon, but you are part of a group in an area where we expect that there will be trouble, and, based on our experience, there is a better than even chance that you, among others, will be carrying weapons. One example given to us was a run of an eastern states bikie gang through a country town, where there is a better an even chance that some or all of them will be carrying weapons and/or drugs, and they are moving on and they are doing their usual thing. They enter, say, Eucla; the police expect that many, if not all of them, will be carrying concealed weapons, or drugs, and they want to prevent these people from carrying these things to other parts of the state. They may not have a particular suspicion that any individual person is carrying a weapon or carrying drugs, but they know that that group is notorious for it and has caused trouble in the past from encounters with

either public or other bikie gangs. They want to be able to say that in Eucla, over this period of time while they are doing their run, anyone going within that area is subject to being stopped, searched and the seizure of any illicit articles that are on them. They say that the current legislation has not permitted that because it requires a reasonable suspicion as to the person. They say that the current section 69 is unsatisfactory because that means that all they can do is ask for the consent of the individual to be searched, and if they do not consent, then they have to leave the area, which means they just go out the other side of the town, so it does not solve the problem. Have you any comments to make about the legitimacy of that sort of concern on the part of the police and whether or not there is an alternative that you can see under the current legislation that would eliminate that mischief. Other scenarios not unlike that is what I think was described by the Commissioner of Police as the “Peckham High Street” scenario in England, whereby you have particular groups of youth and young adults congregating outside, say, a pizza shop in the high street and there has been violence there in the past, fights breaking out, threats with weapons, and locals do not go there any more because they are afraid to encounter these antisocial types and are in fear. The police can have a presence, which might disperse them for a while, but short of stationing a police officer outside the pizza shop 24 hours a day, there is not much they can do about it. Whereas, if they say, “All right, anyone within this couple of blocks of the street hanging around this place is subject to search and we will arrest you and charge you if have been carrying anything”, it disperses the gangs because they cannot hang around there and they go somewhere else, but they break up that scenario. Another example is that of train stations and public transport, whereby they know, say, that at a particular suburban train station people are getting on and off and heading off for their business elsewhere, and there may be a particular group or subculture who may be prone to carrying weapons and interfering with others and being aggressive, or are on their way to places where they can accumulate and cause trouble and so they want to be able to say, “All right, on particular nights anyone getting on and off the train is liable to an arbitrary search.” I am not saying everyone will be, but they are liable to it, and hence hopefully they will break up that pattern of behaviour. I would like to hear your comments on that and whether you think the current legislation is satisfactory to deal with it, or what alternative strategies you might be able to say that may achieve the same end.

Dr Morgan: I thought that the current legislation certainly does allow police to search without reasonable suspicion with the consent of the person being searched, and then if that person refuses, they can be sent away.

The CHAIRMAN: They have got to leave, but problem is they just hop back on the train and go off to the next station, or the bikie gang goes out through the other side of town and heads off further into Western Australia.

Dr Morgan: Yes, but I think there are some dangers in—generally we expect police to intervene when there is some offence being committed.

The CHAIRMAN: Carriage of a concealed weapon is an offence. Carriage of drugs—possession of drugs—is an offence.

[11.45 am]

Dr Morgan: It is, but in public places, I guess, we expect people to be left alone if they are not showing any signs of misbehaviour. When I was thinking about this, I thought about random breath testing as an analogy with the current legislation in that the police stop people without suspicion and the public pretty much accepts that. There are a number of things about the way that operates, and it operates pretty well. It is probably because it does not target—this thing is not quite random and it is not quite adequate suspicion either. In that sense, that is where some of the danger is. If it is random, you are asked to blow into a bag at a random breath stop. You are not made to feel like a criminal in a sense because that is part of the business of driving. There is also strong evidence about the link between drink-driving and road accidents and road deaths. There is very solid

evidence on that, whereas with this legislation, I am mindful of the Scarman report on the Brixton riots that made a finding that one of the main contributors to the Brixton riots was the heavy-handed use of the stop-and-search legislation. That is part of the potential downside. I hope nothing like that ever —

The CHAIRMAN: Was that arbitrary stop-and-search legislation or was it under the reasonable suspicion —

Dr Morgan: It was under reasonable suspicion.

The CHAIRMAN: Abuses can happen under whatever police powers.

Hon SALLY TALBOT: Do you know whether the principle of reasonable suspicion has ever been tested?

Dr Morgan: No; I do not know enough about this kind of legislation.

Hon ALISON XAMON: It is more of a legal issue.

The CHAIRMAN: I am conscience that you gentlemen want to get away by 11.45 am —

Hon SALLY TALBOT: By 12.45 pm.

The CHAIRMAN: Sorry. Do you have anything else to say?

Dr Morgan: In some ways, thinking about RBT might actually help the committee in looking at this legislation and particularly about the measures you might want to—I very much would be in favour of looking at the existing legislation, which has been in operation for three years, I think.

Hon SALLY TALBOT: The existing stop-and-search powers?

Dr Morgan: And looking at what use has been made of those powers before providing new powers.

The CHAIRMAN: We have explored some of that and are awaiting further information.

Dr Morgan: Yes, and delaying the implementation of new legislation. Here we have something that is designed for WA in the first place. Whatever the research is from other places, you have a golden opportunity it seems to look at what has been happening. You probably can think of scenarios such as bikie criminals. You do not see any of that kind of objective in the way the legislation is framed or in the way the bill was introduced. The Commissioner of Police might come up with that. I do not know exactly what he said. That is not quite the same as parliamentarians presenting the bill and saying clearly what it is about in the bill itself.

Hon SALLY TALBOT: May I -

The CHAIRMAN: Can I see whether Professor Indermaur has anything to add to that, and then we will move on to whatever topic Hon Sally Talbot would like to talk about.

Hon SALLY TALBOT: It is the same topic.

The CHAIRMAN: Do you have anything to add to that, Professor?

Professor Indermaur: I have quite a lot to say in response to your statement preceding the response of Dr Morgan. When you were speaking, I was conscious of a number of things. You outlined a scenario regarding bikies at Eucla and so forth. I am not a lawyer, so I am not able to discuss the detailed provisions of the current legislation. I am aware, however, and I presume that the committee is aware, of the president of the Law Society, Hylton Quail's, monthly report in the April 2010 edition of *Brief* where he outlines his criticisms of the proposed stop-and-search laws. That goes through the sections of the current legislation and what is covered. I was persuaded by that article that the current legislation allows the police sufficient powers. As far as I recall—I cannot give any accurate detail—my understanding is that WA Police routinely stop and search bikies as they come to Western Australia anyway.

The CHAIRMAN: Generally that is for traffic-type matters.

Professor Indermaur: I will not go into that in detail.

Hon SALLY TALBOT: They do. We have heard evidence to that effect.

Professor Indermaur: I believe that that happens. From what you have said, I believe that the police are wishing to extend their powers. This becomes a different animal from the idea of using stop-and-search powers in Northbridge to find concealed weapons to prevent violent crimes. We have shifted the objectives quite significantly away from —

The CHAIRMAN: I do not know about that, necessarily. We are just repeating what the evidence was from the Commissioner of Police and how he saw the application powers rather than what the newspapers are saying.

Professor Indermaur: I am picking up on what you said.

Hon SALLY TALBOT: I think Dr Indermaur is responding directly to the statement that you made, Mr Chairman.

The CHAIRMAN: I am not sure that we have shifted the ground. I am simply explaining what the Commissioner of Police has said rather than what you said, which was what you understood the objectives to be from the newspaper reports.

Professor Indermaur: I am simply responding to what you said. I do not know what the Commissioner of Police said. You outlined some scenarios about how this legislation might be useful and I am simply responding to that. From my point of view as a criminologist, I have now heard that this is about extending police powers rather than a selected operation in Northbridge to reduce violent crime. The police would now like these powers, I understand, to be able to extend their searches of people like bikies to find things like drugs. That would be a different research project if I were to evaluate that because that would be looking at a different outcome. You mentioned Peckham Street in England and youth on street corners. I understood from that that some people are bothered by young people hanging around street corners and therefore other people do not go there. The police would have increased powers to use stop-and-search legislation in this way as a punitive action against young people to deter them —

The CHAIRMAN: I think I talked about an incidence of violence involved in those circumstances in the high street because they are juveniles hanging around with weapons and being aggressive and incidences of violence or threats of violence that may cause people to —

Professor Indermaur: I did not hear that in your statement.

The CHAIRMAN: Maybe I was not clear enough.

Professor Indermaur: I certainly heard that the intention was to deter young people from hanging around those street corners so that people would feel safer when they went there, in which case the proposed mechanism of action by the police would be perceived as punitive and aversive by young people, which would lead to a deterrence effect on the young people from being in the street. Again, that is a different intention and outcome and it would be measured in a different way. In the railway situation, whereby the police could use these powers to deter certain individuals who are using the rail system, the police would make a judgement about which people are prone to carrying weapons. That would be a different sort of targeting and there would be a deterrent factor on the young people. I heard how slippery this concept could be. It can be about trying to reduce violent crime in Northbridge or simply about the extension of police powers.

Hon HELEN MORTON: With safeguards.

Professor Indermaur: I did not hear about the safeguards.

Hon HELEN MORTON: You did not hear about them because I do not think that the Chairman spoke about them. Did you say that you had read the bill? I cannot remember whether you said that you had read the bill.

Professor Indermaur: I have read what was sent to me.

Hon HELEN MORTON: The bill has the safeguards written into it.

Hon SALLY TALBOT: Would you like to comment on the safeguards?

Professor Indermaur: No. From what I have read, I do not think that what was mentioned in the safeguards would be adequate in the way that I imagine they would be rolled out.

Hon SALLY TALBOT: There is, I think, another analogous scenario—Dr Morgan mentioned random breath testing—and that is airport security, which seems to me to be perhaps a closer analogy in that people have to empty their pockets and can be subject to pat downs and that sort of thing. It is a comparison that has been made quite frequently by people who have been advocating publicly for the measures contained in these amendments. Would you be prepared to make a comment about whether you think that is a fair comparison and perhaps even give some commentary about why people seem to be willing to submit to those relatively invasive procedures without the reservations that you have identified?

Dr Morgan: Once again, there is a clear understanding by the public about what that is all about. That is a rather different kind of environment and probably makes that kind of search more effective because people are behind a barrier and they need to get to the other side and there are not too many other ways to get there unless you are an airport employee and so on. I have heard it said that nightclubs should use these kinds of measures. I imagine that it would be a lot more difficult in nightclubs, which have just the one entrance. You would run into public safety issues with exists for nightclubs. There are a lot of complicating factors.

Hon SALLY TALBOT: Interestingly, nightclubs were specifically excluded from this legislation because you would need a search warrant to do this kind of procedure on private property.

Dr Morgan: However, here you are in a public place, which is a rather different environment from trying to get from one side of a barrier to another, where you have to go through these kinds of things. It is pretty well understood by the public what the aims of that are and of what that process is for, just as it is for random breath testing. I also thought of that as well. I guess you can avoid it by not flying if you are so upset by it. That may be a silly statement because we almost cannot do that.

Hon SALLY TALBOT: In the same way that you can avoid breath tests by not driving.

Dr Morgan: That is right.

The CHAIRMAN: Not when you are intoxicated anyway.

Dr Morgan: It is analogous but there are some differences. From the point of view of crime prevention —

Hon SALLY TALBOT: Sorry, can I just pick up on the Chair's interjection? My point is that you can avoid random breath tests by not driving. I am not talking about being caught drink-driving.

The CHAIRMAN: You are right.

Hon SALLY TALBOT: That is directly relevant to this comparison.

Dr Morgan: There are all sorts of stories in the newspapers about footballers passing guns and things like that to others. That probably was a nightclub environment, but possibly in a public place there are ways out of this as well. No doubt there will be adaptations to this type of legislation and you wonder what type of legislation might come next. Given that we have had some legislation in place for a while and we have not properly evaluated it, have those powers actually been used to the extent that they might be in conjunction with whatever other legal powers—have those things really been explored three years after the proclamation of the other legislation? I do not know. When will we ever get to evaluate these things? Maybe another two years down the track something else might be seen as essential, and we will not end up evaluating this after five years has passed. In the

meantime, we will have introduced these things that can, even with the reasonable suspicion approach, potentially do some harm. That worries me. I would want to be convinced before favouring this kind of approach.

Hon SALLY TALBOT: Can I just unpack the notion of increasing harm? Are we making comparative evaluations of the various types of harm? Are you suggesting that there is some kind of algebraic formula where you can say that at the moment harm consists of X and you can rate people's level of fear of travelling on public transport, for example? After the introduction of these proposed measures we might have an increase in harm in terms of minority groups feeling harassed. Is there some kind of technique or methodology for evaluating those various types of harm?

Professor Indermaur: It goes to the point of how comprehensive you want your evaluation to be. Our exposure to criminology shows that it is very important when you are bringing in a reform to anything to do with crime and justice to do a very comprehensive evaluation because sometimes some of the biggest consequences are the unintended ones. It is very important to look at the full picture before the legislation is introduced and then after the legislation is introduced to see whether you have either improved or detracted from the situation. You could presumably prevent all knife crimes from occurring in Northbridge if you ensured that every person going into Northbridge was frisked, searched and put through a metal detector before they entered Northbridge. Most people would consider that to be unreasonable because the harm that would produce to most people would be so great and that the knife crimes that we are trying to prevent would not make it worthwhile. Decisions are always being made about intervention and harm. The introduction of bicycle helmets is a good example. Some people still object to that because it requires everyone to put on a bicycle helmet. Most people accept that they must wear a seatbelt. There are different ways to put these sorts of measures in place. I believe that an intelligent and strategic way to look at the reform of the criminal justice system is to take a very comprehensive look at the harms that are involved and to look at the harms in the full spectrum to see how these things relate. The fear of crime is a very good one. The largest negative effect of crime in Western Australia is the fear of crime. Many people suffer the experience of crime vicariously through the fear of crime. That is a significant factor and we should be aiming to reduce the fear of crime as much as we possibly can. A comprehensive criminological evaluation would look at all the harms involved.

Hon SALLY TALBOT: I fear that there is always a disconnect between the political cycle, which in Western Australia is four years and federally is three years, and the academic cycle. I am reminded of an occasion recently when I asked an academic what he would do if he were in charge to immediately change the situation and he said that he would immediately fund a four-year post-doc study. What sort of time frame are you talking about? What I am indicating is that governments would have to change their mindset if they were given advice that they needed to do a five-year study before they could be told how to effectively address the problem.

Professor Indermaur: The bottom line is that the public of Western Australia can be better served by getting accurate information on crime and justice. The Crime Research Centre was established on the idea that we could get comprehensive information about crime and justice in Western Australia in one place, and that we could put together a complete package. We published the crime and justice statistics for many years on those grounds. The crime and justice picture is a complex mix. There is no way around that, and the cycles are relatively long term. The best thing for politicians to do is to be honest to the public and talk to them about what the crime problem is and put in place the best possible measures they can to, firstly, do no harm and, secondly, to try to make things better. Politicians should adopt the Hippocratic oath to do no harm, and then to put in place measures that would, based on the evidence from around the world, reduce violent crime. We know a lot about violent crime. We know the kinds of factors that are associated with it and the kinds of things that will reduce violent crime. A lot of them have to do with drugs and alcohol and a lot of the measures are unpopular. There are factors that we can put in place. It requires an intelligent study of the factors. We have often argued for a bipartisan approach to crime and justice because it

is most important that these measures be put in and carried through by each government rather than them stopping and starting with each new government. Otherwise, three or four years is too small a time to get legislation implemented and reviewed. There needs to be some cooperation between the political parties to look at how we can best achieve an outcome that will serve the interests of Western Australians.

Dr Morgan: Four years is lovely but we often do research that is good enough in a lot less time than that. I imagine that the committee could commission some research that could come up with some very interesting results in the space of three or four months, for example, on how the existing legislation is working. It is a question of what research is good enough to help proceed, given the political exigencies. Five years is a normal time period envisaged for legislation to be bedded in and used in a certain way. Given that there is a new proposal on top of something that has been in for two or three years, maybe it is not so bad to wait a little bit and to commission such research to do more.

The CHAIRMAN: That is not our function. We are required to inquire into the legislation that is currently before the house and report back on our findings regarding the bill as it stands rather than conduct surveys and the like.

Hon SALLY TALBOT: Nevertheless, we can make recommendations.

The CHAIRMAN: We can certainly do that.

Hon MIA DAVIES: I have a quick question. You mentioned criminological evaluations. Am I correct in understanding that there would be an accepted mechanism or way to determine whether the creation of legislation for one purpose would create more harm than good? Is there something that is either utilised in others jurisdictions or has been used in the past in this jurisdiction to measure that, or is it simply a subjective —

Professor Indermaur: No, it is systematic. The way that you would evaluate this legislation, if you wanted to be comprehensive about it, is you would need to look at the specific aims of the legislation that it was purported to achieve and you would also look at some wider effects. Presumably, the person who commissioned the research would want to look at some of the intended outcomes that may be relevant to the decision making as to whether this legislation was seen to be successful. For example, if it led to an outcome that was somewhat anticipated but not wanted, that would be like the side effect of a drug. You are trying to investigate the effect of the drug but you are conscious of the side effects and you would want to look at those side effects. That would be standard procedure in the way that we would do an evaluation.

Hon MIA DAVIES: Before you could get to that point, and in reference to how you would measure the need for the extension of the powers, it was discussed previously that the information is based on the numbers that are provided by the police, to your knowledge, at this point in time in Western Australia.

Professor Indermaur: Are you talking about if we did the evaluation?

Hon MIA DAVIES: No. At the moment, if you were asked to look at it right now, the information you would go and find without doing any more research would be information provided by the police. Are there other sources of information on offences?

Professor Indermaur: We would probably do something more than that. We would look at hospital statistics on knife crimes in Western Australia and at the people who show up at hospitals with injuries that were caused by another person and a sharp instrument was used. We could look at doing surveys of people who work, for example, in Northbridge, like the Nyoongar Patrol, to get a sense from them about what is going on with knife crime and whether the people they deal with are carrying knives. A lot more investigations could be conducted.

Hon SALLY TALBOT: I have one more quick question. What do you make of reports, I think from the United Kingdom, that when the Children's Commissioner did a survey of stop-and-search powers, it was reported that about a quarter of young people wanted more stop-and-search provisions because it made them feel safer? I do not know whether 75 per cent said that we should reduce the amount of stop-and-search powers. Twenty-five per cent is a bit higher than I would have thought. I know that if I had asked my son about police when he was a teenager, even though he was a good law-abiding young man, he would have let me know what he thought. I was surprised to see that it was as high as 25 per cent. Do you have a comment to make on that?

Dr Morgan: One of the things that would be interesting to know is whether those 25 per cent had any actual experience of these kinds of things or whether they were not involved with that type of behaviour anyway and what it was based on. Was it based on a general experience of someone they knew who was searched and knives were uncovered? What the perceptions were based on would depend on that. That could be done in a survey. I am not aware of that survey.

Hon MIA DAVIES: You mentioned something about research that goes towards contacts with children or people who have not actually committed a crime and how it impacts on them. Can you direct the committee to any specific research that has been done on people who are not likely to commit a crime or who have not committed a crime and are coming into contact with the police and the impact of that—whether it is positive or negative? Someone mentioned that earlier. Are there specific bodies of research around that matter that you can direct us to?

Professor Indermaur: That is the idea of the net-widening effect. There is a huge amount of research on that. I can send you some articles if you like.

Hon MIA DAVIES: I do not want a lot, just something specific.

Dr Morgan: If we get down to examples and counterexamples, I can think of situations like that very nasty glassing incident that was in the paper. That would not be affected by this legislation at all. The offender and the victim were women. Rather than just sitting on the fence, the kind of thing that I might be interested in looking at to try to prevent that kind of offence would be prevention kind of stuff and looking at whether glass should be used or should be allowed to be taken outdoors in nightclubs. A lot of research looks at a lot of ways to prevent nasty assaults. A glass was used as a weapon but that would not be touched by this legislation.

The CHAIRMAN: Thank you, gentlemen. I wonder whether you could excuse us for about five minutes and wait outside. We will have a brief discussion and see whether we would like to explore any other areas. I do not expect that there will be, but just in case someone comes up with a brainstorm, it would be helpful if we did not think of it after you had left the building.

Hearing concluded at 12.15 pm