

STANDING COMMITTEE ON LEGISLATION

CRIMINAL INVESTIGATION AMENDMENT BILL 2009

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
TUESDAY, 9 FEBRUARY 2010**

SESSION ONE

Members

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

Hearing commenced at 10.01 am**SCOTT, MS MICHELLE****Commissioner for Children and Young People,
sworn and examined:**

The CHAIRMAN: Firstly, on behalf of the committee, I would like to welcome you to this meeting. Before we begin, I will ask you to take either the oath or affirmation as you prefer.

[Witness took the affirmation.]

The CHAIRMAN: You will have signed a document entitled “Information for Witnesses”; have you read and understood that document?

Ms Scott: I have.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, could you please quote the full title of any document that you refer to during the course of the hearing so that it can appear in the record. Please be aware that the microphones are directional, to a degree; try to talk into them and ensure that you do not cover them with any papers or make any loud noises that may obscure what is being recorded. I remind you that your transcript will become matter for the public record. If, for some reason, you wish to make a confidential statement during today’s 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. Please also 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 evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Before we proceed with your evidence, I will introduce the members of the committee, so you know who it is you are appearing before and who will be asking the questions. I am the chairman, and my name is Michael Mischin. To my right is Hon Helen Morton; to her right is Hon Mia Davies; to my left is the adviser to the committee, Denise Wong; to her left is Hon Alison Xamon; and to her left is Hon Kate Doust, who is not a member of the committee but is a member of the Legislative Council and is sitting in on today’s hearing and is able to ask questions through the Chair.

Commissioner, would you like to make an opening statement to the committee? We have your submission—I think it has been put on the internet so it is on the public record now—but would you like to make an opening statement?

Ms Scott: Yes, I would, and thank you for the opportunity to appear before the committee on this important matter. For the benefit of members of the committee who I have not yet met in my official capacity, I thought I would just very briefly advise the committee of my broad role under the Commissioner for Children and Young People Act.

As you are aware, it is an independent position, reporting to the Joint Standing Committee on the Commissioner for Children and Young People. As Commissioner for Children and Young People I have a very broad mandate, but I am required, under the legislation, to perform specific statutory functions. In particular, I draw the committee’s attention to section 19(g) of my act, which requires me —

to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people;

It is in performing that statutory function that I appear before the committee today.

My legislation is very specific about my brief and remit, and particularly under section 3 of the act I am required, in everything that I do such as appearing before the committee today, to act in the best interests of children and young people. That is my paramount concern.

Section 20 of the act also requires that I take into account not only the needs and requirements all of children and young people under the age of 18, of which there are about 500 000 in Western Australia, but I am also required to give special priority to Aboriginal children and young people. I am also required to give special attention to children who might be vulnerable or disadvantaged and who are under 18 years of age. Some of what I would like to talk to the committee about today involves those two groups for which I must give priority.

I would just like to say to the committee that I took up my appointment in December 2007, and from very early on the whole impact of laws on young people, and youth justice generally, has been a priority of mine as commissioner. Some of the committee members will be aware that Western Australia has some particular issues in relation to youth justice matters. Already, Western Australia has one of the highest rates of detention in Australia. We have a daily rate of children being in detention of about 132, and that compares with Victoria, with a much larger population, which has an average daily rate of 48. There are significant differences between the states, and one of the things that I would like to highlight to the committee is, when we look to adopt legislation, whether it is from overseas or another state, we have to be cognisant of the whole different context in another state, particularly in relation to other legislation, policy, services and programs.

I would like to bring to the committee's attention the fact that although we have a very high rate of detention, the majority of young people who are in detention—some 80 per cent—are there for minor offences and will not receive a custodial sentence when they appear before a magistrate. Many young people are being detained in our detention centres for social reasons: it is not safe for them to be at home; there is no responsible adult. Aboriginal children in Western Australia are overrepresented in the juvenile justice system. Some 75 per cent of all juveniles in our justice system are Aboriginal.

The CHAIRMAN: Sorry; what was that again?

Ms Scott: I said that 75 per cent of young people in our detention centres are Aboriginal.

In Western Australia the Parliament passed, in 1994, the Young Offenders Act. The Young Offenders Act provides the framework for dealing with juveniles who come before the courts and come into contact with the police. I would also like to highlight to the committee the fact that 96 per cent of young people under the age of 18 never have any contact with the justice system, or the police system—96 per cent. That is extraordinarily high; it is only a very small proportion of young people.

The Young Offenders Act, however, sets out the broad principles that should be followed in dealing with a young person under the age of 18. These principles are the importance of diversion—diverting young people away from the criminal justice system—involving and strengthening the family; encouraging rehabilitation; and ensuring that the detention of a child or young person is always a last resort. The Young Offenders Act distinguishes the fact that children and young people, as a group, are vulnerable and different to adults. The Young Offenders Act is an important framework for us to assess other legislation that comes before the Parliament. The committee will be aware that the Auditor General tabled in Parliament, in June 2008, his concerns that many agencies were not complying with the principles of the Young Offenders Act. As a result of that, I have written to a number of agencies, and I am pleased to say that the Department of Corrective Services and the Department of the Attorney General are responding positively to the Auditor General's concerns.

In terms of the proposed legislation before the committee, I would just like to make a couple of general comments. The first is that one of the significant issues for me as commissioner is that this

proposed bill does not distinguish between children and adults. It does not reflect the Young Offenders Act; it does not reflect everything that we have based our legislation on in the past in relation to children and young people. It is for that reason that I do not support the bill. I do not believe that the bill is in the best interests of children and young people. I have not been presented with any compelling evidence as to why children and young people should be subject to this bill. I am, in particular, concerned about not only children and young people as a group; I am concerned about those who might be vulnerable. I have already highlighted to the committee the overrepresentation of Aboriginal children and young people. I am also very concerned about other children and young people; for example, children and young people who may have a disability or a mental illness. The reason that I am highlighting that is the overseas evidence that very young children have been stopped and searched; in fact, children as young as two and three have been stopped and searched under the UK legislation.

My concern in relation to children with disabilities is that, as a community, Western Australia has been extremely progressive and at the forefront of supporting families who have a child with a disability and promoting the independence of children and young people to be well integrated into our community: to travel on public transport; to go to school on public transport; to attend TAFE training to their fullest capacity.

[10.15 am]

I am concerned that when we remove the test in the current legislation that governs stop and search, which is to do with having reasonable suspicion, it then becomes a question of what criteria would you employ to stop and search a child. One of the things that stands out for me as a concern is difference, and children and young people who might have a disability or a mental illness, or some other issue, might stand out for someone on the beat assessing whether they should stop and search.

Mr Chair, if I could pause there. Obviously, I am happy to answer any questions, but they are my opening remarks at this stage.

The CHAIRMAN: Thank you. You have been provided, in advance, with a series of proposed questions. Before we go into your submissions and ask any other more general questions about your evidence so far, perhaps we could go through some of those questions. To start: were you consulted during the preparation of the bill and, if so, what were your comments and what was the outcome of that consultation?

Ms Scott: I was not consulted by the police or anyone else in the drafting of the legislation. However, of my own initiative, I wrote to the police commissioner on 23 November last year, and also the Minister for Police, indicating my interest in this issue and that I would like to provide some comments in relation to the bill.

The CHAIRMAN: At that stage, had you seen a copy of the bill?

Ms Scott: No.

The CHAIRMAN: When did you see a copy of the bill?

Ms Scott: I think when it was introduced to the Parliament.

The CHAIRMAN: And that would have been the second reading speech on 10 November.

Ms Scott: I possibly could have seen it then, but when it was introduced to Parliament.

The CHAIRMAN: All right. Did you see it before or after you wrote to the Commissioner of Police? You have told us no, but now —

Ms Scott: I think that probably I read the bill closely once it was brought to my attention when it was introduced to Parliament. I never saw a copy before that and I was not invited to give any comment before that.

The CHAIRMAN: I want to try and understand this. At what stage did you first find out the substance or the thrust of what the bill —

Ms Scott: When it was introduced to Parliament. My recollection originally was that I wrote to the commissioner after that, but I think it was possibly after it was introduced to Parliament.

The CHAIRMAN: It was introduced; the second reading was on 10 November, and you say you wrote on —

Ms Scott: On 23 November.

The CHAIRMAN: At that stage you had seen and read the bill?

Ms Scott: Yes.

The CHAIRMAN: At what stage did you first become aware that a bill of this nature was to be introduced to Parliament?

Ms Scott: I had broad recollection about public discussion in the media, but I could not be any more specific than that.

The CHAIRMAN: And what did you understand was the purpose of the bill at that stage?

Ms Scott: I understood, just from my general reading, that it was primarily to deal with weapons and searching people in relation to particular places, such as Northbridge.

The CHAIRMAN: As to the mechanism for permitting that sort of search, did you have any concept of that at that stage?

Ms Scott: No, but I have a better understanding now.

The CHAIRMAN: All right. When did you first have concerns about the bill?

Ms Scott: I had concerns when I saw the detail of the bill in relation to children and young people.

The CHAIRMAN: And that was sometime after the tenth?

Ms Scott: Yes.

The CHAIRMAN: Before or after the —

Ms Scott: After the tenth, when it was introduced to Parliament —

The CHAIRMAN: And after you had —

Ms Scott: — and I had seen the detail of it. I tend to respond, Mr Chair, to the detail of something. Sometimes there is speculation in the media and I do not usually respond —

The CHAIRMAN: I am not being critical. I simply want to understand, because you said that you had written off wanting to have input into it and I was not sure whether you had seen the bill and knew enough about the detail of it before you wrote off or after you wrote off.

Ms Scott: I am just indicating that when I am invited to comment on things, I like to see the detail and substance of what is provided.

Hon ALISON XAMON: Commissioner, a couple of questions: I want to confirm then that before the bill was prepared and presented, at no point were you consulted as to its formulation?

Ms Scott: No.

Hon ALISON XAMON: Thank you.

Ms Scott: That is my recollection, no.

Hon ALISON XAMON: The other question I have is: after you wrote to the police commissioner, did you get a response from him and have you had a response at any point indicating a willingness to hear from you?

Ms Scott: I did receive a response from the Minister for Police indicating that the police were dealing with this matter. I have not received a response from the police commissioner.

Hon ALISON XAMON: At this point in time there has been no indication that they are seeking to have your input into the bill?

Ms Scott: My input to the bill has not been sought.

Hon ALISON XAMON: Thank you.

The CHAIRMAN: Am I right that you had a copy of the bill before you wrote to the Commissioner of Police and the minister?

Ms Scott: Yes.

The CHAIRMAN: Did you raise any particular issues with them about the bill at that time?

Ms Scott: Yes. I raised in broad terms some of the issues that I have already put to the committee about children and young people being subject to stop and search and the high proportion of young people who are already detained in the juvenile justice system, and my concern about the research which shows that that first point of contact with police is very important, and if that first point of contact with police can result in children either being diverted away from the system or escalating their involvement with the justice system. I highlighted some of those issues in my letter.

Hon HELEN MORTON: Commissioner, do you have regular contact with the police commissioner in other forums—I do not know what sort of forums that is—but in any other forums?

Ms Scott: I do meet with the police commissioner about a range of matters. I have met with him personally on several occasions about the juvenile justice system and particularly police cautioning. I meet with him in other forums around other matters as well.

Hon HELEN MORTON: In any of those discussions, have you raised these issues with him face to face or personally?

Ms Scott: No. I formally wrote to him on 23 November about this, yes.

Hon HELEN MORTON: Have you attempted to make an opportunity to go and speak to him?

Ms Scott: Yes. I offered an opportunity to the minister and the police commissioner and said I would be happy to meet with them to discuss these issues.

The CHAIRMAN: Having written to them, and having seen a copy of the bill and raised the general concerns that you had, did you put forward any specific proposals as to how the bill ought to be improved in order to, say, acknowledge the interests of children and young people and also, perhaps, to acknowledge the policy consideration behind the bill on safety to the community? Did you put forward any concrete, specific proposals as to how the bill might be improved?

Ms Scott: I extended an opportunity to meet with the police commissioner and to discuss issues, and I asked if I could be kept informed on the bill as it progressed and any further proposals that might arise. “I’d be happy to discuss my concerns about the bill with you personally” is what I indicated to the police commissioner.

The CHAIRMAN: All right; you put forward some concerns and wanted to discuss those concerns. But having seen the bill at that stage—its having been introduced to Parliament—and having gone through the second reading speech so you knew what the policy was behind the bill and the mischief it was intending to correct, did you put forward any specific suggestions for how it may be approved and meet the concerns you had regarding children and young people?

Ms Scott: I did not put any specific proposals or amendments. My starting point was that children—two things: firstly, I drew attention to the fact that children and young people are vulnerable; and, as the committee has noted, in other jurisdictions—for example, Victoria—there

are some special requirements in relation to children. My concern with the bill as it is now is that it does not make a distinction between adults and children. That is my concern with the bill.

The CHAIRMAN: Did you put that forward?

Ms Scott: I did put forward that children and young people are highly vulnerable —

The CHAIRMAN: No, but I am saying did you, in your letter, say that the bill draws no distinction between the particular vulnerabilities of young people as opposed to adults and “I would suggest X as an improvement to the bill ought to be considered” or anything to that effect?

Ms Scott: I could refer the letter to the committee. Shall I read out the paragraph relating to that?

Hon ALISON XAMON: Yes, please.

Ms Scott: “The legislative and policy frameworks that underpin the Western Australian criminal justice system reflect the broad understanding that a distinction should be made in the way young people are treated. Children and young people constitute a distinct and vulnerable group and differ from adults in their psychological and physical make-up. This difference is reflected in the general principles of juvenile justice as articulated in the *Young Offenders Act 1994 (WA)*. In my view this understanding should be maintained in police dealings with children and young people generally and search powers should be exercised sparingly in respect to children and young people.”

The CHAIRMAN: So the answer is “No”. You did not put forward a specific suggestion as to how the bill might be improved, rather than a general statement of principle.

Ms Scott: The intention of the letter was to put forward my concerns and to propose an opportunity whereby I could meet and have some discussion about the specifics.

The CHAIRMAN: Have you, since the letter, written to either the minister or the commissioner setting out any of the specific matters that you have suggested in your submission to this committee as a means of improving legislation?

Ms Scott: I am sorry, could you repeat the question?

The CHAIRMAN: Your submission to this committee refers specifically to certain safeguards that apply in the United Kingdom. Have you written to the commissioner or the minister to point out, “Look, these might be good ideas to consider in the bill”? Have you written to him and pointed those things out at any stage?

Ms Scott: I have not, no. I took the opportunity, when the police minister indicated that the matter would be referred to the parliamentary committee, to write my submission to the committee.

Hon ALISON XAMON: I want to confirm: in the letter that you received back from the police minister did he indicate in that letter any willingness to meet with you to discuss your possible improvements or amendments to the bill at all? Was there any willingness at all?

The CHAIRMAN: Order! I do not think that the letter actually suggested any amendments to the bill.

Hon ALISON XAMON: Thank you, Mr Chair. The question I was asking was whether the letter that came from the police minister back to the Commissioner for Children and Young People in response to the initial letter indicated a willingness on behalf of the police minister to meet with you to discuss the possibility of proposed changes or amendments.

Ms Scott: The minister’s letter indicated his appreciation for me bringing this matter to his attention and that the police department was best placed to address any concerns.

[10.30 am]

Hon ALISON XAMON: So did you read that to mean that the police minister would not be meeting with you to discuss this issue further?

Ms Scott: I took from that that the minister intended that the police commissioner would deal with the matter.

HON ALISON XAMON: And again the police commissioner did not take you up on your offer to meet with him to discuss the legislation.

Ms Scott: Not to date, no.

Hon KATE DOUST: I just have two questions to start with. Can you just remind me, commissioner, again of the requirements under your legislation about consultation? Is the requirement upon you to pursue government when legislation is about to be introduced or has been introduced, or is the requirement for government to advise and consult with you about proposed legislation for your input?

Ms Scott: There is no requirement in the legislation as to who initiates the consultation. There is no requirement for government agencies to do that. I think there was some debate in the Parliament when the legislation governing my functions was being developed, and it was decided to give me a broad function. I have met over the past two years most directors general and heads of agencies and informed them of my responsibility. Many agencies cooperate with me and work closely with me in the development of legislation. On occasions when, for various reasons—and I understand on occasions, if legislation has to be developed quickly, there may not be a possibility of consulting extensively—I have initiated myself writing to the relevant department or minister, indicating my interest in an area. As I did in this matter, I have done that in other matters as well.

Hon KATE DOUST: You touched on some of the impact in the UK upon young people where they have been stopped and searched. I was just wondering what sort of analysis you have done of other jurisdictions within Australia where these types of laws exist and what the impact on children and young people has been in those places.

Ms Scott: The analysis that I have done is that there is no conclusive evidence that this type of legislation will be effective in terms of the objective that it is trying to achieve. In the UK, which has had this legislation in existence for a long period of time, I think other people have done analysis of who has been mostly affected, and they have provided submissions to you. In Victoria, the legislation has just been enacted and came into operation in January. One of my early points to the committee in my introduction was really about the fact that when we do take legislation from other jurisdictions, we have to be conscious of what are the program services and policies; what is the context in which you are doing that?

If I could just speak about Victoria, because I know it quite well, having worked there, and have an extensive background in the not-for-profit sector, Victoria has a totally different policy and program environment, so when you have legislation like this, you have to see what else might exist. For example, I note in one of the questions that the committee foreshadowed to me the notion of an independent person who might attend with the police in Victoria. In Western Australia we do not have a similar program to that. One of my concerns about other legislation such as prohibited behaviour orders, which are loosely based on the UK antisocial behaviour orders, is that they were introduced also with a whole package of other programs and initiatives that tried to deal with antisocial behaviour. So my analysis is really about if you want to reduce antisocial behaviour, what sorts of measures might you put in place? All of the research shows that legislation is low on the priority in terms of effectiveness. That is the extent of my analysis. I would be very happy to see any research that indicates that this would be of benefit to the community more broadly, but would have a positive impact on children and young people. To date I have not seen that.

The CHAIRMAN: The purpose of legislation, though, is not to have a positive impact on children and young people; it is to address a particular social problem, is it not?

Ms Scott: My understanding is that it is about community safety.

The CHAIRMAN: So its priority is not to improve the situation of children and young people; you accept that?

Ms Scott: I suppose, if you take that objective, Mr Chair, community safety—if that is your policy objective—the research would indicate that you would invest in a range of programs to address that issue, and that would have a positive impact on children and young people. I was here, as you are aware, last week and heard some of the evidence. Is it all right to talk about that?

Hon ALISON XAMON: It was a public hearing.

Ms Scott: I noted the committee inquiring about Northbridge, which is a very good example, and I was very pleased to hear about some of the positive developments that are occurring at a program level around safety and security in Northbridge, and the police evidence that they believed that that was having a positive impact. That is what I meant by a positive impact on the community and a positive impact on children and young people.

The CHAIRMAN: All right. You have provided a submission, and you have already made some comments around that. I take it that you do not think that the bill is necessary; is that correct?

Ms Scott: I have not been presented with any compelling evidence as to why the bill should be introduced and applied to children and young people.

The CHAIRMAN: So your concern about it being not necessary is limited to its necessity in respect of children and young people?

Ms Scott: That is my priority concern.

The CHAIRMAN: And what is your recommendation regarding the bill in its current form? I take it that you believe it ought not to be passed, or not to be passed in a way that applies to anyone under the age of 18.

Ms Scott: Yes.

The CHAIRMAN: Is that the idea?

Ms Scott: The second.

The CHAIRMAN: The second; all right. So you have no comment to make regarding the bill generally but only in respect of anyone under the age of 18.

Ms Scott: I probably do have some comments, Mr Chair, but I think in my professional capacity that my concern is the impact on children and young people. That is my statutory obligation.

The CHAIRMAN: Right. Do you have a question?

Hon HELEN MORTON: You actually asked it. I was really interested in at what age do you believe that children can be responsible for, or take the consequences for, having drugs in their possession or weapons in their possession et cetera, and I think you have answered 18. But I would ask the question: do you think that 16 and 17-year-olds do know and understand that certain things like carrying drugs and weapons is illegal and they should be held accountable for that?

Ms Scott: I think that the law currently does provide that they would be held accountable. In Western Australia, the Criminal Code—and legislation does apply to children over the age of 10, so there is criminal liability. That is well established in our criminal legal system. I suppose, if I could just indicate, the difficulty with this legislation is actually removing the test, “reasonable suspicion” or “reasonably suspects”. I think that is the critical issue here. Currently, that is what operates in relation to children and young people. I am not objecting to that. Children and young people are culpable before the law at the age of 10 onwards.

Hon ALISON XAMON: I am listening with interest. There is an idea that perhaps children could be held liable at an even younger age, when considering on the radio this morning they were talking about increasing the drinking age to 21. So it seems that we have some rather conflicting ideas

about when people should be able to exercise responsibility and also be culpable. That is just a comment that I thought I might make. But, commissioner, one of the areas that you started to discuss and that I would be interested in hearing you elaborate on further was the idea of additional programs, and you are right to point out that the police themselves in their evidence last week outlined a number of initiatives that they had undertaken in preference to seeking additional powers. I was hoping you could outline, perhaps using the Victorian example, unless you feel that maybe the UK—I am not sure—has a better example, the sorts of programs people would actually look at as opposed to a legislative regime to deal with issues of antisocial behaviour.

The CHAIRMAN: Before we get on to that, how is that relevant to the question of stop and search without providing reasonable suspicion as opposed to a general policy issue?

Hon ALISON XAMON: I think it is entirely relevant, Mr Chair, because we are looking at evidence here from people who are saying that the legislative regime is the main way or the only way that we can actually deal with antisocial behaviour, and I am very interested to hear from people who are informed in this area as to the sorts of alternatives that we might be able to look at to deal with an actual or perceived problem in areas such as Northbridge.

The CHAIRMAN: Very well.

Hon ALISON XAMON: Commissioner?

Ms Scott: I could make a few comments perhaps about that issue. There are some excellent programs here in Western Australia. I would like to say that I have travelled extensively in this state and I have met with many good community people, including police, throughout the state who are actively involved in engaging with children and young people and developing positive programs in local communities, whether it is a holiday program or a before-school program or an activity-based program. I have met many of those officers and other community organisations who tell me their own practical experience: if you have those sorts of programs, kids get actively involved and they do not engage in antisocial behaviour. All of the research supports that. I also just wanted to bring to the attention of the committee that there have been some very fine initiatives developed by the Department of Corrective Services and the Attorney General's department under the Attorney General, and one of them is the Geraldton Youth Justice Service. It is an outstanding program that is achieving positive outcomes, and it involves all of the agencies working very well, including the police. It involves cautioning children and young people for minor offences; it involves supporting the parents; it involves diverting children and young people into positive programs. Since the introduction of that youth justice service in Geraldton, no children have been transported to Perth to the juvenile justice facilities in Rangeview and also Banksia Hill. I think that is a very fine example where the research shows where agencies can work together to achieve a better model. It involves the local council, it involves community members, it involves agencies. They also have a similar scheme in Kalgoorlie, and I know that the departments are looking to roll out those services progressively to other areas in Western Australia. I think that they are having a big impact on behaviour and a big impact on the numbers of children ending up in detention.

The CHAIRMAN: Proceeding with the questions that were posed to you so that we can get them out of the way, your submission indicates your concern that children and young people, particularly Aboriginal children and young people, will be detrimentally and disproportionately affected by the bill if it is passed. You have already developed part of that point in your submission, but would you care to say a little bit more about that?

Ms Scott: It goes to the fundamental issue of—a number of things. Firstly, if you remove reasonable suspicion, what are the criteria that the police, on a daily basis, would use to stop and search a person? Children and young people—young people particularly—gather in public places. We did as young people ourselves. They gather at beaches, shopping centres. They are more visible just generally. Some Aboriginal children, because they are vulnerable—and we have seen some

articles in the press recently about a regional area in the state where children are not safe in their own homes and might be on the streets—come to the attention of the police.

[10.45 am]

The current provisions provide for reasonable suspicion. If we take that away, my concern is: what criteria would we put in place? In the UK people from different ethnic backgrounds have disproportionately been caught up in the stop and search, and I think other people have made that submission to the committee.

The CHAIRMAN: You have mentioned that the removal of reasonable suspicion as a criterion for the stopping and searching of someone will have that effect, but how? What is the current criteria for stopping—reasonable suspicion of what?

Ms Scott: Reasonable suspicion that they are carrying something or they are involved in some illegal activity. That is, I think, a very important principle.

The CHAIRMAN: Possession or under their control anything relevant to an offence; that is the basis for a basic search?

Ms Scott: Yes.

The CHAIRMAN: And that might arise from a police officer observing a person, whether young or old, whether European or Aboriginal or Asian, behaving in a way that is out of the ordinary; correct?

Ms Scott: I haven't seen what the guidelines are but —

The CHAIRMAN: I am just testing whether that in itself is relevant because you have expressed an opinion that the removal of this safeguard will somehow increase the risks of arbitrary search without any sort of a basis. But what sort of things in your understanding give rise to reasonable suspicion or excite a suspicion that someone is in possession of something or has under their control something relevant to an offence; things like the way they are behaving?

Ms Scott: Potentially.

The CHAIRMAN: The way they look, inasmuch as they look a little bit drug affected perhaps or perhaps look aggressive or surly?

Ms Scott: It could be a number of things and I am not privy to what the guidelines are. Can I just indicate, though, to the committee that it could be any one of those things. Behaviour is a good example, Mr Chair, where, let us say for example, some child or young person has a disability and they are exhibiting some behaviour that perhaps you and I would not because we do not have that disability. That is the sort of thing that may come to a police officer's attention. And the law presently provides that it has to be more than a superficial assessment; it has to be reasonable suspicion that the person is doing something illegal, carrying something et cetera. That is what I am talking about, that test being removed, which has been very important to our legislation.

The CHAIRMAN: That is what I am trying to drive at because the current situation, the current law, does not discriminate between anyone under the age of 18 and anyone over the age of 18, does it, provided that there is a reasonable suspicion that that person is in possession of or is in control of something that is relevant to an offence?

Ms Scott: The current legislation does not distinguish.

The CHAIRMAN: Does it make any distinction between a person? Current section 68 or 69 of the Criminal Investigation Act, does it distinguish between young people, children and adults?

Ms Scott: Not my understanding; no, it does not.

The CHAIRMAN: Yet your criticism of the proposed legislation is that it does not make that distinction. Why does it make a difference?

Ms Scott: I think because my —

The CHAIRMAN: How are they more effective?

Ms Scott: Two reasons. One is that I think that the reasonable suspicion test is a higher test than no test. That is fundamentally it. I could also say —

The CHAIRMAN: All right. Just on that, because on the one hand I am just trying to see what the practical difference is. I am not suggesting that there is not one; I am just trying to work out what your understanding is of the practical difference in the change in the law. One of your criticisms is that the proposed legislation does not adequately distinguish between those under the age of 18 and those over. Yet the current law does not distinguish between people under the age of 18 as a basis for a search provided that there is reasonable suspicion; correct?

Ms Scott: That is my understanding.

The CHAIRMAN: And reasonable suspicion can arise from an observation of circumstances; it has to be, does it not?

Ms Scott: One would anticipate that, yes.

The CHAIRMAN: So if you are out on the street and you see a person, young or old, they may not attract your attention. What sort of things would attract your attention that they may be in the possession of something relevant to an offence? It would be their behaviour; correct?

Ms Scott: Mr Chair, I have already indicated what I think some of the criteria could be, or agreed with some of the possibilities for criteria that you have indicated. I am not privy to what the police commissioner or the police are developing in terms of the guideline. I would be happy to consider this —

The CHAIRMAN: It is not a question of guidelines; I am just talking about the way the law is at the moment. The way people behave, the way they appear, the way they speak, the way they act is what may attract attention of others to them, whether they are young or old.

Ms Scott: Yes.

The CHAIRMAN: And some of the ways they act may give rise to a reasonable suspicion that they are up to no good.

Hon KATE DOUST: But, Mr Chair, at the current time you actually have that threshold test of a reasonable suspicion.

The CHAIRMAN: That is what I am talking about.

Hon KATE DOUST: The difference is that, under this proposed legislation, that is absolutely removed, and it is left to the discretion of the individual police officer based upon their own moral values and judgement and prejudices, and that will vary from individual to individual. I do not believe it is the commissioner's place or position to be able to provide the information that you are requiring. That might be better placed with the Police Union later today; they would have that information.

The CHAIRMAN: Thank you, but the point I am trying to get at is that it is said that the removal of that test will somehow leave children more vulnerable. What do you fear will be the thing that attracts police attention to children and young people under the proposed legislation that would not attract their attention to those children and young people under the current legislation?

Ms Scott: May I answer that?

Hon ALISON XAMON: Mr Chair, I believe the commissioner answered it before when she referred to a difference and I felt that —

The CHAIRMAN: Thank you. There is no harm in answering it again then.

Ms Scott: Some of the things that I indicated why children and young people might be more likely to come to the attention of the police are that they do gather in public places in a way that some of us do not, although as we get older we might be at shopping centres too. That is the sort of thing I was talking about. They do gather at the beach, they do come to the city. Generally young people gather in public places in a way that some other people, groups, might not, but also, Mr Chair, I was indicating that vulnerable groups may be on the street in particular communities because it is not safe for them to go home, and I have travelled to lots of communities.

The CHAIRMAN: I understand that.

Ms Scott: So they are some of the things why children and young people might be disproportionately impacted.

The CHAIRMAN: I understand I am not making myself very clear. I suppose the point I am trying to get you to respond to is that you are afraid, are you not, that someone under the age of 18 may attract the attention of a police officer and have that police officer search them for something relevant to the commission of an offence, correct, without a reasonable basis for doing it?

Ms Scott: Yes, the latter bit that you—the point that you made.

The CHAIRMAN: What I am driving at is: what would attract a police officer to a particular juvenile in any case? Just a kid walking down the street minding his own business is not going to attract the attention of a police officer so that they waste their time searching them unless there is some reason for it.

Ms Scott: If there is some reason, then the reasonable suspicion test or the reasonable—I think the evidence I heard last week was all around that: what reason would you have. And I am saying the test of reasonable suspicion, reasonably suspect, that we have enshrined in our legislation is a good threshold; and if we do, then it will to some extent be arbitrary. I am not privy to what the guidelines are going to be but we can tell that if you do remove that, and the evidence shows that in the UK, then particular groups do come to the attention of police and other groups do not, not necessarily because they have done anything wrong or they were carrying any weapons et cetera. I have not seen any evidence as to if we remove this threshold what are the benefits to the community. And, Mr Chair, children and young people are part of the community and I have not seen what the benefits of this legislation are to all of us as community members.

The CHAIRMAN: Don't get me wrong; I am simply trying to test the propositions. You say that in the UK the experience is that groups of people are attracting the attention of the police.

Ms Scott: Yes, that is correct.

The CHAIRMAN: For no reason?

Ms Scott: That is right, the statistics will show that. I think other submissions that you have before you have indicated some of the groups that have been particularly affected by legislation such as this in Victoria. We have not had the impact of it yet.

The CHAIRMAN: All right, but you have also pointed out to us that Victoria, as in other—you cannot simply transpose the experience in other jurisdictions to Western Australia because the circumstances may be very different.

Ms Scott: Yes, and one of the differences here in Western Australia is that, unlike Victoria, if you look at the population of Victoria compared to Western Australia, an average daily rate of young people in detention already in Western Australia is 132 compared to 48 in Victoria. The point of referring to that, Mr Chair, is Western Australia already has some unique issues here in Western Australia that is resulting in a disproportionate number of young people ending up in detention. One of those is what the Auditor General found in his report, which was tabled in Parliament; that police were not cautioning young people at the same rate as they could. That is one issue. There were many other issues in the Auditor General's report. I am pleased we are making some progress on

that. I am please that we have got initiatives like the Geraldton youth justice service. What I am concerned about is we already have a disproportionate number of young people caught up in the justice system. If we —

The CHAIRMAN: I am sorry, disproportionate compared to what?

Hon ALISON XAMON: Population.

Ms Scott: Every other state except, I think, the Northern Territory.

The CHAIRMAN: Maybe theirs is disproportionate to ours. You have got to have a standard, do you not?

Hon ALISON XAMON: Mr Chair, there has been quite a number of us indicating we wanted to speak for quite some time.

The CHAIRMAN: Yes, I know, thank you.

Hon ALISON XAMON: I am wondering when other people on the committee may get an opportunity to respond.

The CHAIRMAN: If I might develop my points —

Hon ALISON XAMON: We may also actually want to respond to this too, Mr Chair.

The CHAIRMAN: Hang on! You are saying it is disproportionately high compared to other states. Maybe other states are disproportionately low compared to the level of crime.

Ms Scott: This has nothing to do with the level of crime. One of the points that I made earlier, Mr Chair, is that many children are being detained for minor offences. Many children are being detained because they do not have a responsible adult or a safe home to go to, and the youth justice service in Geraldton is an effective alternative to that. I am very supportive of those initiatives. I think over time those initiatives will change the numbers of young people being held in detention. In other states like Victoria they have those initiatives well developed and they have had a long-term impact on the numbers. It is not to do with the number of, you know, that we have got more children who are exhibiting more criminal behaviour; it is because there are not other options and it is very much tied to other social issues in our community here in Western Australia.

[11.00 am]

The CHAIRMAN: Right —

Hon ALISON XAMON: Hon Mia Davies has had quite a long time.

The CHAIRMAN: Hon Mia Davies.

Hon MIA DAVIES: Just for my clarification, your concerns relate to the fact that young people are overrepresented in areas where this legislation is likely to be implemented and there is likely to be a disproportionate amount of people impacted in that particular demographic. In your submission, you referred to the fact that there are significant differences between mental and physical behaviours of young people. They are not fully developed, so they react differently, which may then attract the attention of the police even though it is completely innocuous and the rest of it.

Ms Scott: Yes.

Hon MIA DAVIES: My concern, which was touched on in your submission, is the impact on these children who may be behaving badly or being facetious. How does that impact on them being stopped by the police and having contact with the police, which they would not normally have, because the police would not ordinarily have reasonable suspicion to stop them?

Ms Scott: That is my concern. If you remove that threshold, then young people exhibiting that behaviour on its own might be sufficient to bring them into contact with the police.

Hon MIA DAVIES: Are you aware of evidence that that type of contact with the police is detrimental to a young person's relationship with the police and to the child's future development?

Ms Scott: Yes. This is why a lot of police in the country and regional areas go to great efforts to have a positive relationship with young people. All the research shows that if the initial contact with the police is a negative experience, it is likely to escalate. I notice that the Director of Public Prosecution's prosecutorial guidelines actually refer to that first point of contact being absolutely critical. We should be doing everything—which is what the Young Offenders Act is all about—to caution kids and keep them away from the justice system by diverting them, because otherwise they will be on a trajectory of engaging in more criminal behaviour and having more contact with the police.

Hon HELEN MORTON: Were you still listening at the last hearing when we were discussing the current legislation and how there is a provision for the police to declare a place and, without suspicion, to stop and search people?

Ms Scott: Yes.

Hon HELEN MORTON: I understand that that is applicable to children right now. The police can actually stop and search people in a declared place without suspicion under the current legislation. The legislation that is in place right now gives the police the opportunity to stop and search children or young people in a declared place without reasonable suspicion.

Ms Scott: I was not aware that that was the case. I thought that you had to have reasonable suspicion.

Hon HELEN MORTON: No, not if it is a declared place. The example given was the Big Day Out or an area such as a beach where there was some concern, or any other sort of place. The only difference is that the child would need to give consent or he would be moved on and would have to leave the area. Can you give your impression of that legislation and the difference between it and what is being proposed, and how you see the differences?

Ms Scott: Based on what you have just told me, I presume it is the consent issue, so the young person would have to give consent, currently, if a place is declared.

Hon HELEN MORTON: And if they declined to give their consent?

Ms Scott: Under the new provisions, what is being proposed is you would not be able to say no. Neither consent nor reasonable suspicion would be required.

Hon HELEN MORTON: That is correct. In a declared area under the existing legislation children can be stopped and searched with their consent or they can be told to move on, but there is no requirement for reasonable suspicion. Do you support the existing legislation?

Ms Scott: Not in that respect. I noted last week that the police evidence indicated that no place had been declared. I imagine that this issue has not come to our attention in a practical sense of how it would apply because, although it is on the statutes, it has not been used to date. I would imagine that that would create a number of significant issues. Can a child give consent? At what age can a child give consent? I am also concerned about the notion of "declared places", having heard some of the commentary recently. I understood from what the police said last week that this is all about place and not people, but last week it was about Northbridge and a particular issue and now we are talking about trains and the possibility that children or adults could be stopped on trains.

Hon HELEN MORTON: It could be Dunsborough during school leavers week.

Ms Scott: Yes, and someone mentioned the Big Day Out.

Hon ALISON XAMON: Thank you for the comments that you are making around reasonable suspicion. Certainly one of the concerns everyone has with this legislation is not whether we have the capacity to stop and search people who genuinely may be in the process of committing a crime,

but the number of innocent citizens, both children and adults, who will potentially get caught up in this. We have separate legislation for children and young people in recognition of the fact that they are literally maturing and their brains are developing at different rates. I have three children and I am watching their brains developing at different rates. I am interested to hear your response on a couple of things. Firstly, how do you think an innocent child or young person might respond to being stopped and searched without any justification, as opposed to an adult? I am interested to know whether you have any science to refer to in relation to brain development. The second thing I am interested in hearing about is the potential correlation between a child being stopped and our new mandatory sentencing provisions in relation to assaulting a public officer. Do you have any commentary to make about the possible link between the two; that is, whether an innocent child who is stopped and searched is more or less likely to lash out at a police officer and hence be caught up in the new mandatory sentencing provisions?

Ms Scott: I would say a number of things. Firstly, there is a lot of research about brain development and a child's development. I think that is why we have legislation like the Young Offenders Act, which recognises that children are vulnerable developmentally as well as emotionally and psychologically. They are not fully formed adults. Those of us who have been there ourselves or have children who are over 18 know that the maturing process is ongoing. There is no question about the science. There is a full range of possibilities of how a child might respond. A child might be very frightened and scared about being stopped by the police and react depending on his particular circumstances. The child might become aggressive, but he might not. There is a full range of possibilities because children are like adults; they are not all the same, and we all have different responses. When we are pulled over by the police, what do we think? It is important that the science tells us that they are not yet mature and that their brain and physical development and their emotional and psychological development are still ongoing. That must be recognised in the law and we have a proud tradition of that in Western Australia. My concern is that this may override the legislation.

Hon ALISON XAMON: In relation to the second issue about mandatory sentencing and public officers, do you have any concerns that we may see more children getting caught up in those mandatory provisions, or is that not a concern of yours?

Ms Scott: I made that point in my comments to the Attorney General at the time and I was very pleased that the Parliament lifted the age to 16. It is too early to say in terms of the numbers, but that was one of my concerns. I have not seen any analysis of the figures since that came into operation.

Hon ALISON XAMON: I am asking specifically whether you hold any concerns that because of the introduction of these stop-and-search laws, which do not have any safeguards around children specifically, and in conjunction with the new mandatory sentencing provisions, we may see an increase in the number of children who are caught up in the mandatory sentencing provisions?

Ms Scott: I have indicated that mandatory sentencing of people who assault public officers and stop-and-search legislation has the potential to widen the net in terms of children and young people being captured by the criminal justice system. I am sure that there would be some interplay between the various pieces of legislation. I am not able to say specifically, but my concerns remain the same for both pieces of legislation.

Hon KATE DOUST: In your submission, you outlined a range of safeguards that you say would provide checks and balances. They go to a number of things, including data collection. On page 6 of your submission you also give a very interesting example from the UK about police providing all those details when they stop and search an individual. After this inquiry, will you formally write to the minister and the police commissioner and outline very clearly those proposed safeguards for this legislation, recommending that they amend the legislation to apply these safeguards?

Ms Scott: I have not yet taken that latter decision. As I said before, I had indicated to the committee that I took the opportunity to provide my evidence to the committee. I was very pleased when the government referred the matter to the committee so that more consideration could be given to it. I have taken this opportunity to speak to the committee but I have not yet decided whether I will write directly to them.

Hon KATE DOUST: Given that that threshold test will not exist and that it is probably more than likely to be young people rather than young children who will be targeted, in your view, how will that impact upon the relationship between young people in Western Australia and the police?

The CHAIRMAN: Are you able to comment on that? It is speculation.

Hon KATE DOUST: I just asked for the commissioner's view.

Ms Scott: I was just going to say, Mr Chair, that it is a matter for speculation. What I could say —

Hon KATE DOUST: Based on the evidence in other places, such as Victoria or the UK—would you base your view on what has happened in those other places regarding the impact on the relationship between young people and the police?

Ms Scott: I was going to say that I could provide comment already about what is happening in Western Australia. I have seen evidence of very positive interaction between the police, in particular in regional communities. That has a very positive impact on the relationship with children and young people. If I could just highlight to the committee a very concrete example, which is the people of Fitzroy in relation to the introduction of alcohol restrictions. The police there have been very supportive. They have also been very supportive about positive programs for the children of Fitzroy. They see it as very important to develop a positive relationship with children and young people. That is the approach being taken in Fitzroy. I think that shows that the police see it as being very important. The evidence that we heard about Northbridge last week was very similar. The police recognise particular issues that relate to particular groups of young people. Having a positive relationship with children and young people is important for them and their work. That is the comment I would make.

The CHAIRMAN: Assuming that the bill is passed and becomes operational, you have indicated that some more checks and balances on the police must be put into the bill—that is your submission to us—to help protect the position of children and young people. You have suggested that this would include a comprehensive process of data collection, monitoring and reporting similar to that which occurs in the United Kingdom. Would you also welcome the insertion of greater direction in the bill for police officers who conduct stops and searches under proposed section 70A of children? Would the Victorian legislative rules on stopping and searching children without reasonable suspicion be sufficient and, if not, what other safeguards would you propose? If it helps, these were in the questions that were forwarded to you.

[11.15 am]

Ms Scott: They were, Mr Chairman. My starting position is that the legislation should not apply to children and young people. That is my starting position. One of the problems, Mr Chair, I found with the questions is that if we look at provision by provision, from other states or overseas, we are not actually looking at what the holistic situation is, either the whole legislation; or, as I indicated to you, with Victoria, there is a whole lot of other programs and so forth that are in place. In the UK there is a whole different regime. I would not be of any assistance, I do not think, to the committee if I was to comment on provision by provision from other states or the UK.

The CHAIRMAN: In a nutshell, dealing with Western Australia rather than by way of comparison to other states, are you able to suggest any improvements to the legislation other than what you have already indicated in the submission, which is introducing a data collection and monitoring provision and some criterion for searching or for triggering the power?

Ms Scott: As I indicated, my initial point would be the removal of children and young people; that the legislation does not apply. In addition to the particular things I highlighted in my submission, I am extremely concerned about the vulnerability of a child around the consent issue. If the child does not consent to the search, how do you communicate that? Who would be present with a child in relation to searching them on the streets, for example? There are real concerns about that consent issue.

The CHAIRMAN: That is currently the law anyway, that if an area is prescribed or declared under section 69, it becomes effectively an area where the police can demand to stop and search someone. If they do not consent to that, the person can be moved on; or, if they are already within the area, they can be told to leave if they do not consent. That is the way the Criminal Investigation Act is presently framed. We are not looking into that. What we are looking into is the bill, to remove that requirement for the threshold to have a reasonable suspicion and modify the extent to which areas can be declared or prescribed. You have suggested in your submission some things that you feel ought to be inserted. You have nothing to add to that?

Ms Scott: I have nothing further to add.

The CHAIRMAN: Would your concerns about the bill be eased if it had more direction or instructions as to how or why an area would be chosen to be prescribed or declared?

Ms Scott: I think that that obviously would be extremely helpful, but I have no idea what those directions might be. I do not even know the content of that, so it is just speculating.

The CHAIRMAN: Would your concerns about the bill and its effect on children and young people be eased if it had more requirements for notifying the public about the prescription or declaration of an area where the proposed additional stop-and-search powers may be used? Let us assume the legislation goes ahead and this power is provided to the police. To what extent would your concerns be ameliorated by it being made quite clear and there being publicity that says Northbridge is an area that is subject to this, and that children and young people are aware of it?

Ms Scott: Obviously the more notice you can give, that would be of some assistance, but it would depend on what that notice is.

The CHAIRMAN: It appears that in Victoria it must be not only gazetted but published in a newspaper, including a map. Can you think of any other ways, in your experience of dealing with children and young people, that might facilitate their being aware of the declaration or designation of an area subject to the proposed powers?

Ms Scott: I think there is a lot of research, Mr Chair, about the way in which children and young people gather information. The newspaper and the *Government Gazette* is not one of them.

The CHAIRMAN: I understand that. That is why I am asking what other ways you would suggest.

Ms Scott: Radio, the web, SMSs. There is a whole range of ways that young people communicate.

The CHAIRMAN: In your experience and your knowledge of the way that young people communicate and obtain information, which would you consider the more efficacious means of letting them know that if you go to Northbridge tonight you may be stopped and searched without reasonable cause?

Ms Scott: There are two things that I would say, Mr Chair. The first is there is probably a wide range of tools or mechanisms that you would use if you really wanted to ensure that children and young people were aware of that. That could be subject to further discussion. It would not just be one mechanism. It would be a wide range of mechanisms. The second thing that I would say is that many children and young people would not use those mechanisms, and particularly those that might be vulnerable and it is not safe for them to go home. I visited a school in the metropolitan area recently, where children do not have access to TV and they do not have access to radio. Children that might be extremely vulnerable—we are talking about a small proportion—who might be

coming into the city because it is safe, or going into a particular location because it is safe, will not be able to access that sort of information.

The CHAIRMAN: That is what I was asking. You said there are many ways. I am asking you to identify those ways so that we can, if necessary, suggest them as part of the improvement to the legislation, if it comes to that. How would you recommend we do that?

Ms Scott: I just made two points, Mr Chair. The first was that for a number of children, finding out through the web, SMSing, radio et cetera is a mechanism. There are a group of children and young people who would not, no matter what mechanism you applied, be aware that a particular area was subject to a stop and search. It might be by word of mouth in the evening if something was happening; there might be some word of mouth.

The CHAIRMAN: So word of mouth. If we wanted to let as many juveniles as possible know that tonight Northbridge is an area that, if you go into it between certain streets, you may be subject to these powers—you say email. You need to have email addresses, so that does not help. SMSs—you need to have phone numbers. Youth centres—is that a way of letting them know? Schools, shelters? How do we get the word out there? This is an area within your experience. I am trying to find out some information here so we can suggest improvements, if necessary.

Ms Scott: Could I suggest this: if the legislation progresses in relation to that and you wanted to develop a communication approach-strategy, then I would be happy to participate with those people who are developing that. I am sure there are a number of other organisations that would be happy to do that as well.

Hon ALISON XAMON: Can I have it confirmed that your testimony here is that there are simply some children who are so marginalised and who are so disadvantaged to whom conventional, or even attempts at various communication techniques would simply fail to reach; is that what you are telling us?

Ms Scott: Yes, that is correct.

Hon KATE DOUST: Commissioner, in your submission you refer to the police operational manual not being considered binding and basically being treated as a set of guidelines. If, under this proposed legislation, we lose that threshold test of reasonable suspicion and consent is also removed for children and young people, if this document is only going to be treated as a guideline, I have a real concern that it is open for abuse. We are coming back to that individual set of values, biases and opinions, are we not, in terms of how decisions would be made as to who would be stopped and searched? How do we address that? Is that something that needs to be done through the legislation or is that something that perhaps the police need to take on board in their training or do they actually need to make the manual binding in some way? Does it need more than just a manual? Should there be regulations perhaps?

Ms Scott: I think there is a range of responses to that. I notice that the police last week in their submission actually said that the guidelines would be binding. That is not my understanding. As you can see, I have referenced that in my submission. One option is through legislation. The problem with legislation, though, is that that can be quite restrictive and if circumstances change, how could you have discretion? It is the same, to some extent, with regulations. One solution is to have the guidelines binding and for police to have considerable training. The other is making sure that the guidelines are updated and reviewed, taking into account the circumstances. A fundamental concern to me is that there is going to be very broad discretion and that the guidelines will not be binding.

Hon KATE DOUST: Do you think, commissioner, that in this situation where you do not have the threshold test and you do not have consent, things like the police guidelines for dealing with these types of issues should be perhaps reviewed by the Parliament from time to time; the Parliament

have capacity to have a look at what the current status of those guidelines are and perhaps some sort of monitoring of how they are being implemented?

Ms Scott: I am not sure that that is a function for Parliament. It is obviously up to Parliament to decide. But I do think there should be ongoing review and ongoing monitoring of any legislation, should the legislation be passed, and the guidelines. Also collecting of statistics in terms of the impact et cetera, and it should be looked at holistically in terms of what impact the legislation is actually having on a range of people.

Hon KATE DOUST: You refer to that in your submission. You say that the Minister for Police has been reluctant to consider reporting requirements. Why would you think that would be the case?

Ms Scott: I do not know. I have just heard those comments reported.

Hon ALISON XAMON: This was of course in the questions that were submitted to you ahead of time—the bill provides that the operation and effectiveness of the new provisions be reviewed in five years. Do you agree with a five-year review, or do you think the time of the review should be sooner or later than that?

Ms Scott: It is standard practice for legislation to be subject to a five-year review. I would suggest that you might review it on a number of occasions. You might review it after 12 months, you might review it after three years and you might review it after five years. I think to wait five years is a considerable amount of time given the potential impact of the legislation.

Hon HELEN MORTON: In particular in such a review, any one of those reviews, what sorts of issues or criteria would you be wanting from the perspective of children and young people? What would you be wanting to be included in that review?

Ms Scott: I would want to gather information about the age of people stopped and searched so that we have information about children and young people; in what circumstances; their ethnic background; whether they had any disability; some of the demographics information.

[11.30 am]

One of the fundamental things about reviewing an act is finding out whether it achieved its purpose, and that is what I would be interested in—if there is clarity around the purpose of the legislation, did it achieve that purpose? I am sure that there are other things we could come up with as well, but that would be a basis for it.

The CHAIRMAN: Whether charges flowed from a stop—that sort of thing?

Ms Scott: That is right. Ideally, in a longitudinal sense, one would want to know what the impact has been on the child or young person. As the honourable member indicated, did it lead to them entering the justice system—so that was their entrée—or not?

The CHAIRMAN: Time is running out. What I would like to do is to get your answers on record regarding the rest of the questions that were sent to you, then I think we have a number of things that each member may want to explore. I think we got to question 7. Under the bill, a public place may be prescribed for up to 12 months and be declared for up to two months. Are these maximum periods of prescription and declaration too long? If so, why, and what maximum periods would be preferable? I understand that you are looking at it from the perspective of juveniles, so your perspective will be from that of your particular brief and function as the commissioner. If you have no particular comment because you do not think that the legislation should provide for this sort of thing at all, that is fine as an answer, but if you have anything to add in respect of those things, please do so.

Ms Scott: I do not think I have anything further to add.

The CHAIRMAN: Under the proposed section 70B, the Commissioner of Police may declare an area only with the approval of the minister, and under proposed section 70A, the prescription of an

area, no additional approval is required. Would your concerns about the bill be eased if both the prescription and declaration of areas were required to be approved by a person independent of the government; why and why not; and, if so, what level of independence?

Ms Scott: I do not think I have any further comment.

The CHAIRMAN: Under proposed section 70B, the Commissioner of Police is able to delegate his or her power to declare a public place to the deputy commissioner and assistant commissioner. Does that concern you from your perspective as commissioner; and, if so, why?

Ms Scott: I do not have any comments.

The CHAIRMAN: The bill provides that the minister rather than a person independent of the government must conduct a review of the operation and effectiveness of the proposed sections 70A and 70B. Do you have any comment to make on that, and whether there would be any preference peculiar to your area of responsibility that would exercise your mind?

Ms Scott: My main issue there would be that any review draws on the evidence not just from the police but also from other interest groups that would have a contribution to make, such as myself, other youth organisations, and families in the community that have had direct experience.

The CHAIRMAN: Again, it comes down to what is said to be the objectives of the act and measuring them against that, and presumably weighing that against what your evidence may be or the evidence of others may be on the peculiar or particular effect on children and young people.

Ms Scott: Yes.

The CHAIRMAN: I direct your attention to question 12. Would your concerns about the bill be eased if it required police officers, when conducting a stop and search under the proposed additional powers, to give the person being searched or whose vehicle is being searched a notice that advises the person of certain facts—for example, the fact that they have entered a prescribed or declared public place; the fact of police officers' powers to stop and search; and information as to the person's rights and obligations during the stop and search; and, if not, why not?

Ms Scott: I think that all of those are added checks and balances and that it would be useful to consider the provisions in Victoria.

The CHAIRMAN: Can I just digress from that a moment and develop that point. In your experience, with respect to the consequences that may flow from a juvenile's first contact with law enforcers and the criminal justice system, would providing them with information of this nature be helpful? If a police officer were to stop a juvenile who is behaving oddly—forget about whether it gives rise to a reasonable suspicion or not—and provides the juvenile with information such as the fact that the juvenile is in a prescribed area which means that he is liable to be stopped for no good reason simply to check out whether he is carrying anything that may be connected with an offence, and asks whether he understands the information, that the police officer is entitled to do so, and asks whether the juvenile has a problem with it, is that likely be more beneficial? Is that likely to limit or assist?

Ms Scott: On the face of it, in my submission I spoke about, in the UK, that sort of information being given to young people. One of the points that one of your colleagues made earlier was about the capacity of a young person to take in information in that situation; also, the capacity of someone who does not speak English or for whom English is not a first language. On the face of it, what you are proposing is an added measure that would be of assistance, but it will not assist every young person.

The CHAIRMAN: Likewise, I suppose it depends on whether you are talking about the 96 per cent who do not have any contact with the criminal justice system as a rule, as opposed to the four per cent who have, the age of the child, whether they have a criminal history and whether they are anti-authority anyway. Is there any reason to suppose that this would make any difference whether the

law requires a reasonable suspicion or not in respect of many of these juveniles as to how they would react to a police officer stopping and searching them?

Ms Scott: Your colleague asked that question earlier. All the science shows that children, generally, are not fully mature and that their brain cells are not fully developed even by the time they are 18. A lot of brain development goes on at that point and also psychological development, so even with children who are among the 96 per cent who do not come into contact, there are a range of responses possible, as there are now when a P-plater is stopped by the police and is asked what he feels about it, how frightened he is and how confident he is in dealing with an authority figure, as distinct from groups that are highly marginalised in our community. I think that giving clear information, having the conversation and explaining is of assistance, but the police will require some special measures. I have some considerable experience in my previous statutory role of particularly working with adults with mental illnesses and people with disabilities, for example. Police training in relation to that is extremely limited, and sometimes they do come across people in the community—this time I am talking about adults, but the same applies to young people—where they have no knowledge of that person's condition or understanding—for example, a person with autism or someone with a serious mental illness, as distinct from someone who has an intellectual disability. If you stop and search someone with those conditions, it requires specialist knowledge and specialist understanding. In the Kimberley, as members are aware, people are very concerned about foetal alcohol spectrum disorder. That affects children and adults in a particular way. It is a highly specialised area in terms of how one communicates with that person. If one gives basic information—"You are being stopped and searched because of," et cetera, as you would communicate it to me, it will not necessarily have the same impact.

The CHAIRMAN: It does not really matter in those sorts of cases whether there is a reasonable suspicion or not, because that is not what is exercising the mind of the person who is being stopped. The officer may have a reasonable suspicion and stop the person or he may not; the person does not care. It is just the fact that he is being stopped by a police officer and searched.

Hon ALISON XAMON: Presumably they would be less likely to be stopped and searched if there were no reasonable suspicion.

Ms Scott: That is the point I was making earlier; once that threshold is removed, the likelihood of more children coming into contact with the police is increased.

The CHAIRMAN: Would your concerns about the bill be eased if it provided for the minister or a person independent of the government to revoke or cancel the prescription or declaration of a public place for the purposes of the proposed additional powers?

Ms Scott: I do not have any comment on that.

Hon KATE DOUST: Given that the police and the minister, when they talk about the need to change the legislation to remove reasonable suspicion and consent, they are talking predominantly about places such as Northbridge, do you think that if this legislation goes through, young people in particular might decide that it is not really worth their while going into the city because they do not want to have to deal with this type of issue in that area that has been designated, and that they might actually start perhaps going back out to the suburbs in larger groups, or other places, and congregating in those places, because they are not designated and it is probably more unlikely that they will have to engage with the police in a stop and search situation?

Ms Scott: That could be the case. It is hard, really, to predict whether that will happen. Some young people will still want to go to a particular place and will be unaware of those restrictions, even if over time more information comes out about it. I suppose that as commissioner I take a holistic view of these sorts of issues. To use Northbridge as an example—although I know that the police have said that no particular place has yet been contemplated—that requires a holistic, integrated response from the community and from government, and I was very pleased to hear from the police

the other day that there is a range of initiatives that are starting to work in Northbridge around referral to appropriate agencies and getting kids to a safe place. There are some very positive initiatives now in Midland—midnight basketball, and those sorts of initiatives—which are all about giving young kids who are marginalised access to positive programs, and that is having an effect on whether kids come into Northbridge or not. I think that legislation alone should not be looked at in isolation; we need a range of comprehensive measures.

The CHAIRMAN: I have a couple of more questions. These refer to your submission of 18 January. It might help if you see what I am talking about. I refer you to paragraph 1 and the three dot points that are set out there. It might be helpful if you have a copy of your letter to the minister and the Commissioner of Police of 23 November and a copy of the response.

[11.45 am]

Ms Scott: Yes, I do.

The CHAIRMAN: I was wondering whether there was a problem with us having a copy of that and getting a photocopy made. Is there any objection to that?

Ms Scott: No.

Hon HELEN MORTON: While the chairman is waiting for that, I cannot get out of my mind the idea of how beneficial it might be for a place like Dunsborough for two months of the year to be declared a place under legislation that would perhaps allow the police to stop and search people without suspicion but with consent. If people were not willing to consent, then they would be sent home. Do you think that that might make some of the school leavers-type places safer for 16 and 17-year-old kids?

Ms Scott: I suppose it goes back to the point that I just made: one measure on its own will not achieve that. You need a comprehensive approach. I cannot remember about Dunsborough this year but I do remember about Rottnest that the police in charge at Rottnest said how well behaved young people were at Rottnest, more so than the usual visitors. That is my recollection. So I think if we are going to declare an area, we would have to be very careful. What is the basis of it? Do we have the evidence as to what is actually happening in a particular geographical area that would warrant an area being declared in the first place? That is the first issue. Secondly, that alone probably will not achieve the outcome that you are wanting to achieve. I think that it might be a measure but not the total range of measures.

Hon HELEN MORTON: But you would not object to it. Just imagine that every young person that was going to go to Dunsborough —

The CHAIRMAN: And adults.

Hon HELEN MORTON: And adults — knew that that was going to be the case down there and that they could be subjected to a request for stop and search. If they do not want to go down there under those circumstances, then do not go. Would you find that objectionable for young people?

Ms Scott: I would just as a matter of principle. I would want to know what is it you are trying to achieve by doing that.

The CHAIRMAN: We are trying to stop drugs and weapons from being in that area at a time when juveniles go there en masse and are celebrating the end of the school year and tend to let loose. We are trying to limit the amount of harm that might be done to them and to others that might come across their path.

Ms Scott: I am asking, though, is that in relation to children and young people or is that in relation to adults?

The CHAIRMAN: I am saying anyone.

Hon HELEN MORTON: My interest in asking you that question is that you are speaking, I imagine anyway, from an understanding of the potential benefits for children and young people. So I am asking you: would you object to an arrangement that if everybody knew the circumstances and wanted to go anyway, and knew that they could be stopped and searched with consent and if not they could be sent home, would you have an objection to that kind of arrangement around somewhere like Dunsborough for a short period of time — say two months?

Ms Scott: I suppose it goes back to my fundamental question: what is it you are trying to achieve? Is it because you think that kids are not safe to be in that community?

Hon HELEN MORTON: Sometimes.

Ms Scott: Yes, that might be a consideration. What else might you put in place to ensure that they are safe? Is this provision the only way to enable that to happen?

Hon HELEN MORTON: No. Let us assume that other things are in place and that this is an additional thing.

Ms Scott: In principle I guess that I would be asking all these questions. It is a bit like the Northbridge Link: what are the things that we can do that will make a substantial difference?

Hon HELEN MORTON: But is this one thing that we could do?

Ms Scott: We could do that, yes.

Hon HELEN MORTON: Would you object to that?

Ms Scott: I would object if it was the only thing.

Hon HELEN MORTON: But if it is not the only thing?

Ms Scott: And if the other things were evidence-based, then, yes, I think it would be a package of things.

Hon HELEN MORTON: And you would not object to it?

Ms Scott: Yes, but I would object if that was the only thing.

The CHAIRMAN: I am sorry; we did not give you a chance to supply your correspondence —

Ms Scott: To the minister?

The CHAIRMAN: Your correspondence that you referred to and the response that you received— if you have got notes and things on it that you do not want us to see —

Ms Scott: Just notations.

The CHAIRMAN: All right; that is fine. We will put post-a-note over those when it is photocopied. Moving on from that then—and I will come back to that point—turning the page, on page 2 of your submission and the fourth paragraph —

Recent research has supported this approach, finding the juveniles given custody orders are no less likely to reoffend than juveniles given non-custodial orders (that is, detention exerts no specific deterrent effect)

How is that conclusion drawn as opposed to the one that non-detention serves no great effect? Maybe both measures lack effectiveness. Do you understand what I am driving at?

Ms Scott: I do. That was a very detailed study by the Australian Institute of Criminology that was published last year. We would have to have that report before us.

The CHAIRMAN: All right, so you have drawn that from the conclusions of the report?

Ms Scott: Yes.

The CHAIRMAN: Turning over to paragraph 4.1 on page 3, the third paragraph, the last couple of sentences just above a quote —

By removing the ordinary circumstances of 'reasonable suspicion' police will be able to target people based on what they look like, what they sound like, what they are wearing, or how old they are, rather than whether they are engaging in activity that is an offence or is likely to cause an offence.

The criteria to stop and search someone currently are not that they are engaging in activity that is an offence or is likely to cause an offence. It is that they are in possession or control of anything relevant to an offence. It could be a reasonable suspicion that they are carrying drugs or some other deleterious item, a weapon, proceeds of crime, whatever. The fact that they are, from objectively looking at them, seen to be engaging in some activity is not a criterion for the current search powers, so how does that form the basis of your views?

Ms Scott: Other provisions of the Criminal Code require elements of an offence to be proved, so I am not just talking about the criminal investigations bill; I am also talking about the Criminal Code. So you could be stopped because you were speeding and you were doing something that has elements of an offence.

The CHAIRMAN: That is true, but that is not the only basis.

Ms Scott: No, but that is what I am referring to, or otherwise in this case in relation to this bill we are talking about reasonable suspicion, and I am talking about the proposal to move away, whether it is from the existing provisions or the Criminal Code.

The CHAIRMAN: But don't the existing provisions enable police to stop someone based on what they look like, what they sound like, what they are wearing or how old they are if that gives rise to reasonable suspicion they may be in possession or control of something that is connected with or relevant to an offence?

Ms Scott: I think that is what I am saying.

Hon ALISON XAMON: You have got a reasonable suspicion.

The CHAIRMAN: No, it is not what you are saying. By removing the ordinary circumstances of reasonable suspicion the police will be able to target people under the new legislation for what they look like, what they sound like, what they are wearing or how old they are. But isn't that the sort of information anyway that a police officer has in mind when he formulates a reasonable suspicion?

Ms Scott: I do not know. That is a question for the police.

Hon ALISON XAMON: That is right. I must say, Mr Chairman, I am surprised that you are asking that as a lawyer yourself, because we know that suspicion is a lot more than simply how old someone is or what someone is wearing. I think the commissioner's point is actually very clear in her submission.

The CHAIRMAN: Perhaps that is a debate we can have afterwards, but I do not know how a police officer forms a reasonable suspicion without looking at someone, viewing someone —

Hon KATE DOUST: Mr Chairman, I think that is part of the concern about removing reasonable suspicion and relying on non-binding guidelines and relying on an individual's private views, values and biases. That is when you would fall back into this situation.

Hon ALISON XAMON: Without the safeguard of a reasonable suspicion.

The CHAIRMAN: Reasonable suspicion is a state of mind.

Hon ALISON XAMON: Mr Chairman, we certainly saw last week in the evidence that reasonable suspicion is something that is certainly a test that needs to be demonstrated in court.

The CHAIRMAN: Never mind where it is demonstrated. Isn't it a state of mind? Isn't a reasonable suspicion a state of mind?

Hon ALISON XAMON: No, Mr Chairman, I do not think it is a state of mind; I think it is a little bit more accountable than that. By removing it you certainly lose any accountability. I think that is the point that the commissioner here was making. Perhaps we can focus on the commissioner's comments.

The CHAIRMAN: A suspicion is not a state of mind?

Hon ALISON XAMON: A reasonable suspicion.

Hon KATE DOUST: There are certain criteria, I understand, that the police have to work through to attain a reasonable suspicion, and that is dealt with in their training.

The CHAIRMAN: As far as this correspondence is concerned, going back to the three dot points on page 1, those were raised, were they, in your letter to the minister?

Ms Scott: I think dot point 2 is picked up by paragraph 4 and by paragraph 3 on page 2. That relates to dot point 2 as well.

The CHAIRMAN: I understand, thank you. I appreciate that. It saves me having to try to relate it myself.

[12 noon]

The CHAIRMAN: Lastly, you mentioned on page 4, the first dot point, that the rate at which police have directed young people away from court has declined by 13 per cent over the past five years. Is there any evidence that the diversion strategy worked?

Ms Scott: Does work?

The CHAIRMAN: Yes.

Ms Scott: Yes; there is a lot of evidence that shows that it does, and the Youth Justice Service is another good example in Geraldton, on the ground, where it is working.

The CHAIRMAN: What I am driving at is that, statistically, are you able to show that during the time of the diversion process—plainly it will mean less people going to court, but has it actually reduced the crime rate? It may have reduced the conviction rate because there are less people going to court, but is there any statistical evidence that you can point to that shows that the diversion of juveniles away from the court system, where they may have been found as having committed an offence, has actually decreased the level of crime or their recontact with the criminal justice system?

Ms Scott: I think there is research to establish that, Mr Chair. The other thing is, I notice that Premiers and the Prime Minister signed off, at the last COAG, a statement to communicate, and it indicated that juvenile offending over the past 10 years has actually declined.

The CHAIRMAN: Can you tell us where the research is that supports that proposition?

Ms Scott: The COAG?

The CHAIRMAN: No, not the COAG, but that the direction away from the court system has actually resulted in a decline in crime?

Ms Scott: You might want to consider the Australian Institute of Criminology; it's got a very good reputation.

The CHAIRMAN: That is all I need to ask. Are there any other questions?

Hon KATE DOUST: Commissioner, given that the police already have the capacity, under the current legislation, to stop and search an individual, why do you think the government has moved to make this change? Why do you think it has sought to introduce this legislation?

The CHAIRMAN: I do not know if the witness can tell us why the government is doing something.

Hon KATE DOUST: I am just interested in the commissioner's view as to why she thinks the government may have sought to do this.

The CHAIRMAN: Well —

Hon KATE DOUST: Chairman, I have asked the question; if the commissioner does not want to answer it, she will tell me that.

Ms Scott: I am not privy to why the government wants to introduce the legislation.

Hon KATE DOUST: I am just sort of interested in —

Ms Scott: Other than what I read in the Parliament and the speech.

The CHAIRMAN: You might as well ask why the opposition wanted to introduce similar legislation; the witness cannot comment on that either.

Hon KATE DOUST: No, but the commissioner is in a position whereby she has access to a range of people in the community—particularly young people—and a range of research materials, and I know the commissioner is fairly observant as to why these sort of changes happen. I was just interested in her view as to why the government may have proceeded down this path.

The CHAIRMAN: I do not think the witness can comment on why the government might have thought anything; that is speculation, is it not?

Hon KATE DOUST: No, but I have the right to ask a question.

The CHAIRMAN: Are you able to speculate—well, I am sure you can speculate, but are you able to say why the government has chosen to introduce this legislation?

Ms Scott: I just indicated no, I am not.

The CHAIRMAN: Unless there is anything else, thank you very much, commissioner; I appreciate your assistance.

Ms Scott: Thank you.

The CHAIRMAN: It may be, I should add—it does not, at this stage seem likely—it may be that once we have heard further evidence, we may wish you to re-attend; we will be in touch if that is the case.

Hearing concluded at 12.04 pm