

Legislative Assembly

Wednesday, 11 November 2009

THE SPEAKER (Mr G.A. Woodhams) took the chair at 12 noon, and read prayers.

MEMBER FOR MINDARIE

Allegations against Police — Personal Explanation

MR J.R. QUIGLEY (Mindarie) [12.02 pm]: In October last year, I awoke to find my front wall graffitied with an accusation that I was a paedophile. This was widely reported. At 6.00 am my house was staked out by media, and the cameras were there when I went outside. I was very upset and very distressed. The circumstances of my distress were twofold. Firstly, I was the victim of this crime that morning, and it had exposed my young family to this hideous public and slanderous allegation. Secondly, I was in the middle of a Corruption and Crime Commission inquiry in which some senior police were pushing for me to be charged with a criminal offence. We now know as a matter of record that their efforts in that regard were absolutely ill founded. The coincidence of being under the improper and wrong allegations by police that I had committed a criminal offence and being faced with the circumstances of what happened at my house caused me to make an allegation against the police that they were likely to be responsible for that graffiti.

The police have conducted a very thorough investigation into the circumstances of the graffiti-ing of my wall, and I have had discussions since then with the Commissioner of Police, Dr Karl O'Callaghan. To Dr Karl O'Callaghan, I have fully retracted my allegation against the police. Some little while ago I did this in private conversation with Dr O'Callaghan. At that time I offered him my humble apology for what I had said and any slur that my comments may have cast upon serving members of the Western Australia Police. It was a genuine mistake made as a victim of crime under enormous stress, when my family home was under attack. Notwithstanding that, it was a mistake and I unequivocally withdraw what I said and apologise. I have this day spoken to the Commissioner of Police, and he reminded me that some time ago I apologised to him privately, but as I made these remarks publicly, it is only proper that I publicly withdraw them and apologise to the Commissioner of Police and all of his staff for any slur that my comments would have caused.

The matter has caused considerable distress. As I said in the speech I made in March this year, my family home has been under attack, with the windows being broken; the windows of my parliamentary office being broken; a dead rat being placed under the windscreen wipers of my wife's car; and filthy mail being sent to my wife about me. The attack that I have been under has been sustained, hideous and colossal. Under the weight of all this, I have made an error, for which I unequivocally apologise. I thank the Commissioner of Police and his staff for the thorough investigation, looking at all the attendant circumstances, and being able to identify for me another suspect, if not a prime suspect, for this offence, whom I shall not mention under parliamentary privilege. That is a matter between the Commissioner of Police and his staff. Suffice to say that this has caused my family so much distress—they are still being harassed by criminal elements—that the officers of the dignity protection unit have recently attended at my house. I know that they have been conducting surveillance of my property. My attendance at the regional Parliament in Bunbury was a circumstance of great distress for my wife, but she is very thankful to the police for their attendance while I was in Bunbury, to make sure that my premises were secure.

I once again unequivocally withdraw my comments and humbly apologise to the commissioner and his staff. Thank you for the opportunity, Mr Speaker.

MOUNT LAWLEY OUT-OF-SCHOOL CARE FACILITY

Petition

MRS M.H. ROBERTS (Midland) [12.08 pm]: I present a petition couched in the following terms —

To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, say

We wish to express our concern that there are no current plans to retain the Mount Lawley Out of School Care facility on site at the Mount Lawley Primary School following the construction of new classroom buildings from 2010.

The Mount Lawley Out of School Care Committee has been issued an eviction notice for the 18th of December 2009 to evict from the premises.

The centre offers a safe, convenient and extremely important service. Currently no other facilities close to the school have been found that readily conform to licensing requirements.

If the facility cannot remain on site or a suitable replacement is not found, the centre faces imminent closure.

Now we ask the Legislative Assembly,

To petition the Minister for Education to immediately intervene to ensure that Mount Lawley Out of School Care centre remains onsite at the Mount Lawley Primary School.

I certify that this petition conforms to the standing orders of the Legislative Assembly and contains 296 signatures.

[See petition 166.]

22 DARTFORD CRESCENT, MARANGAROO

Petition

MS M.M. QUIRK (Girrawheen) [12.09 pm]: I table the following petition signed by 84 signatories and certified as conforming to the standing orders of the Legislative Assembly —

To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, say that the Department for Child Protection facility at 22 Dartford Crescent, Marangaroo is a source of ongoing and persistent anti-social activity, with escalating reports to police, which greatly disturbs the quiet enjoyment and amenity of neighbouring residents.

Now we ask the Legislative Assembly to note that the facility was established without consultation with local residents and despite undertakings the Department for Child Protection for improved oversight that the facility be closed in light of the Departments failure to honour their undertakings of greater supervision.

[See petition 167.]

SHACK SITE COMMUNITIES

Petition

MR A. KRSTICEVIC (Carine) [12.10 pm]: I present a petition from 283 petitioners regarding leased shack site communities. It has been certified as complying with the standing orders of the Legislative Assembly —

To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned say that leased Shack Sites Communities, such as Wedge Island, Grey, Donnelly River, Broke Inlet, Dampier Archipelagos, and Israelite Bay have long been the traditional holiday/recreational destination for many thousands of ordinary Western Australians.

Most Shack Site Communities sprung up to accommodate the gathering of farming and town based families to enjoy holidays together in remote and idyllic fishing locations right across Western Australia.

Some Shack Site communities went onto becoming fully-fledged towns such as, Bremer Bay, Jurien Bay, Dongara and Horrocks, whilst some Shack Site Communities have disappeared.

However, some residual communities remain, with a strong sense of community and have become the preferred holiday option for many thousands of Western Australians.

These places are tangible examples of sustainable lifestyles, where younger generations can learn responsibility and become creative and family traditions and stories can be passed on.

The loss of these communities will seriously diminish the social, economic and health well being of many ordinary Western Australian families.

Now we ask that the Legislative Assembly support our campaign for the Government to

Examine how other States of Australia, including South Australia, Tasmania and New South Wales have retained conforming Shack Site Communities in order to preserve these valuable assets for many Western Australians to have affordable coastal holiday destinations and continue to allow human interaction all but lost in today's society.

Similar petitions were presented by **Mr A.J. Waddell** (443 signatures) and **Mr J.C. Kobelke** (169 signatures).

[See petitions 168, 169 and 172.]

WEST BEECHBORO PRIMARY SCHOOL*Petition*

MR M.P. WHITELEY (Bassendean) [12.11 pm]: I present a petition that conforms with the standing orders and has 25 signatories. It reads —

To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, say

that the West Beechboro Primary School community has been negatively impacted upon by ongoing graffiti attacks, vandalism and anti-social behaviour during and after school hours.

Now we ask the Legislative Assembly

that the Minister for Education addresses the issue by ensuring that fencing of West Beechboro Primary School is undertaken as a priority.

[See petition 170.]

MARRI GROVE PRIMARY SCHOOL*Petition*

MR A.J. SIMPSON (Darling Range — Parliamentary Secretary) [12.12 pm]: I have a petition signed by 395 people, and it reads —

To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, say that the present Education Department policy as it pertains to air-conditioning at Marri Grove Primary School needs to be revisited so that all new buildings are air- conditioned.

Now we ask the Legislative Assembly call upon the Minister for Education to review policy for the provision of air-conditioning to all schools so that it more accurately reflects the current community expectations and standards. We also request that localities deemed to be a part of the metropolitan area be reviewed more regularly, and adjusted, to reflect the growth of the metropolitan region.

[See petition 171.]

PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

PUBLIC SECTOR COMMISSIONER — MALCOLM CHARLES WAUCHOPE*Notice of Motion*

Mr C.J. Barnett (Premier) gave notice that at the next sitting of the Legislative Assembly he would move —

That in accordance with sections 18(6) and 28 of the Public Sector Management Act 1994, this house authorises Malcolm Charles Wauchope to continue to hold the office of Public Sector Commissioner, being an office referred to in part 1 of schedule V of the Constitution Acts Amendment Act 1899, upon an appointment by the Governor of him as Acting Commissioner for Public Sector Standards, and requests the Legislative Council to agree to a similar resolution.

**RETAIL TRADING HOURS AMENDMENT
(JOONDALUP SPECIAL TRADING PRECINCT) BILL 2009***Notice of Motion to Introduce*

Notice of motion given by **Mr T.R. Buswell (Minister for Commerce)**.

**DIRECTOR GENERAL OF THE DEPARTMENT OF AGRICULTURE AND FOOD —
APPOINTMENT OF MR ROB DELANE***Statement by Minister for Agriculture and Food*

MR D.T. REDMAN (Blackwood-Stirling — Minister for Agriculture and Food) [12.16 pm]: It gives me a great deal of pleasure to inform the house of the appointment of Rob Delane as Director General of the Department of Agriculture and Food. Mr Delane started in the role last week and will lead a major revitalisation of the department to support the development of Western Australia's agriculture and food industries. He rejoins the department after a one-year absence during which he undertook the joint role of Deputy Secretary of the Biosecurity Services Group and Executive Director of the Australian Quarantine and Inspection Service with the commonwealth Department of Agriculture, Fisheries and Forestry.

Mr Delane has demonstrated an outstanding commitment to agriculture, with 30 years servicing the state's agricultural industries, including 13 years in senior executive roles at the Department of Agriculture and Food. He brings to the position extensive experience in organisational leadership, together with broad knowledge of the agrifood sector that will enable him to carry out the pivotal role of leading the department to help the sector progress. Mr Delane was awarded a Public Service Medal in 2007 for outstanding service to the agricultural industries and community of Western Australia.

Mr Delane's main priorities will be repositioning the department as an economic development agency to implement the government's new priority plan for agriculture and food in WA. This is the plan that redefines the role of government in helping build the agriculture and food sector's critical contribution to the state's economy. As the new director general, Mr Delane will now oversee the implementation of the government's plans to support industry development.

I believe this is an excellent appointment, and I look forward to working with Mr Delane as we drive WA agriculture towards a more productive and profitable future.

MULTI-UNIT HOUSING CODE PROVISIONS

Statement by Minister for Planning

MR J.H.D. DAY (Kalamunda — Minister for Planning) [12.18 pm]: I advise the house of proposed new multi-unit housing code provisions to be incorporated into the existing residential design codes, known as the R-codes, applicable in Western Australia. As most people are aware, the R-codes control all forms of residential development, from single houses to multi-unit developments, and are adopted, through reference, in local town planning schemes across Western Australia.

There have been concerns about the perceived failure of the R-codes to effectively deliver satisfactory diversity and choice in housing, particularly in the design of multi-unit and mixed-use developments. The proposed multi-unit housing code will address these concerns and provide guidance and assistance to regulators and industry in the interpretation and application of performance-based criteria and the promotion of multi-unit housing and mixed-use developments.

The proposed changes to the R-codes will introduce separate controls for higher-density housing and multiple-dwelling developments. The proposal intends to have two separate parts to the R-codes—one that applies to single houses and grouped dwellings and one that applies to multiple dwellings, which are multiple dwellings over multiple floors, and the residential component of mixed-use developments.

The R-codes work well in guiding conventional development—in other words, the development of single houses and grouped dwellings—but in their present form they do not recognise the need to provide different types of appropriate housing forms. The new provisions will include new maximum plot ratios, new maximum site coverage, new height controls and new side, rear and boundary setbacks. The parking requirements are also changing and will now acknowledge proximity to public transport, the size of the unit and availability of on-street parking. It is proposed to remove minimum lot size requirements for multiple dwelling developments and to introduce minimum and maximum dwelling size requirements. A new activity centre zone will also be introduced to align with other WA Planning Commission policy initiatives, namely “Directions 2031: Draft Spatial Framework for Perth and Peel” and the activity centre policy.

The changes will encourage higher density and high quality residential development. These reforms are designed to respond to the demands of our growing population while also maximising the utilisation of key transport and social infrastructure. This initiative is based on extensive consultation with industry and local government stakeholders, and the proposal will now be advertised for public submissions.

I commend the Department of Planning officers who have worked on this project and developed it to this stage. Public comment on the proposal is invited from today until Friday, 22 January 2010, and the proposal is available from the PlanningWA website at www.planning.wa.gov.au.

PILBARA REVITALISATION PLAN — PILOT WATER PROJECTS

Statement by Minister for Regional Development

MR B.J. GRYLLES (Central Wheatbelt — Minister for Regional Development) [12.22 pm]: I inform the house of the ongoing work being undertaken by the Liberal-National government on the Pilbara revitalisation plan and report that expressions of interest have been called for pilot water projects and associated works in the Pilbara. Along with the Minister for Water, Dr Graham Jacobs, I recognise the need for careful and sustainable development of water for the growth of the Pilbara region. Earlier this year the state government announced a major new royalties for regions initiative—a \$300 million commitment over four years to enact the Pilbara revitalisation plan. That plan finally recognises the vital role that the region has played in securing Western Australia's economic future.

The call for expressions of interest follows the Pilbara water pre-feasibility study, which identified water-source options and opportunities in the region, including the use of excess water from mining operations, supplementary bore field development and pipeline construction to integrate source with demand. The government is looking for funding proposals for projects to help create secondary economies, including agricultural and silviculture development and Indigenous capacity building within the hinterland. The government is particularly interested in projects that partner with industry, stimulate local economies and maximise Indigenous training, employment and business opportunities.

The government has made \$2.5 million available in grant amounts in three project categories: small grants between \$10 000 and \$50 000, medium-sized grants between \$50 000 and \$250 000, and large-sized grants above \$250 000. It is proposed that the maximum grant will be \$500 000; however, amounts of more than \$500 000 might be considered if a project demonstrates exceptional merit. The Pilbara revitalisation plan is an exciting initiative to modernise and transform the region's communities, with a focus on four key delivery areas of health, energy, water and community development.

The expressions of interest process aims to identify qualified private and public organisations to deliver small or major pilot water projects with a view to further developing these as part of the overall vision for the Pilbara. Expressions of interest close at 2.00 pm on Monday, 7 December 2009, and we look forward to seeing what capacity we can bring to the Pilbara to supply innovative new water projects to help continue to grow the most important region in Australia.

HIGHER EDUCATION AMENDMENT BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Mr R.F. Johnson (Leader of the House)** on behalf of the Minister for Education, and read a first time.

Explanatory memorandum presented by the Leader of the House.

Second Reading

MR R.F. JOHNSON (Hillarys — Leader of the House) [12.25 pm]: I move —

That the bill be now read a second time.

The Higher Education Amendment Bill 2009 amends the Higher Education Act 2004—the act—to implement revised national protocols for higher education approval processes—the protocols. It also includes amendments to the act arising from operational experience since the act commenced some four years ago. The state is a signatory to an intergovernmental agreement to implement the protocols that were originally approved by the Ministerial Council on Education, Employment, Training and Youth Affairs on 31 March 2000.

The protocols are the key element of a national quality assurance framework for Australian higher education. They are designed to ensure that consistent criteria and standards are applied across all states and territories. They provide the framework for regulating the establishment and recognition of Australian universities, the operation of overseas universities in Australia, authorising non-university providers to operate, and accrediting the courses of such providers. The ministerial council approved some revisions to the protocols on 7 July 2006, and some further protocols on 31 October 2007. These revisions were deemed necessary to reflect the experience since 2000 and to deal with emerging challenges. The bill being introduced is required to discharge Western Australia's national obligation to introduce those revisions.

With the significant development of higher education as an exported service, there has been a rapid expansion in the number of Australian institutions offering higher education awards onshore and offshore. The Australian export of education and training services currently earns in excess of \$15 billion, with Western Australia's share being approximately \$1 billion. The strength of the industry is highly reliant on the maintenance of Australia's reputation for quality. The protocols and the associated commonwealth, state and territory legislation are essential elements in the maintenance of quality in higher education. The provisions of this bill maintain and clarify the state's processes in relation to non-university higher education providers and for the consideration of applications for a new university, or for overseas universities to operate in Western Australia.

In summary, the bill has 10 main provisions. Firstly, there is a stronger provision for the protection against fraudulent or negligent representation. Advice from the State Solicitor suggests that certain kinds of fraudulent or negligent representation are not captured under the existing offence provisions of the act. This concern is addressed by clarifying the offence provisions to facilitate proof.

Secondly, a new section provides that a request from an educational institution can be made to the minister to appoint a higher education advisory committee to report to the minister on whether the institution may meet the criteria for establishment as an Australian university. Although the minister will provide this advice to the institution, it is for Parliament to decide whether and in what form an institution will be established either as a

university or as a lesser institution, such as a university college, consistent with the provisions of the protocols. There is also a new provision related to establishing a payment agreement to cover the costs incurred when considering whether an applicant meets the criteria for establishment as an Australian university. Since the request or application may require the state to incur considerable costs, the amending bill enables the minister to require the applicant to enter into a written arrangement between the applicant and the minister for the applicant to pay the reasonable costs and expenses incurred in considering the request or application.

Thirdly, a new section provides that an overseas education institution may apply to the minister for a determination that the institution meets the criteria for recognition in Western Australia as an overseas university. Again, an application for a determination may involve an agreement relating to the payment of costs incurred in considering the application.

Fourthly, the bill introduces a new category of application that enables a non-university provider to apply to become self-accrediting, meaning that some or all of its courses would no longer need to be externally accredited. The bill introduces provisions dealing with applications, standards and conditions for non-university providers seeking self-accrediting authorisation. The minister may grant a self-accrediting authorisation based on criteria and standards and advice from a higher education advisory committee. Self-accrediting authorisation will relate to specified courses within a field or a range of fields of study leading to specified awards. An application for self-accrediting status may involve a payment agreement.

Fifthly, the bill includes a provision in relation to determining the duration of a provider's authorisation to operate in Western Australia and a related transition provision. The provision of a time period for the authorisation of providers, which mirrors the time period for the accreditation of courses, is an essential amendment to the act. Under the proposed amendments, the minister may also make a provider's authorisation subject to conditions to ensure that standards in the authorisation are maintained, that the interests of students are protected, and that the authorisation may be suspended or revoked under certain circumstances.

Sixthly, there is a mutual recognition provision such that a course accredited elsewhere in Australia under corresponding legislation that implements the national protocols will be considered as accredited in Western Australia.

Under a seventh key provision, a ministerial accreditation of a higher education course is to be in force for five years after the day on which the course is registered unless otherwise specified, but the minister may extend the accreditation for a further six months under certain conditions. A transitional provision is made for providers who may need to seek an extension of their accreditation but are within the six-month period specified on the commencement of the amended act. The minister may at any time make a provider's authorisation subject to conditions to ensure that standards in the authorisation are maintained or that the interests of students are protected, subject to natural justice provisions.

An eighth provision of the bill is a new section that requires the minister to make a copy of a higher education advisory committee report available to an applicant and provide the applicant with an opportunity to request a review of the proposed report.

A ninth provision addresses the act's inadequate ministerial investigative powers that have made it extremely difficult for the state to exercise some of the key instruments in the act to establish and maintain standards, including the offence provisions. Ministerial investigative powers similar to those in the recently amended Vocational Education and Training Act 1996 are to be incorporated in the act.

Finally, the bill provides for the inclusion of immunity from tortious liability, which indemnifies officers and other persons performing functions under the act in good faith. Without an indemnity provision, it will be increasingly difficult to attract suitable members to higher education committees. The provision will not relieve the state of liability, which means that a person disadvantaged by the negligent performance of the function under the act has a means of redress.

The bill has been developed following consultation with the commonwealth and all states and territories, as well as staff responsible for the administration of related state acts, including the Education Service Providers (Full Fee Overseas Students) Registration Act 1991 and part 4 of the Vocational Education and Training Act 1996. The act, when amended by the bill, will enable the state to implement the revised protocols in Western Australia. I commend the bill to the house.

Debate adjourned, on motion by **Ms R. Saffioti**.

MINES SAFETY AND INSPECTION AMENDMENT BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Mr W.R. Marmion (Parliamentary Secretary)**, and read a first time.

Explanatory memorandum presented by the parliamentary secretary.

Second Reading

MR W.R. MARMION (Nedlands — Parliamentary Secretary) [12.34 pm]: I move —

That the bill be now read a second time.

The purpose of the bill is to implement a cost-recovery regime through a levy on the mining industry. This will enable the regulator to have the necessary resources to deliver a safety regulatory regime to the mining industry that is on par with world-class standards.

The Mines Safety and Inspection Act 1994—the act—contains the laws relating to the safety of mines and mining operations, and the inspection and regulation of mines, mining operations and plant. In Western Australia the responsibility for administering safety legislation in the mining industry rests with the resources safety division of the Department of Mines and Petroleum.

Western Australia leads the nation in the mining industry. The state produces some 50 mineral commodities from about 300 open-cut and underground mining operations, with the industry employing well over 70 000 people at its recent peak in 2008. Growth and development of Western Australia's mining industry has increased demand for safety regulatory services and stretched the capabilities of the regulator. As industry has expanded, the shortage of skilled people has manifested in greater risk to the inexperienced workers now employed in mining operations across the state. This risk is compounded by increasing production pressures and the need for the mining sector to access deeper and more geologically challenging ore bodies as near-surface deposits are exhausted.

Although the lost time injury frequency rate in mining has fallen over the previous decade and the rate of fatalities has declined to a relatively low plateau over a similar period, recent events indicate that production pressures, a less skilled workforce and other factors may be driving an unacceptable upward trend. The recent number of mining fatalities has focused attention on resources safety regulation in Western Australia, the number of which over the last 12 months is unacceptable in any circumstances. In the most recent review of mining safety, Commissioner Kenner noted that the joint factors of the low inspector to employee ratio, when compared with the other principal mining states of Queensland and New South Wales, and the difficulty of attracting and retaining suitably qualified staff indicate that the present resourcing of the inspectorate “is in need of urgent attention”. As an indicator of the relative lack of inspectorate resources, the ratio of inspectors to mining industry employees was assessed to be one to 550 employees in New South Wales, one to 880 employees in Queensland and one to 1 795 employees in Western Australia.

The Western Australian government has traditionally funded the primary cost of resources safety regulation. However, continued growth of this economically important sector has imposed pressure on the capacity of the safety regulator to maintain services commensurate with the size and technical complexity of the resource sector. This pressure has increased with the need to improve the efficiency and quality of safety regulation.

With the need for government agencies to make use of limited budgetary resources, there is an economic imperative for levying user charges to improve the efficiency with which resource industry services are delivered. User charges will enable the state government to focus on funding the public good or community service obligations aspects of its resource industry safety activities. Therefore, to cover the cost of enhancing Western Australia's safety regulatory services to a best-practice standard, it is proposed that cost recovery be implemented.

Cost recovery and safety regulation is widely accepted. In Queensland, a safety and health levy fee is charged by the Queensland government for safety and health services provided by the state to mining, quarrying and explosives operations across that state. Similarly, a dedicated Mine Safety (Cost Recovery) Act 2005 was passed by the New South Wales Parliament to enable a levy to be raised to enhance the safety functions of its Department of Primary Industries in relation to mining and other operations. Likewise, in an identical safety regulator role, the National Offshore Petroleum Safety Authority operates under a full cost-recovery model, and in Western Australia the electricity and gas safety regulator—Energy Safety—also now operates under a levy system. Implementing cost recovery in Western Australia for safety regulation in the resource industry will therefore mirror the approach adopted for safety regulation of mining operations in other jurisdictions.

A new provision will be inserted into the act to provide for regulation-making powers to impose a levy payable to the state for the cost of administering the act. A head of power is provided in this act authorising the imposition of the levy. The regulations made under this provision will deal with the following: the circumstances in which a levy is to be paid and how the levy will be calculated; when payment of the levy becomes due and how payment is to be made; who may be exempt or partially exempt from the liability to pay the levy and the rights to object to an assessment; and the administration and enforcement of the levy.

The bill introduces a cost-recovery approach that will enable the government to improve support for existing operations and properly resource future projects across the state. Despite the recent economic slowdown, major

resource projects are still in train that will place additional demands on the safety regulator. Additional funding through cost recovery is the only practical way to achieve the desired outcomes and provide industry with the level of service it expects. Improved levels of safety administration and compliance monitoring will result in improved health and safety outcomes for individual workers in the state's mining industry where the hazards can be inherently higher than in most other occupations. I commend the bill to the house.

Debate adjourned, on motion by **Ms R. Saffioti**.

CRIMINAL CODE (ROCK THROWING AND LASER POINTING) AMENDMENT BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley**, and read a first time.

Explanatory memorandum presented by the member.

PRIVATE MEMBERS' BUSINESS, ALL STAGES OF BILLS, GRIEVANCES AND COUNCIL MESSAGES

Standing Orders Suspension — Motion

MR R.F. JOHNSON (Hillarys — Leader of the House) [12.42 pm]: I move —

That for the remainder of 2009, so much of standing orders be suspended as is necessary to enable —

- (a) bills to proceed without delay between the stages;
- (b) messages from the Legislative Council to be taken into consideration on the day on which they are received;
- (c) private members' business to have priority on Wednesdays between 4.00 pm and 6.00 pm; and
- (d) grievances to be suspended.

This motion is in line with motions that have been moved by previous governments over many years—in fact, since the late 1980s. It has become customary for the house to reduce private members' business for the last two or three weeks each year. In past years, it was normal practice for the house to cut off private members' business altogether at the end of each year. A reduction along these lines is, I believe, a more balanced approach. As I said, the motion will reduce private members' business to two hours on Wednesday afternoons for the last three weeks of the year, and it is envisaged that the house will sit to around 10.00 pm on Wednesday evenings for the last three sitting weeks. I am confident that with carriage of this motion, the Speaker may also grant the house a dinner break on Wednesday evenings. The motion also suspends grievances for the last three sitting weeks of this year, to provide additional time to discuss legislation. The motion will allow bills to proceed through this house without delay and for messages from the other place to be considered on the day on which they are received. I commend the motion to the house.

MR M. McGOWAN (Rockingham) [12.43 pm]: I thank the Leader of the House for moving this motion. I indicate that the opposition will not support it, and I will tell the house why. This motion will basically truncate a lot of the proceedings of the house for the remaining sitting weeks of the year. Private members' business will be shorter—it will run for two hours. That is in accordance with past practice, and I agree with that. The motion will also suspend grievances; I do not agree with that. This is different from past practice. In different years, different things have taken place in relation to grievances. As members—particularly government backbenchers—know, grievances are one of the great opportunities for members to raise an issue with a minister and receive a full, well-researched answer to that issue. It is also a great tool for members of the opposition. I think that grievances are actually more effective than question time for getting a proper response from a minister. I think it is something that should not be cut out, but should actually be expanded. I think there should be more opportunity for grievances. If the motion were to reduce the time allocated for each grievance from seven minutes to five minutes, I would not object, if it meant more opportunities for grievances in which ministers are required to answer questions. I have been a minister, and I know what it is like to get grievances. Ministers often do not like them; they particularly do not like grievances from their own backbenchers, because the questions that are asked are often uncomfortable and ones that ministers do not want to have to deal with, but part of the grievance process is that the minister must deal with them. I think we should give members the opportunity to have three or four grievances from either side every week, rather than only two. If that means a small cut in the amount of time each member gets for a grievance, so be it; I think that would be fine. The past practice has been that grievances have in some years been cut out for the remaining week or two weeks, and that some years they have not been cut out. We should retain grievances for the remaining sitting weeks of this year.

Mr R.F. Johnson: I will do a deal with you. If you agree to let this motion pass amended, I will delete the part about grievances.

Mr M. McGOWAN: That is a deal —

Dr J.M. Woollard: Professional sitting hours!

Mr M. McGOWAN: Something else has been thrown into the mix by the member for Alfred Cove! I think the Leader of the House should respond to that also.

Mr R.F. Johnson: I didn't hear what she said.

Dr J.M. Woollard: I said professional sitting hours. We had an opportunity to review the sitting hours of the house. We will have sat late on more than 50 per cent of the Tuesdays we have sat in this house. It is time that we reviewed the sitting hours and made them professional.

Mr R.F. Johnson: We listened to the views of all members, member for Alfred Cove, not just yours.

The SPEAKER: Members, thank you! I have given a call to the member for Rockingham. He is responding at this stage, and I do not think other interjections are necessary.

Mr M. McGOWAN: The Leader of the House provoked that: it was a shocking and abhorrent interjection from the Leader of the House, attacking the member for Alfred Cove for her very reasonable and sensible suggestion!

I am agreeable to the amendment offered by the Leader of the House to reinstate grievances, on the basis that the opposition will support the motion. The government has the numbers to do what it wishes, but I will agree to that offer. I also want to make a couple of other points about what —

Mr R.F. Johnson: Brief points?

Mr M. McGOWAN: I will be brief, but if the Leader of the House interjects on me, I will go longer!

I have a couple of other points to make. This motion will also ensure that bills can proceed through stages without delay. That is commonplace at this time of year. It means that legislation that is ordinarily delayed until another day—for example, the third reading of legislation or the introduction of legislation, which normally has to sit on the table for three weeks—can be dealt with immediately. I know that the government is planning to introduce legislation that it wants to deal with immediately. That is common practice, and it means that the government can pass the legislation it wants to pass by the end of the year.

I will agree to that, even though I find some of the legislation difficult to agree with—for example, the stop-and-search legislation. However, this has been uniform past practice and in any event, the government could force the legislation through if it wanted to. I will accept the deal in relation to grievances, because that is an improvement to the motion. However, I find the stop-and-search legislation abhorrent. I think it is quasi-fascist legislation, and that it is more in tune with Nazi Germany in the 1930s and 1940s. It is the sort of thing that one might read about in William L. Shirer's *The Rise and Fall of the Third Reich*. I note that in a contribution in this chamber last night, a government member even defended, in a manner of speaking, the 1940s leader of Germany. A member of the Liberal Party apparently thought that the security provided by Adolf Hitler was more important than liberty. I found the member for Southern River's comments very enlightening in that respect.

The SPEAKER: I advise the member for Rockingham that he is speaking to the suspension of standing orders; he is not speaking to any other business that might be before this place. I ask him to return to his comments on the suspension of standing orders.

Mr M. McGOWAN: I wanted to also make the point that this legislation is very contentious and we will be proceeding without delay between the remaining stages. I suspect, in the contentious way of dealing with it without delay between the stages, that the government will move the gag. I suspect that the Leader of the House will gag this legislation to get it through the chamber, even though I find that process abhorrent. I think the bill needs to be rejected, but I also think that our amendments need at least proper scrutiny. However, it raises a very interesting question. As I understand it, some members of the National Party are very nervous about this legislation and may want to vote against it, and I understand other members of the house may wish to vote against this legislation.

A question was raised in this chamber some weeks ago about whether the Speaker should vote for the gag. In this context it is important that we put that on the table if the gag is moved. You, Mr Speaker, have indicated that you will provide a ruling on what will happen in that regard, because I understand that the National Party is very nervous about laws that will remove fundamental rights and freedoms from Western Australians that they have enjoyed for as long as anyone can remember. I would like to know in this context what will happen if the gag is moved. I want to defeat this legislation. I want to use the numbers in this chamber and the good sense of members to defeat this legislation, particularly as the government has rejected our amendments.

They are the questions I have about this motion. As I indicated, provided that the government adheres to its promise to allow grievances to remain in place, we will support the motion. If the government does not do that, we will oppose the motion.

Mr R.F. Johnson interjected.

The SPEAKER: Order, Leader of the House!

MS A.J.G. MacTIERNAN (Armadale) [12.52 pm]: I will take this opportunity of discussing standing orders to raise an issue that concerns me—that is, the Parliament sitting on 11 November. I believe that it is very important for members to be able to participate in Remembrance Day ceremonies. Members from outer metropolitan areas and country members are precluded from participating in Remembrance Day events in their communities as a result of Parliament sitting on 11 November. It is an important date in our national calendar, it is an important day for us to remember the sacrifice made by so very many on our behalf, and it is a very serious matter for members of the Returned and Services League of Australia, who officially conduct these services. Having their local members of Parliament at these events adds greatly to the sense of occasion and dignity at those events. It is very sad that many members cannot attend these events, including you, Mr Speaker, and my good friends the members for Collie-Preston and Albany, who would very much like the opportunity to attend these events. I call upon the Leader of the House to consider this matter and to consider a standing order in future that says that Parliament will not sit on this particular day.

Amendment to Motion

On motion by **Mr W.R. Marmion (Parliamentary Secretary)**, resolved —

To delete the words —

; and

(d) grievances to be suspended.

Standing Orders Suspension — Motion, as Amended

DR J.M. WOOLLARD (Alfred Cove) [12.54 pm]: In relation to the motion as amended before the house, I appreciate that I am probably the only member who will be voting against this motion, but it is time that this house seriously looked at the sitting hours of this house.

Several members interjected.

The SPEAKER: Thank you, members! Member for Albany!

Dr J.M. WOOLLARD: Next year I hope that we will have more sitting weeks and that the house will eventually adopt professional sitting hours, rather than have members of this house and staff who work in this Parliament sitting until the early hours of the morning when it is not safe to be returning home.

Question (motion, as amended) put and passed.

CRIMINAL INVESTIGATION AMENDMENT BILL 2009

Second Reading

Resumed from 10 November.

MR J.R. QUIGLEY (Mindarie) [12.55 pm]: I rise to speak against this bill. In doing so, I realise that I attracted a bit of controversy in the media in the lead-up to this debate by referring to the provisions of this bill as suitable for a fascist regime. After I made that comment—as the Leader of the House has pointed out—it was pointed out to me that I was not the shadow spokesperson for this legislation and that my comments should be reserved for the chamber. I now make those comments.

I realise that my friends in the press gallery and elsewhere will now be wondering whether I am going to use weasel words and weasel out of my earlier comment. I will not use weasel words and I will not walk away from my earlier comment. I will at the end of my speech throw a challenge to my friends in the media, who themselves are pillars of the free press and very important pillars of our democracy. Nor will this debate be carried by a Quigley rhetorical flourish. The matters before the chamber are far too weighty and far too important to be demeaned by a Quigley rhetorical flourish, although my description of them as laws suitable for a fascist regime certainly had the effect of galvanising the debate and concentrating people's minds.

When the media rang me last Friday seeking yet a further comment from me, they said that they had spoken to people in the minister's office who had said that this legislation was not fascism and to just think about what the definition of fascism was—that is, a hierarchical, authoritative system of government that represses opposition. The minister's office said that that was a fair definition of fascism but that this legislation was not fascism because when these areas are prescribed, they will be prescribed by regulation, so that the Parliament will still have a function to perform. I said to the reporter who was interviewing me at the time that I could not comment on the record because I was not the opposition spokesperson, but that I knew what the bill would do.

I take members to proposed section 70B of the bill, which provides that the Commissioner of Police, with the approval of the minister, can declare a prescribed area. That proposed section of the bill provides in proposed subsection (1) —

The Commissioner may, with the approval of the Minister, declare an area to be an area where the powers in section 70A may be exercised by a police officer in public places.

Think about that, Mr Speaker and members. The provisions of proposed section 70A provide for search powers that can be activated without there being a suspicion held by the officer exercising the search power. It is said that this will happen only in limited areas, which will be prescribed by regulation. Any Commissioner of Police—I am not having a go at the incumbent of that office or the current Minister for Police; I am addressing the law and the proposed laws of Western Australia—in the future may in the middle of the night ring up the minister of the day and say, “Because I am fearful of violence in Rokeby Road, Subiaco, I want approval for Rokeby Road, Subiaco to be a declared area.” The minister may ask, “Why?” The commissioner may say, “I have telephone-intercept intelligence that I cannot disclose to you, minister.” The minister is likely to say, “Yes”, and the law will be changed in a heartbeat in the middle of the night without anyone in Western Australia knowing that it has changed. Think about the effect of the law that is being changed. The High Court of Australia has described the power of the police to detain us and to take from us our liberty as the most serious power that the state has over a citizen: the power of detention.

The Criminal Investigation Act 2006 provides that if a person is in a prescribed area, a search of that person can be undertaken. It provides also that a person who is the subject of suspicion can be ordered to leave a prescribed area, and the police can use reasonable force to effect that end. In the investigation of any suspects for offences, or in the investigation of any miscreant behaviour, there needs to be some ultimate sanction of force. The Criminal Investigation Act, which codifies the search powers in Western Australia, contains in part 1, section 3, a definition of “basic search” and “strip search”. The Criminal Investigation Act also outlines where the search powers can be used. Section 65 provides in part —

- (2) In the case of a basic search or a strip search, the searcher may do any or all of the following for the purposes of doing the search —
 - (a) stop and detain the person for a reasonable period;
 - (b) search any thing being carried by or under the immediate control of the person;
 - (c) order the person to remove any thing that might injure the searcher when doing the search from any article that the person is wearing;
 - (d) order the person to do anything reasonable to facilitate the exercise by the searcher of any power in this section, or in section 63 or 64, as the case requires.
- (3) In the case of a basic search, the searcher may also photograph part or all of the search while it is being done.
- . . .
- (5) A person who is detained under subsection (2)(a) when he or she is not under arrest is to be taken to be in lawful custody.

The act then goes on in section 66 to deal with how searches must be done.

So, sitting behind the power of a basic search is a provision for the use of force against the citizen. I will not engage the government on its hollow tin-man chant of “law and order”. I do not know what law and order means. It is just a political chant. The member for Southern River has said that he knows what law and order means. He has said that law and order is what we need to impose to stop the slide into fascism, as was the case in Germany during anarchy. My breath was taken away by that comment. I say that because it was the state of Germany that introduced the anarchy; and, having introduced the anarchy, it then brought in laws that were more and more repressive.

Several members interjected.

The SPEAKER: Order, member for Cannington!

Mr J.R. QUIGLEY: I am not surprised that the member for Southern River, being the nephew of a convicted war criminal—Otto Abetz, who was Hitler’s personal envoy to Vichy France—would come into this chamber with a reconstruction of how Nazi Germany ended up as it did. The member for Southern River’s uncle received 14 awards in the eight years between July 1934 and 1942. That included being awarded the position of Honorary Brigadier General in the SS. His final award came at the end of the war, when he was awarded 20 years’ imprisonment for war crimes. The member for Southern River has come into this chamber with a reconstructed view about how we need all these laws to stop us from becoming Nazis. That is absolute poppycock. The real

situation is that the effect of these laws will radically change the relationship between the citizen and the state. As I have said, I do not understand what law and order means. It is just a hollow chant. What I do understand, and what I have learnt in law school and in the practise of the law, is something that the government has never mentioned—the rule of law. We in this chamber should be doing our utmost to protect the rule of law. From the rule of law springs the fountain of freedom and democracy. The rule of law is what my father fought for in the Second World War as RQMS of the 2/2nd Anti-Tank Regiment. What my father fought against in that war was totalitarianism.

This legislation provides that the Commissioner of Police of the day can ring the Minister for Police in the middle of the night, without any document being signed, and without any reasons being given, and ask the minister to give him approval to change the law to declare Rokeby Road, Subiaco, a prescribed area, and to give his officers the power to detain people and to carry out basic searches. That is totalitarianism. If we need any further proof of that, we need only go to proposed section 70B. That provides in subsection (4)—the reconstructionist revisionist from Southern River would not have read this far —

The Commissioner must make a written record of such a declaration and —

- (a) the area to which it applies; and
- (b) the date and time on which it was made; and
- (c) the period for which it will be in force, which must be no more than 2 months; and
- (d) the reasons for making it.

This written record does not need to be made contemporaneously with the making of the order. It can be done subsequently. Subsection (5) provides —

The Commissioner must publish the written report of the declaration in the *Gazette* as soon as is practicable after the declaration is made, —

That all seems to be open and accountable. But it is here that we find the protection for totalitarian law. It goes on to say —

but the validity of the declaration is not affected by a failure to comply with this subsection.

Therefore, even if the declaration does not comply with the law, that does not mean that the declaration is invalid. That is woeful.

The leader of government business in this chamber has said that Labor must change its spokesperson on this legislation. Why did he say that? He said that because he is concerned that the comments that I made earlier, in which I described this law as being fascist, could be perceived by the media as being at odds with what the shadow police spokesperson was saying at the time. Nothing could be further from the truth. The real truth was noted by “Sketch” in last Thursday’s edition of *The West Australian*. The real truth is that this law—which is about civil liberties, and which will change the relationship between the state and its citizens—would ordinarily be the province of the Attorney General of the state of Western Australia. This law was introduced into Western Australia by the previous Attorney General in the Criminal Investigation Act 2006. However, for some mysterious reason, the carriage of this bill in this chamber has been given not to the Attorney General of this state, but to the Minister for Police. All we have heard from the Attorney General on the extreme laws that will be introduced in this bill is silence. The Attorney General has deafened us all with his silence in this chamber. The Attorney General has not come into this chamber and sought to support the draconian provisions in proposed section 70B. Those provisions will allow the Commissioner of Police and the Minister for Police to change the relationship between the citizen and the state, in the dead of night, without one document being signed. Under those provisions, it will not matter if the Commissioner of Police and the Minister for Police have failed to publish the declaration in the *Government Gazette*. It will not matter if they have failed to tell the people. The declaration will be valid anyway, even if the legislation has not been complied with.

The Attorney General has not uttered a breath in support of this law; not a breath. I suggest that the Attorney General for Western Australia does not want to touch this law with a barge pole. That is why Labor was wrong-footed, because, as the government Whip would know, this has all the hallmarks of a Ted “Square” Kilmurray flick pass that was outlawed because it was illegal. The Attorney General flick-passed the legislation across to the Minister for Police because he did not want to sully his reputation by coming into this chamber seeking to justify this extreme, unjustifiable law, which, for the reasons I have already pointed out, amounts to totalitarianism by changing the law in the middle of the night, in a heartbeat, on a nod and a wink—“That’s okay, Commish. You can change the law in Rokeby Road in Subiaco.” Bang—done.

I challenge the Attorney General to come out of his office and come into this chamber to tell the people of Western Australia the legal justification for this. The Attorney General has got too many street smarts for that, because one of his guides and mentors is the former Minister for Police in Sir Charles Court’s government,

Mr Hassell. Mr Hassell got roped in to bringing in an extreme law under section 54B of the Police Act to control the population by saying, "If three or more people are caught talking on a street corner, we can arrest them". That blighted Mr Hassell's career for the rest of time.

[Member's time extended.]

Mr J.R. QUIGLEY: Mr Hassell was then the Leader of the Opposition and sought to become Premier. He sought to make valid criticisms of the then Burke government. Who will ever forget it—on the back of a truck in Fremantle with a hat with some corks hanging around it. He said that the Labor Party was being funded by big business to come back into power. Even when he was saying that, the people of Western Australia would not wear him as their Premier because they had seen Mr Hassell as Mr Extreme on section 54B, and he had forever despoiled himself.

I suggest that the Attorney General will not come into this chamber and speak in support of this bill because he does not want to have his dance card marked so early in the game as totalitarianism. We wait to see what the Attorney General says in support of section 70B(1), (2), (3), (4) and (5).

It is true that section 70A involves the Parliament because it involves regulation. Prescribing Rokeby Road under section 70A is not a middle-of-the-night job like the offence of section 70B, but, rather, section 70A requires the tabling of regulations in Parliament. As the government has pointed out, and as the Premier and the Treasurer have pointed out in relation to the shopping hours debate, they can do that and change the law by, on the last day of parliamentary sitting in this current session, coming in and laying a regulation on the table that changes the whole tourist precinct until a motion of disallowance is passed. No-one will have the opportunity to debate that, as the Premier points out, until February or March next year. In relation to changing the law on this very important matter—the liberty of the citizen—it can be done in the same way. I am not saying that the minister is going to do this, but under this law the minister can come in here, lay the regulation on the table and, on the last sitting day of this Parliament, the law changes between the citizen and the state in any street that he chooses to name. He can come in here and name the metropolitan area, on the last day of Parliament, and every citizen in Perth has that law changed without them knowing. Bang—done. That is why this is offensive. Even though it would remain offensive, it would be less offensive, may I suggest, if the government came in and legislated which areas so that we could debate the areas as a chamber. I would still be voting against the law, but it would be less offensive than proclamation by stealth; which, in a democracy, is totally offensive.

During my speech I have not used weasel words. People in the media, especially the print media, are pillars of our democracy. That was never better exemplified than in the case of Andrew Mallard. The media played a crucial role in that case. I would have gone down. It was seven years ago that I stood in this chamber and said the police were "off" and that Mallard was innocent. It was dogged journalism that saved Andrew Mallard and it may be dogged journalism that saves democracy in Western Australia. It is not by way of rhetorical flourish, it is not by way of me saying this is fascism that will win the day; what is now required is for the Attorney General to justify this bill. I am now exposed because I have made a challenge to the Attorney General to enter this chamber and justify section 70B. As I said, he has deafened us with his silence. The reporters who are reporting my speech will now know that whilst I was not allowed to speak as a spokesperson because I was not the spokesperson before today, as the member for Mindarie I have full, unbridled rein in this chamber to make intellectual and valid criticisms that section 70B is totalitarianism of the most offensive nature.

The second challenge I throw down—it might not be accepted—is that the reporters and the opinion writers, who have heard both sides of the argument as to whether these laws are justified in the form that they are, should now be writing their opinions. Whilst they were waiting with some eagerness to hear what I would say on my feet in the Legislative Assembly today, it is with equal eagerness that I wait to see what their opinions are, knowing that the rationale given for these totalitarian laws were that the laws already in place under part A division 1 of the Criminal Investigation Act 2006, that provided stop-and-search powers upon suspicion, are said by the government never to have failed. The government conceded to journalists that it has got no example of a case having come before the courts where it failed because the initial contact, the police, could not justify their suspicion.

I will tell members about suspicion. My son, Jack, who today is sitting his second-year law exams, has for the past several years, but not now, worked as the door manager of the Library Nightclub—one of the large nightclubs in Northbridge. As the door manager, he was not the muscle who threw people out; he was the person who got to call "this person is not fit to come in". He said, "Dad, the police know the people who are the suspects in there. I can pick them, and the police can pick them, because they are always in Northbridge, these troublemakers, and the police have their suspicions." What the police minister is telling us, and what is implicit in this legislation, is an insult to Western Australia Police. There is no other jurisdiction that has these provisions because in every other jurisdiction it is predicated by the word "suspicion". Those jurisdictions trust that their trained police know whom to suspect and whom to search, and that has never failed in Western Australia. The government is saying in this legislation that it is not confident that the police can pick suspects. I do not buy that.

The government is saying in this legislation that we have a bigger problem than is the case anywhere else in Australia; we have a bigger problem than in Fortitude Valley in Brisbane, in Kings Cross and on the streets of Fitzroy. I do not buy that that is Perth. The government's argument for this legislation is predicated on inducing a state of fear that, without these laws, we are on the slide to anarchy. That is exactly the same argument that the nephew of Otto Abetz, the member for Southern River, argued: that is why Nazi Germany had to have totalitarian laws to stop anarchy. My god, that was all said within 15 metres of the roll of honour —

Several members interjected.

The ACTING SPEAKER: Members! The member for Mindarie has the call.

Mr J.R. QUIGLEY: The member for Southern River, the nephew of Otto Abetz, made these comments —

Point of Order

Mr C.J. BARNETT: It is unparliamentary for the member opposite to use personal accusations like that. We know what he is doing. It is a deliberate attempt. It is unparliamentary. It is probably not against standing orders, but it is clearly unparliamentary.

The ACTING SPEAKER (Ms L.L. Baker): I do not think there is a point of order, Premier. I think we need to return to the debate. I ask the member for Mindarie to please use the member's correct title.

Debate Resumed

Mr J.R. QUIGLEY: I did; I never mentioned his name. In debate, in support of this —

Mr C.J. Barnett: Are you going to give another personal explanation tomorrow for this effort?

Mr J.R. QUIGLEY: In debate members opposite cited Nazi Germany and what happened in Nazi Germany as an —

Several members interjected.

The ACTING SPEAKER: Members! The member for Mindarie has the call. Will members please let him finish.

Mr J.R. QUIGLEY: The member for Southern River cited what happened in Nazi Germany as why we now need these laws. Nazi Germany had to have extreme measures because of the anarchy in Germany. What a load of codswallop!

The commentators are the last stand because the government has the numbers. I have not heard from the Attorney General in support of these laws. This is not a challenge to the commentators, but I invite them to look at the provisions of section 70 and then consider the government's argument and give an opinion, either for or against, of the proposition that I am putting that these provisions are totalitarian, have gone too far and provide for extreme circumstances to happen in the middle of the night without citizens ever knowing that their rights have been so greatly changed between the state and the citizen.

The ACTING SPEAKER: Members, if you are going to speak in the chamber, you need to speak from your own seat and call for an interjection, member for Darling Range.

Mr J.R. QUIGLEY: What will happen to the people who come to Perth from other places and walk down the street? Will there be signs warning them that this is a public search area? What will happen when it occurs in the middle of the night? Will there be red flashing lights to indicate that people are now entering a public search area? I know that a lot of people do not care about this issue, but what I extol is that the first and foremost principle that we must protect in this place is the rule of law, which has a separate legislature that makes the laws, a separate police force that enforces the laws and an independent judiciary that judges between the state and the citizen. For those reasons, these laws are offensive and I am totally opposed to them.

MR P. PAPALIA (Warnbro) [1.24 pm]: In rising to oppose these draconian laws, I respond to and acknowledge the comments made by our lead speaker on this legislation last night when she said that it was unhelpful to raise the spectre of fascism and totalitarianism in relation to this legislation. Although I deeply respect and admire our lead speaker, the member for Girrawheen, I beg to differ. It is my opinion that not only is it helpful to raise totalitarianism and fascism in relation to this law, but also it is essential that we appreciate the nature of the laws that those regimes imposed on the people of the countries in which they were enforced and utilised. I acknowledge and admit up-front that this legislation is not the legislation that threw innocent people into Stalin's gulag. This legislation is not the legislation that threw innocent people into Nazi concentration camps. I acknowledge that.

Mrs L.M. Harvey interjected.

Mr P. PAPALIA: I tell the member for Scarborough that this is the legislation that came before that legislation. This legislation started the roll down the hill. This legislation enabled the legislation that subsequently imposed

fascism on Germany and Stalinism on Russia. It is essential that we consider totalitarian societies when discussing this legislation. Some of my colleagues during the debate last night talked of Hitler's Germany, and so did the member for Southern River; others talked of Stalin's Russia. I do not intend to draw on those particular examples. Instead, I will talk about a personal experience of living under a totalitarian regime that was every bit as oppressive and evil as either of those two regimes.

Many members may be aware that I served in the Iraq war in 2003. That is recorded on the honour roll, and I am proud of it. But it was not my first operational service in Iraq. I served in Iraq in 1992 with the United Nations in a multinational force using explosives to destroy chemical weapons. This was when Iraq had weapons of mass destruction. It had bombs, missiles and rockets which were filled with chemical munitions, such as mustard and sarin nerve agent, and which had been subjected to strikes from the coalition during the war and were left in the desert in extreme temperatures for more than a year. Subsequently, we were called upon to deal with this ordnance. In the course of doing that task, while living inside Saddam Hussein's Iraq when he was in total control for seven months, I had the opportunity to witness a totalitarian police state in action. I had the opportunity to suffer the extreme behaviour of a police force unfettered by the rule of law.

Mr C.J. Barnett: Unfettered! That is ridiculous. Read the legislation.

Mr P. PAPALIA: I am talking about Saddam Hussein's regime.

Mr C.J. Barnett: The parallels you draw are disrespectful.

Mr P. PAPALIA: In 1992, while the Premier was sitting in this place shining his backside, I was in Iraq, and I can tell him about it. In 1992, Saddam Hussein had total control in Iraq. I served six days a week in a place called Al Muthanna, where all the ordnance was moved to after the Gulf War, and we used explosives to destroy that ordnance. There was a hot line beyond which the area was contaminated. It was downwind of where most people worked.

During the course of the seven months I spent there, I found the Iraqis to be a most honourable and friendly people, and Iraq to be perhaps the most westernised of all the Arab nations I had worked in. I went out of my way to engage with some of the young men with whom I was risking my life daily. One of them was a bloke called Sahad. He was an explosive ordnance disposal operator, as was I. It took me months to engage with this guy, even though, every day, we were the only two people who would walk past this hot line, where all the medics, doctors and the defibrillator and emergency evacuation to fly us out to Kuwait if we were contaminated by sarin nerve agent, which could kill us in about 90 seconds if we were exposed to it, were positioned. When I was over the line with him, I tried to engage with him to try to encourage him to loosen up a bit and give me a bit of an insight into how life inside Iraq was at that time under the control of Saddam Hussein. It took me a long, long time, but I eventually elicited from Sahad that prior to the Gulf War he had been training as a fighter pilot in France; this was an intelligent young man. He was very westernised. He was not that great a Muslim because he had enjoyed a drop of red wine whilst he was in France; he loved western women and their company; and he loved Australian television programs.

After many months of conversation, I eventually reached the point whereby I could ask him why it was that a man who had been a trainee fighter pilot prior to the Gulf War and who had returned to his country, and who was intelligent and spoke clearly and articulately in English, was serving as an EOD operator with me in amongst the nerve agent and the mustard agent. The only time he would deign to talk to me about that subject was when we were on the other side of the hot line, dressed in charcoal-impregnated suits, rubber gloves and rubber boots, and wearing gas masks. He knew that the secret police were too afraid to come across that line. It was the only time he knew that was not being surveilled. He told me that the reason he was there was that he was a Shia. He said, "Paul, Saddam Hussein, he is a Sunni." He was so afraid that he spent his entire life watching his back and ensuring that the police, who had unfettered control of that society, did not detect that he may not have been entirely loyal to Saddam Hussein.

I know that government members are all saying to themselves that this is irrelevant to them, and that there is no way that laws such as these could be used in Western Australia to unfairly impinge upon disadvantaged groups or minorities and isolate them and subject them to any negative outcomes. Members opposite will be saying to themselves that there has never been evidence of that, and certainly not in the past 12 months that this government has been in office. Member for Southern River, there is no evidence that this legislation might add to other laws that unfairly impact on the disadvantaged, the minorities or the mentally ill, is there? There is no evidence of that—has the member for Southern River lost his voice? I will fill the member in.

It took six weeks to extract some information from the Attorney General, who has been absent from the chamber during this legislation debate, and who is, I suspect—exactly as the member for Mindarie suggested—intentionally absent from this chamber during this debate because he does not want his fingerprints on this absolute outrage of legislation. He does not want to have himself anywhere near this legislation. But eventually, after six weeks, he tabled, yesterday, a bit of information that the member for Southern River might want to

know. I know that the member for Southern River goes out to Warburton and other places in the desert at Christmas time or whatever and hands out gifts to the poor, disadvantaged Aboriginals. I suggest that perhaps if the member for Southern River wants to see disadvantaged Aboriginals, he should visit some of our state prisons.

As I have been trying to convey for months now, there is a new situation in Western Australia. It has changed. It is true that the Liberal-National government inherited the problem of overcrowding in our prison system. I must admit, shamefully, that during the previous government's office the prison population—the muster of our prisons—escalated by a total of 750 individuals over the course of seven and a half years. I am ashamed of that. But I can tell the member for Southern River that, yesterday, the Attorney General conceded that in the past 12 months the muster of prisons in this state has escalated by 825 people. I dispute that; I think it is closer to 900, but I will accept his number. The muster has gone up by 825, which represents 22 per cent growth. It took the former government eight years to achieve 30 per cent; this government has achieved 22 per cent growth in 12 months. We know that we will be told at the midyear financial review that it will cost at least \$100 million just to accommodate them, by putting dongas in the maximum security prisons and paying for the extra accommodation and all that sort of thing, above and beyond the budget that was delivered in May. Is the member concerned yet? He is probably not.

I will tell members a little more of the information that the Attorney General finally revealed yesterday, after six weeks. Let me tell the member that a significant proportion of the growth in prison population suffers from mental illness. How many does the member think that is? What percentage does the member think suffer from mental illness—noting, of course, that the Department of Corrective Services is notoriously inept and incapable of identifying people with mental illness, and that it has been starved of funds to deal with the problem by the Minister for Mental Health? But aside from that, what percentage does the member think that this government—the wonderful defender of the rights of individuals in Western Australia—has thrown into prison the past 12 months? The answer is that 14.5 per cent of the additional people imprisoned in the past 12 months are flagged as suffering from a psychiatric illness. Beyond that, in answer to another question I asked, two per cent of those people are mentally disabled.

I asked for some more information. Think about this: I am constantly confronted by an Attorney General who says I am “latte light” on law and order. I am confronted by a Minister for Police who has the absolute gall to say I am soft on crime. He says that he is defending the Western Australian people against dangerous criminals. What percentage of the growth in prison population do members think is just for not paying off fines? Any guesses, backbench of the Liberal Party, defenders of the Liberal tradition of Menzies? Any guesses? I will help them out, because they should have been asking these questions of the ministers but I know that they have not been. Of the growth in prison population, 34.3 per cent is for no other reason than that people are too poor to pay their fines.

Mr C.J. Barnett: Or they refuse to pay their fines.

Mr P. PAPALIA: They are too poor to pay their fines!

Mr C.J. Barnett: Or they refuse.

Mr P. PAPALIA: Government members should think about their Liberal tradition and think about what Menzies would be saying about what is happening now. Let us think a little further.

Dr J.M. Woollard: Maybe you failed to look at home detention! Maybe this government will look at home detention!

Mr P. PAPALIA: The member knows where I am coming from on this, and that we share a lot of similar views on this subject, so she should not interject.

How many people who are part of this unparalleled, unprecedented growth in the prison muster does the member think are in prison for what is the common definition of a minor crime—an offence for which the maximum penalty is two years or less? What percentage, member for Morley? Any ideas, member for Geraldton?

Mr I.C. Blayney: What sort of minor crime would you get two years for?

Mr P. PAPALIA: What percentage do members think are in there for a crime for which the maximum penalty is two years or less? I sourced that definition from a number of learned friends of mine who have had a lot of experience in the courts. They said that if I wanted to capture that sort of crime, I should ask this question. I will tell members the percentage because I know that none of them has provided the oversight that their own electorates deserve in relation to this bogus law and order campaign that is being run by this government. The truth is that 56.6 per cent of the growth in prison population since this government took office is for crimes for which the maximum penalty is two years or less.

If that is not enough for members, the member for Southern River might want to pay attention to this: what percentage of the growth do members think is Aboriginal? Have a guess. I will tell members: the percentage

mirrors exactly the outrageously disproportionate percentage of the Aboriginal adult prison population; it is 43 per cent. The national average for Indigenous prisoners is 17 per cent to 19 per cent. In Western Australia Indigenous people comprise 43 per cent of the recent increase. This government, which is the one the member is defending by attacking us for questioning this legislation, has caused an additional 43 per cent of this growth in our prisons. All that should be considered in light of what I said about Iraq. This law adds to other laws that are already impacting in a negative, unfair and disadvantageous manner on the poor, the mentally ill and the Aboriginal people in the state of Western Australia.

Mr F.A. Alban: How many of those are innocent? They are in for two years.

Mr P. PAPALIA: Will the member say that again?

Mr F.A. Alban: How many of these people, whom you want to let out, are in prison incorrectly and are innocent and are there for no reason at all?

Mr P. PAPALIA: The member has suggested that they are all guilty and that they all belong in prison. I suggest that there might be a better, more economic, way of dealing with it, noting that yesterday the independent Inspector of Custodial Services released a report on Wooroloo Prison Farm in which he commented on the entire system. He had a crack at the Labor Party for having grown the size of the prison population by 30 per cent over eight years. Notably, he did not mention anything about the growth rate over the past 12 months under the current government. I do not have a go at him for that, because he must maintain his ability to comment on and maintain a working relationship with the government. That aside, what he said was that the prison system of Western Australia is so gridlocked by overcrowding that prisoners who should be in minimum-security prisons are in high-security prisons. Let me enlighten members. The cost of incarcerating a prisoner in Western Australia varies between about \$60 000 and about \$100 000, depending on the classification of the prison in which a prisoner is incarcerated.

[Member's time extended.]

Mr P. PAPALIA: If prisoners are incarcerated in a higher security prison than they should be in because the prison system is gridlocked, it costs us all more. That is terrible. We have seen it upfront. The Minister for Corrective Services blew his budget by 16 per cent in six months, continuing a fine tradition of financial misadventure and malpractice by the ministers of this government.

Several members interjected.

Mr P. PAPALIA: The Premier is the chief culprit.

Several members interjected.

The ACTING SPEAKER (Ms L.L. Baker): Members! Member for Joondalup, please! The member for Warnbro has the call.

Mr P. PAPALIA: Thank you, Madam Acting Speaker. We know that it costs a lot of money, but it also costs in other ways. The Inspector of Custodial Services identified and confirmed what is common knowledge. Members can find the information by googling the consequences of prison overcrowding, which brings up all the stories from the United States, where, strangely enough, there is a lot of experience of overcrowding. One of the consequences of prison overcrowding is that the environment can be dangerous and threatening for prison officers. I stand by prison officers and defend their right to a safe workplace. This government is creating a dangerous workplace for them.

Mr C.J. Barnett: You failed to invest in prisons. You failed to build accommodation of different levels of security.

Mr P. PAPALIA: The Premier will get his turn. The other major consequence is that gridlock results —

Several members interjected.

Point of Order

Mr T.G. STEPHENS: The Premier is constantly interjecting on a member who is not inviting his interjections. The Premier will have the opportunity to reply when he finds the courage to rise in the debate. He should be called to order by you, Madam Acting Speaker, otherwise he is holding you and this house in contempt.

The ACTING SPEAKER (Ms L.L. Baker): Thank you, member. I was just about to intercede and say something very similar. Premier, please let the member for Warnbro continue, unless he accepts your interjection.

Mr P. PAPALIA: Thank you, Madam Acting Speaker, for your defence, but rest assured that I do not feel in need of it.

Debate Resumed

Several members interjected.

Point of Order

Mr P.B. WATSON: Madam Acting Speaker, you just made a ruling. The Premier is sitting over there saying that you were biased and that you were not doing the same as you did with the member for Southern River. I think he should be called to order.

The ACTING SPEAKER (Ms L.L. Baker): Thank you, member for Albany. I did not understand or hear correctly what the Premier said. I trust that he would not be as inappropriate as to say that. I ask the member for Warnbro to please pick up the debate.

Debate Resumed

Mr P. PAPALIA: The other consequence —

Several members interjected.

Withdrawal of Remark

Mr M. McGOWAN: The Premier just accused the member for Albany of being a liar. I ask that he withdraw that allegation.

Mr C.J. BARNETT: I withdraw. I did not at any stage accuse the Acting Speaker of bias. That was totally incorrect.

Several members interjected.

The ACTING SPEAKER: Thank you, members!

Debate Resumed

Mr P. PAPALIA: The other consequence of prison overcrowding, which will be readily identified and which the independent Inspector of Custodial Services, Professor Morgan, identified yesterday —

Dr M.D. Nahan interjected.

The ACTING SPEAKER: Member for Riverton!

Mr P. PAPALIA: The other consequence, for the benefit of the learned individual the member for Riverton, who can get the report and have a look, is that when a prison system is overcrowded and a gridlock is created, apart from increasing the cost of the system, it restricts the ability of the system to impact positively on people within the system and thereby reduce the rate of recidivism. Therefore, the consequence of this much-trumpeted, tough-on-crime and law-and-order agenda being run by the Premier, and defended by the Minister for Police and even, to his eternal shame, the Attorney General, is that it will cost hundreds of millions of dollars which this government does not have in its budget and which taxpayers will now have to pay. It will also make the situation worse because when those people get out of prison, they will reoffend at a higher rate. Those are the findings of a lot of independent research, including that of our own independent Inspector of Custodial Services.

I will move on from that subject, because it is obviously uncomfortable for the Premier. I want to touch on another subject that the member for Cannington raised last night in a very articulate speech, when he spoke from the heart and referred to his anger at and, I think, a bit of sadness with some of the lines which the government has run, and which have again been run by the Premier here today. He spoke of the willingness of learned individuals, such as the Attorney General and the Premier, and other people, such as the Minister for Police, to engage in name calling, the slinging of taunts and the taking of populist lines, such as those that we on this side are somehow soft on crime.

Mr C.J. Barnett: You are. We all know that.

Mr P. PAPALIA: I am glad the Premier has reaffirmed —

Several members interjected.

The ACTING SPEAKER: Members! The member for Warnbro still has the call.

Mr M.P. Whitely interjected.

The ACTING SPEAKER: Member for Bassendean!

Mr P. PAPALIA: Would the member please just be quiet. I am going to reflect on those taunts, which have again been repeated in the house by the leader of the state and the person who is supposedly the senior statesman of Western Australia. It was a taunt thrown at me and members on my side, suggesting that we are somehow soft on crime; the implication being that we would like to see the breakdown of order in society. He is suggesting that we do not stand for the defence of our constituents from crime. He is suggesting that somehow we do not care about our constituents as much as he does. He is quite willing to engage in that populist and outrageous rhetoric.

In reflecting on this taunt, I was mindful that this morning I attended a Remembrance Day service in Fremantle. I am proud to say that I was representing the Leader of the Opposition. I went to Fremantle and stood with my brother veterans, wearing my medals, and laid a wreath at the memorial on Monument Hill. The member for Fremantle was there, together with a couple of senators and many other dignitaries. I was quite comfortable walking up to and shaking hands with my brother veterans from the Korean War, the Vietnam War, Borneo and other conflicts around the world. I stood with them, because I knew what I had done to earn my medals and to have the right to call myself a veteran.

I advise the Premier, the Attorney General and the absent Minister for Police that before they engage in impugning my character and honour and again taunt me by saying that I am somehow soft on crime, do not stand up for the freedoms of Australia and do not support our society and all the good things in it against threat, they should ask themselves what any of them has done to earn the right to do that to me.

DR J.M. WOOLLARD (Alfred Cove) [1.51 pm]: Thank you, Madam Acting Speaker.

Several members interjected.

Mr T.G. Stephens: You are a scumbag, Premier.

Several members interjected.

The ACTING SPEAKER (Ms L.L. Baker): Members, we have limited time left in this debate. I have given the member for Alfred Cove the call. Please let her take it.

Withdrawal of Remark

Mr R.F. JOHNSON: The member for Pilbara made a very unparliamentary comment in describing the Premier and I ask that he withdraw it and apologise.

The ACTING SPEAKER: I am sorry, I did not hear the member.

Mr R.F. JOHNSON: Madam Acting Speaker, I will tell you what he said. He called the Premier a scumbag. That is totally unparliamentary and he should apologise for it.

The ACTING SPEAKER: Yes. I agree. Member, you need to withdraw.

Mr T.G. STEPHENS: In deference to you, Madam Acting Speaker, I will withdraw.

Debate Resumed

Several members interjected.

The ACTING SPEAKER: Members, we have just been over this territory. Would you please be quiet and let the member for Alfred Cove continue.

Dr J.M. WOOLLARD: Thank you, Madam Acting Speaker. The Minister for Police introduced the Criminal Investigation Amendment Bill 2009 and in his second reading speech he said —

The government is introducing this bill in response to an increasing concern by government, police and the community in relation to the proliferation of weapons and the increasing number of incidences of violence and antisocial behaviour in entertainment precincts.

This bill is not clear because it does not target entertainment precincts only. I hope that the Minister for Police in his reply to the second reading debate will make it clear to the house whether the areas that can be set aside under this bill in which the police will have these increased powers will be one kilometre from a selected area, five kilometres, 50 kilometres or 100 kilometres. At the moment I believe that the whole of Western Australia could be identified.

Mr E.S. Ripper: If you support our amendments, Parliament will have authority over each and every declaration.

Dr J.M. WOOLLARD: I will look at the opposition's amendments and listen to the debate in consideration in detail. However, it is something that the Minister for Police should put on the record.

Mr R.F. Johnson: I will do that.

Dr J.M. WOOLLARD: I thank the minister for arranging the briefing on this bill that was given to members by WA Police and his legislative officers. It was a very comprehensive briefing. As part of the briefing I was shown figures for the past 15 months concerning weapon-related offences, of which there were many. It was interesting to note that they occurred more often at particular times of the day and on certain days of the week. However, in his second reading speech the minister referred to the increasing incidence of violence and antisocial behaviour in entertainment precincts. The statistics I was shown at the briefing were for the past 15 months. It would be useful to go back further —

Dr M.D. Nahan: I have them for 10 years.

Dr J.M. WOOLLARD: The member has the statistics for the past 10 years. I was not given the statistics for the past 10 years. Therefore, I was unable to ascertain to what degree violence and the use of weapons has escalated in that time.

I support government interventions that result in a safer community. However, I have some reservations with aspects of this bill. I know that amendments will be put on the table and many of them will actually improve the bill. The bill needs to be improved in terms of both police protection and accountability and community protection in relation to these new powers.

The ACTING SPEAKER: Members, can you please keep the background noise down?

Dr J.M. WOOLLARD: I am concerned that the bill proposes to remove the requirement of reasonable suspicion. I believe that Western Australia will be the only state in Australia that does not have reasonable suspicion as a requirement. I will come to the issue—probably after question time now—that problems arose because reasonable suspicion was not a provision in the terrorism legislation that was introduced in the United Kingdom in 2000. There have been several changes to that legislation because “reasonable suspicion” was not inserted in the original legislation and, as a consequence, the UK experienced problems.

Mr M.P. Murray: Member, do you realise that under this legislation the kids in the public gallery could be pulled up and searched?

Dr J.M. WOOLLARD: Yes, I am concerned that this bill is taking away the requirement of reasonable suspicion.

I will refer to some case law later. I asked the police for examples of cases in which a lack of reasonable suspicion was used by the courts to not proceed with a case. I have not been given those facts, but I have found some cases that were allowed by courts to proceed on the grounds of public policy, even though the police were found not to have had reasonable suspicion. Again, because of the case law that exists there are concerns about the powers that this bill will give to the police and the effect that will have on the community.

In general terms, this bill will allow police officers to stop and search a person or vehicle without having to prove that they have a reasonable suspicion that it is necessary. As I said previously, not having to prove reasonable suspicion reverses a fundamental principle in that no suspicion of wrongdoing is required. We will be the only state in Australia in which the police are able to stop and search people without having to prove reasonable suspicion.

During the debate last night members referred to the Convention on Civil and Political Rights. Article 17 of that convention states —

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence —

Debate interrupted, pursuant to standing orders.

[Continued on page 8827.]

QUESTIONS WITHOUT NOTICE

DAVID CAPORN — FESA APPOINTMENT — COMMISSIONER FOR PUBLIC SECTOR STANDARDS' REPORT

859. Mr E.S. RIPPER to the Premier:

I refer to the revelations today that the independent Commissioner for Public Sector Standards, Ruth Shean, was harassed, bullied and threatened as a result of her attempts to expose nepotism and patronage within the Fire and Emergency Services Authority.

- (1) Does the Premier condone the behaviour of senior public servants and their legal advisers in this case?
- (2) Did he do anything to protect the independence of the commissioner in this matter?
- (3) Does the Premier accept that the appointment of David Caporn brings the process of senior appointments in the public sector into disrepute and undermines confidence in the senior executive of FESA?
- (4) Will the Premier inquire into and report to the house today exactly how much FESA spent on its legal campaign against the independent Commissioner for Public Sector Standards?

Mr C.J. BARNETT replied:

Let me say from the outset that I think it was unfortunate that Mr Caporn was appointed to FESA. I have no doubt about his competency to do the job, but given his background and history, it was an inappropriate

appointment. It was looked at by the Commissioner for Public Sector Standards. She pointed to some failings in the way in which that assessment took place.

(1)-(4) In response to the questions, I am disappointed that FESA should seek private legal advice on a matter that was properly dealt with within the public sector. If the reforms that we are proposing are put in place, it would be handled by the Public Sector Commissioner. That is where it should lie. It was not an appropriate process of appointment and it was not appropriate —

Mr E.S. Ripper: Why didn't you intervene?

Mr C.J. BARNETT: I do not intervene as Premier directly in matters within the public sector. I understand that the Labor Party is supportive of our attempts to have the head of the public service be a public servant—that being Malcolm Wauchope, whom we appointed as Public Sector Commissioner. It is the intention of this government that the role of the Commissioner for Public Sector Standards, hopefully with parliamentary approval, including the statutory reporting role of the Parliament, will be rolled into the position of the Public Sector Commissioner so for the first time in many years we will have a clear, independent head of the Western Australian public service to deal with such issues.

DAVID CAPORN — FESA APPOINTMENT — COMMISSIONER FOR
PUBLIC SECTOR STANDARDS' REPORT

860. Mr E.S. RIPPER to the Premier:

I ask a supplementary question: why is it okay for the Premier's office to interfere in the appointments process when he wants to hire someone such as Peter Conran and not okay for the Premier or his office to intervene when FESA is making a completely inappropriate appointment?

Mr C.J. BARNETT replied:

The implication of that question is that the appointment of Peter Conran as head of the Department of the Premier and Cabinet was somehow inappropriate.

Mr E.S. Ripper: He was your chief of staff.

Mr C.J. BARNETT: I will answer the question. The Leader of the Opposition raised the issue, there was a parliamentary investigation and all sorts of things were done. What was found? The process was totally appropriate and conducted properly, as it should be and as it was.

A lot of members in this house are new. I could go back into the history of the former government but I will not waste the time of the house doing that. Some of the appointments that Labor made—stacking people into the public service, employing friends and mates in departments and offices of government—were absolutely outrageous.

Mr E.S. Ripper: Answer the question.

Mr C.J. BARNETT: I have answered the question. What people see is an ethical, proper government that respects the public service and respects the independence of the public service.

EFTPOS MACHINE SKIMMING — PREVENTIVE LEGISLATION

861. Mr M.W. SUTHERLAND to the Attorney General:

I refer to the recent widespread high-profile skimming operation conducted in various outlets of a fast-food franchise, and to the Attorney's recent announcement of this government's intent to deal with and deter this kind of serious crime. Can the Attorney update the house on the government's progress on this important initiative?

Mr C.C. PORTER replied:

I thank the member for his question. It is a very important issue. I thank him for his continuing interest in it. The information that we have received from the Western Australia Police with respect to the McDonald's scam, if I can put it that way, is that it is a type of identity crime that we have not seen in this jurisdiction, certainly not to the scale that has been witnessed with McDonald's. It appears that a chip has been inserted into EFTPOS machines. That has allowed for the transmission of the electronic information that pertains to someone's identity such that somewhere in the world, maybe not even in this jurisdiction, individuals have been able to hack into private bank accounts and take money from them. That is an offence—simply the offence of stealing.

One of the matters that have come to light in other jurisdictions is the existence of legislation to have a precursor offence to ensure that the type of equipment that allows this to occur is prohibited; that is, that it is an offence to possess the equipment that allows these sorts of offences to happen. No doubt there will be some discussion tonight of the member for Mindarie's second attempt to try to prohibit that type of equipment. What is very interesting about this situation with respect to the member for Mindarie's legislation—our legislation will be

introduced very shortly and it will cover all the possibilities—is that it prohibits equipment that would allow someone to make identity information but not transmit it. The legislation is based on South Australian legislation that was enacted in 2003, as that was the first jurisdiction to have any sort of legislative response. Frankly, it is already out of date in terms of the criminality that we are experiencing. If this house were to pass legislation that prohibited the possession of equipment used to make identification information —

Ms M.M. Quirk: It is better than nothing.

Mr C.C. PORTER: It is actually not much better than nothing. All the money stolen from accounts of Western Australians through this McDonald's scam would not be covered by prohibiting the possession of the equipment that was used to allow that to occur. The opposition has brought a bill to this house that prohibits the possession of equipment used to make identification information, but, frankly, it is so 2003. What happened there was that individuals were using cameras and skimming devices over ATMs to make credit cards. The legislation that the opposition has brought forward will certainly prohibit the possession of equipment that allows that to occur, as ours will, but ours will go a step further to ensure that the type of equipment used in the McDonald's scam, which transmits the information without creating the identification information, would also be prohibited. Very shortly members will see comprehensive legislation brought in, not long after the first year of this government's time in office, keeping in mind that South Australia had legislation in place in 2003. Whilst the government is bringing its legislation in after a year, five years since the first jurisdiction legislated, absolutely nothing whatsoever occurred while the Labor Party was in government. Very shortly members will see comprehensive legislation to deal with this issue.

SCHOOL SUPPORT WORKERS — WAGE CLAIM CAMPAIGN — PAY DOCKED

862. Mr E.S. RIPPER to the Premier:

I would like to acknowledge those representatives of workers in the gallery who joined more than 1 000 workers at a protest rally today. I note that this week many education assistants, gardeners and cleaners will have their pay docked by up to 90 per cent for protesting against the government's miserable 2.5 per cent pay increase offer.

- (1) Why is the Premier taking such mean-spirited action and docking the pay of some of the state's most low-paid workers?
- (2) Is it acceptable to the Premier that special needs education assistants who earn \$760 a week will this week be sent home with just \$76 in their pay packets to support their families?
- (3) Will the Premier now accept the advice of the member for Riverton, who has advocated for a more generous pay increase of 4.4 per cent?

Mr C.J. BARNETT replied:

- (1)-(3) Education assistants, who do a variety of tasks around our schools, particularly caring for children with disabilities, do a great job. It is vital to give those children some opportunity to succeed through school. Education assistants are a great source of support for parents. I recognise them and thank them for the work they do. I also recognise that they are relatively low-paid in terms of salaries within the public sector. In my years as a member of Parliament, I have visited numerous special education schools. I have seen the work they do, and I have seen the health conditions of many of the children. It is an incredibly demanding role. I met a large group of those employees outside the Governor Stirling Tower, and I spoke for some time to a number of them. There were two issues in my mind, as I saw it. The first is the issue that the Leader of the Opposition has raised. A number of people, mainly women, made the point to me that they had refused to work for a period of time and their salaries had been docked. They said to me that their understanding was that their salary had been stopped. In other words, if they stopped work for an hour, it was not a matter of an hour being docked; the salary had actually been somehow put on hold. I promised them that I would undertake to look at that. That did not seem to me to be a reasonable situation if it was true. My office has followed up with the Minister for Commerce and the Department of Education in the past hour to make sure that that is not the case. I would not want anyone to think that they will be deprived of their weekly salary if they stop work for an hour, or whatever it might be. Salaries may be docked, but they will not be stopped.

Mr P.B. Watson interjected.

The SPEAKER: Order! Member for Albany!

Mr C.J. BARNETT: No-one can cope with the member for Albany.

The second issue is the wage offer. This government has a policy of wage moderation. I recognise that, and I also recognise that there have been some significant increases in the cost of living, not the least of which is electricity charges.

Several members interjected.

The SPEAKER: I think all of us in this place are interested in the answer, because I would be surprised if any of us were not aware of the issues. I would like to hear the answer without interruption.

Mr C.J. BARNETT: I recognise that an offer of two and a half per cent is a small increase for people already on low wages. I urged the people to whom I spoke to accept that, and we would continue to discuss with them, in good faith, their salary and conditions of employment.

Mr M.P. Murray: You are absolutely joking!

The SPEAKER: Member for Collie-Preston, I said that I wanted to hear the rest of the answer without interference or interjection. I call you formally for the first time.

Mr C.J. BARNETT: I recognise that that is a small pay increase.

Mrs M.H. Roberts interjected.

The SPEAKER: I would like question time to be able to run its full length today. I formally call the member for Midland for the first time.

Mr C.J. BARNETT: The interjection from the member for Midland makes a fair point. People in senior levels of the public service and chief executive officers of statutory trading organisations have received unacceptably high increases. The Treasurer and Minister for Commerce has commented on that, and I have commented on it. Almost without exception those increases result from contracts, incentives and bonuses put in place by the Labor government. They are existing contracts, and I agree with the member for Midland that they are totally inappropriate when we consider the salaries of a group of workers such as education assistants.

I will conclude by repeating that the government has taken measures to reassure those employees that while they may see some docking of their salaries, their salaries will not be stopped, and I hope that they can accept this initial modest offer and that we can sit down and discuss the issue. I have had long experience as a minister, and now as Premier, in negotiating public sector wages, and I will stand on my record for being fair.

SCHOOL SUPPORT WORKERS — WAGE CLAIM CAMPAIGN — PAY DOCKED

863. Mr E.S. RIPPER to the Premier:

I have a supplementary question. Am I to understand the Premier's comments to mean that he has intervened to overturn the unfair wages policy of his Treasurer, and that he will now negotiate an acceptable and fair wage increase for this group of vital but very low-paid workers?

Mr C.J. BARNETT replied:

I have not in any way interfered or intervened in the wages policy of the government. What I have done is what I promised to the employees that I met a couple of hours ago, which was that I would ensure that no-one had their salaries stopped.

EYE SURGERY AT PUBLIC HOSPITALS

864. Dr M.D. NAHAN to the Minister for Health:

A report in *The West Australian* last Friday stated —

Thousand of patients needing sight-saving eye surgery face a fresh blow with the State Government poised to slash the fees it pays doctors for cataract removals at some public hospitals.

Can the minister advise the house whether this report is true?

Dr K.D. HAMES replied:

I was somewhat surprised to read this article in *The West Australian*. I am pleased to say that it came from Andrew Tillett, a Canberra reporter, and not from one of our local reporters, who I am sure would not have put an article like this in a paper, given that, firstly, it is totally untrue for a start and that, secondly, nobody even asked us whether it was correct. The story states that thousands of patients needing eye surgery face a fresh blow with the state government poised to slash the fees it pays for cataract removals in some public hospitals. That is absolutely and totally untrue. We are not slashing or even cutting the fees that we pay for cataract surgery in public hospitals. As this house will be aware, the federal government is slashing the Medicare fee for cataract surgery by almost half. I totally oppose that move. I am pleased to say that not only do I oppose it, but the federal opposition and the minor parties have opposed the measure and blocked it in the Senate. The federal Minister for Health is going back with another fee that is slightly higher, but is still a significant reduction, and my view is that that should be opposed as well.

If the eye specialists continue to charge their current fees for cataract surgery, many of the patients having surgery in the private sector will have to pay huge amounts out of their own pockets—in the order of \$300—for that sight-saving surgery. Unfortunately, this will put huge pressure on the state system, where we maintain the same level of fees, when people come into the public system and do not have to pay at all. There will be an enormous movement of patients from the private sector to the public sector. Currently, more than half the cataract surgery in Western Australia is done privately. We all know that Western Australians value enormously their private insurance. More than half of Western Australians have private insurance, and that saves a huge amount of cost to the taxpayers and the government. It is very interesting to see that the commonwealth looks as though it will persist with the cut, which will in essence move a significant cost from the commonwealth government to the state government.

The article goes on to say that the fees are linked to the Medicare fee, and that will also be halved from 1 December. There is an association between those fees—they are similar—but they are in no way linked. I say again that there will be no change to the fees for cataract surgery in public hospitals in Western Australia.

FIONA STANLEY HOSPITAL — MAJOR TRAUMA CENTRE

865. Mr R.H. COOK to the Minister for Health:

I refer to recent statements about the new Fiona Stanley Hospital that trauma services will simply be included as part of the range of services at the hospital. Can the minister confirm that the Fiona Stanley Hospital will be the major trauma centre for Western Australia as initially planned and promised, or has its proposed status now been downgraded?

Dr K.D. HAMES replied:

As members may know, under the former government the trauma centre at Royal Perth Hospital was significantly extended and upgraded and given the title of State Trauma Centre by the former government in the last year of its existence. We made a commitment that Royal Perth Hospital would remain as a major trauma centre in this state. The commitment was made by the previous government that there would be only one major trauma centre in this state, and it would be located at Fiona Stanley Hospital.

Mr R.H. Cook interjected.

Dr K.D. HAMES: Is what I said incorrect? Is the member questioning what I said? The previous government stated that Fiona Stanley Hospital would be the major trauma centre for the state. It would transfer across with the closure of Royal Perth Hospital as a tertiary hospital. We have committed to retain Royal Perth Hospital as a tertiary hospital, and that is very strongly supported by people in Western Australia, particularly by the member for Mount Lawley and the member for Morley.

Mr C.J. Barnett: And the member for Perth.

Dr K.D. HAMES: Yes, probably the member for Perth also. It is very strongly supported by people in this state, so we are retaining it. The issue is which will become the major trauma centre. When we look at the studies of projected population growth in this state, we see that it is estimated that by 2014 we will need two major trauma centres in this state, not one. The way it has been arranged is that, from the very start, those two major trauma centres will be Fiona Stanley Hospital and Royal Perth Hospital. Therefore, we will have two major trauma centres. We got into an argument about which would be the major trauma centre. My view is that with time and with the facilities that will be provided, Fiona Stanley Hospital, by dint of the number of patients who will go there and the quality of the staff, will eventually be regarded as the premier trauma centre. But, for now, I am not saying which is B or which is A. We will have two major trauma centres in this state, and they will be Royal Perth Hospital and Fiona Stanley Hospital. Sir Charles Gairdner Hospital will continue to deal with metropolitan trauma.

FIONA STANLEY HOSPITAL — MAJOR TRAUMA CENTRE

866. Mr R.H. COOK to the Minister for Health:

I have a supplementary question. Does this not undermine the prospect of Fiona Stanley Hospital being the flagship hospital for Western Australia?

Dr K.D. HAMES replied:

Not in the least. I do not see how the Deputy Leader of the Opposition can suggest for one second that that will be the case. Fiona Stanley Hospital will be a major new hospital. As members know, it will have more than 640 beds. We also have the funding —

Mr E.S. Ripper interjected.

Dr K.D. HAMES: The alternative was that that money went to pay debt. The former government had X-million dollars worth of debt. That money could have been put towards paying off the debt but, instead, it was put into a

separate piggy bank. In fact, it was not even taken out and put into a separate piggy bank, was it? It was still there; it was just earmarked. There was no separate amount of money, and the Leader of the Opposition knows it, because I asked him about it.

Fiona Stanley Hospital will be the flagship new hospital in this state. We have added, through the very kind contribution of the commonwealth government, a replacement for Shenton Park hospital, at a cost of about \$250 million. In fact, the former Minister for Health was very complimentary about that. He said that we had filled in the last pieces of the jigsaw puzzle by adding in the Midland hospital and the replacement for Shenton Park hospital. I acknowledge the work done by the former government in putting in the funding and the initial plans for those hospitals. Of course, the reality is that in the same way that Labor, when it came into government, took over some significant infrastructure projects that we had put in place, we are doing that. In fact, I made that comment when in opposition. Members opposite think that they did all these things. The reality is that we are doing them, we will be opening them, and we will take pleasure in doing that.

WEAPONS — CONFISCATION LEGISLATION

867. Mr A. KRSTICEVIC to the Minister for Police:

I am aware that since June of this year, 85 weapons have been seized by police off the streets of Northbridge and the central business district. I am sure we would all agree that this is an alarming and unacceptable figure. I am proud to be part of a government that is committed to getting weapons off our streets through our strong approach to law and order. Can the minister please advise the house of the government's new, tough approach on weapons?

Mr R.F. JOHNSON replied:

I thank the member for the question.

Ms M.M. Quirk interjected.

The SPEAKER: There seem to be people in this place who have an entirely different agenda at question time. Member for Girrawheen, I formally call you for the first time, and also the member for Cannington.

Mr R.F. JOHNSON: The member is quite right. This morning I did a press conference at Curtin House where tables of very offensive and very dangerous weapons were on display. They ranged from handguns to rifles and shotguns. There were machetes, axes and all sorts of very dangerous-looking weapons. Since June, 85 weapons have been seized from individuals on the streets of Northbridge and the CBD. That is why this government is bringing in two new tough laws. One is the weapons bill and the other is the stop-and-search legislation.

I must say that I get a bit confused, Mr Speaker, sometimes; I really do. The opposition confuses me. I took a short holiday, and I was led to believe that the member for Mindarie was the new shadow police spokesman. Then I was told no, he is not, because the Leader of the Opposition had to have very stern words with him, and that it is actually the member for Girrawheen, who I think is much more competent. This morning I have been told that it may have changed again and that there may have been another reshuffle, because we heard the member for Armadale, the hopeful candidate for federal Parliament, speaking about police issues.

Point of Order

Mr M. McGOWAN: I have a point of order on the grounds of relevance. The question was quite clearly about weapons that were seized, including knives and so forth. The minister is digressing into issues that are well outside the scope of the question.

The SPEAKER: I take your point of order, member for Rockingham. I am sure the minister will return to deal with the question.

Questions without Notice Resumed

Mr R.F. JOHNSON: Certainly, Mr Speaker, and I do not canvass your ruling at all. However, can I make it quite clear that the question was about weapons that have been seized, and the answer is about comments that were made on the radio this morning by the member for Armadale regarding weapons and the stop-and-search laws. She just alarmed people. She said that police are going to ram people up against a wall, and take their jackets and their shoes off. They were absolutely horrific, frightening comments to make, and they were absolutely untrue. This government wants these weapons off the streets. There have been 85 weapons seized since June, and 10 weapons have been seized in the past 10 days—that is one a day coming from the streets of Northbridge and the CBD. These weapons were taken from people who were either acting in an antisocial way—that can cover a range of things—or actually committing a criminal offence such as mugging and trying to rob people in the streets. They are the weapons that have been taken under the law, because these people were committing criminal offences. But that is only a small number compared with the number of weapons that other people are walking around Northbridge with every day and every night of the week. If members opposite do not believe that, they must believe in fairies.

I will be bringing into the chamber later today just two or three weapons from those that are on display because I want members to see the types of weapons that people are carrying in Northbridge and the CBD. I will bring in only two or three, because I think any more than that would be a stunt, and I am not looking to do a stunt. However, I want people to see —

Several members interjected.

Mr R.F. JOHNSON: I can with the Speaker's permission.

Mr M. McGowan: It's inappropriate behaviour.

Mr R.F. JOHNSON: Members of the Labor Party have done it.

Mr M. McGowan: Yes, but you're dangerous.

Mr R.F. JOHNSON: Yes, I am dangerous, my friend, because I am going to get laws through this Parliament that are going —

Mr M. McGowan: You are threatening the liberties of Western Australian people.

Mr R.F. JOHNSON: What a load of rubbish. Listen to the talkback, my friend.

We will not resile from our duty as a government to try to ensure the safety of Western Australians—the safety of families and decent people who want to go to Northbridge and the CBD for a night's entertainment without being afraid that somebody might come up to them with a knife or another offensive weapon. Let me assure the house that there are handguns out there, and those that were on the table this morning had been taken from people. We will not resile for one second from our duty to try to protect the safety and the lives of Western Australians.

MEMBERS' ALLOWANCES AND ENTITLEMENTS — MR ROBERT COCK

868. Mr M. McGOWAN to the Premier:

I refer to the comments the Premier's made to Parliament on 21 October this year relating to members' allowances and entitlements.

- (1) What steps has the Premier taken since announcing his plans to appoint Mr Robert Cock, the former Director of Public Prosecutions, as the Premier's special counsel to assist the Premier with an investigation of the various allowances and entitlements provided to ministers and members of Parliament?
- (2) Is it the case that the Premier has prepared the terms of reference for this investigation?
- (3) If so, will the Premier today release the terms of reference for this investigation, which was announced in October; and, if not, why not?
- (4) When did the Premier meet with Mr Robert Cock to discuss the details of this proposed investigation, and what was the outcome of the discussion?

Mr C.J. BARNETT replied:

- (1)-(4) The member for Rockingham raises the issue of the entitlements—the salaries and conditions—of members of Parliament. There is quite a degree of disquiet in the community about what they would see as perhaps outdated, unnecessary or superfluous entitlements, but probably there is concern most of all about the transparency of the various entitlements. I, as with any other member of Parliament, share that concern. I am concerned also that it is an unnecessarily complex set of arrangements. Members of Parliament in some areas are accountable to the Parliament, in other areas they are accountable to the Department of the Premier and Cabinet, in other areas they are accountable to the Premier, and in yet other areas they are accountable to the Salaries and Allowances Tribunal. That formula is bound to lead to mistakes and will raise, quite legitimately, concerns in the public arena.

Mr E.S. Ripper: It is too tough for the Treasurer.

Mr C.J. BARNETT: It is easy to point the bone. I suggest to members that they should not start doing that because that would be a race to the bottom and it would end up in tears for a lot of members opposite.

Mr M. McGowan: Was that a threat?

Mr C.J. BARNETT: No; I am just telling members. The implication of the question was that there is to be an investigation. There will not be an investigation at all. What I have said is that there are no terms of reference and that there will not be any terms of reference. I have already said that this is a summer job; I am not dropping other matters that I am involved in or redirecting the efforts of senior public servants for this. Mr Robert Cock, QC, is special counsel for the government. I have not sat down with him and talked specifically about this issue,

but he is aware of it and has been doing preparatory work by looking at some of the conditions. I will deal also with the head of the Department of the Premier and Cabinet and the Public Sector Commissioner and I intend shortly to meet with the chairman of the Salaries and Allowances Tribunal. I want to introduce a sense of fairness, some modern standards and transparency to the salaries and conditions and entitlements of members of Parliament. In due course I will be talking with the Leader of the Opposition, if he is interested, and other members of Parliament. I intend to seek the advice of former members of Parliament. I am yet to speak to the Leader of the Opposition about this and I am not suggesting that it will be a representative of the opposition. If I can, I want to draw on a former experienced Liberal and a Labor member of Parliament.

Mr P.B. Watson interjected.

Mr C.J. BARNETT: No. They will be unpaid people with long-term parliamentary experience. They will simply provide me with their advice. This is not Colin Barnett's —

Mr P.B. Watson interjected.

Mr C.J. BARNETT: I might as well just sit down. This is pointless.

The SPEAKER: Members!

Mr C.J. BARNETT: This is not going to be Colin Barnett's view of what the entitlements should be; it is simply trying to modernise them and to make them accountable and acceptable. That is long overdue and I intend, hopefully with the cooperation of all members of both houses, to progressively modernise and make transparent those entitlements. I will give members one example. I have had this view for a long time. There is a lot of discussion about the imprest account. I have always thought that there was a lack of accountability regarding the imprest account. Although members might think that will mean restrictions—it might do—from a member of Parliament's point of view, it might be regarded as a positive that an imprest account can be used for travel but that it cannot be used to pay for conference fees. I happen to think that conferences often provide far more value than does travelling around the world. One of the suggestions I will make—I will not impose it—is that the imprest account can be used to pay conference fees for members of Parliament.

Mr P.B. Watson: Are you on the old super scheme?

Mr C.J. BARNETT: I will not talk to the member for Albany. I want the members' entitlements system to be modern, accountable and transparent.

Several members interjected.

The SPEAKER: Members! I have given the call to the member for Kingsley; I have not given it to anyone else in this place.

STATE BUDGET — AUSTRALIAN DOLLAR, EXCHANGE RATE

869. Ms A.R. MITCHELL to the Treasurer:

My question is to the Treasurer, who was very recently referred to, and will now continue be to be referred to, as the world's greatest Treasurer! The exchange rate has been at over 90c for the past month. Can the Treasurer please outline to the house the impact that will have on the state's budget if this continues as we seek to maintain a budget surplus?

Mr T.R. BUSWELL replied:

I thank the member for the question. If the exchange rate stays where it is and continues to grow, I would hate to see the impact it will have on my hairline; my hair has already turned grey and is heading to white!

The exchange rate is one of the volatile factors that we must deal with when framing and managing the state's budget. Despite the Premier's high international standing, unfortunately it is a factor that is beyond the capacity of the state government to control, and when the rate moves, it has a significant impact on our fiscal capacity. To refresh the memory of members, when the budget was handed down in May, the assumed exchange rate based on the six-week floating average was 68.5c. Based on that, we forecast a budget surplus of \$409 million. This morning, as I understand it—not that I trade on the exchange markets—the exchange rate went to 93c. There are no indications from the market that it will be heading south any time soon. That is good news for people who want to travel overseas. I can see the member for Perth becoming visible—I will rephrase that—shifting anxiously in his seat at the prospect, but it is bad news for the state's finances. Members may be interested to know that we did some numbers on an assumed rate of 85.5c. At 85.5c, that movement in the exchange rate has cost us \$1.5 billion. That is \$1.5 billion less income in our forward estimates over the next four years. If it sits at or near that figure for some time, it will easily go to \$2 billion. As we look to the midyear review and to scoping next year's budget, the revenue will be at least \$2 billion less because of the exchange rates. On top that, there has been a downward movement in the price of iron ore. At the time of the budget, we anticipated a 30 per cent

reduction in the contract price of iron ore, and it has been reduced by 37 per cent. That puts a \$745 million hole in the finances. The result is that the surplus is under pressure.

The interesting thing is that at the same time some very positive news about the broader economic performance of Western Australia is beginning to emerge. We are seeing significant investment projects getting off the ground and a return to positive sentiment. We have, I think, a very positive potential outlook for the Western Australian economy. I do not believe that this is a finger-crossing exercise, member for Warnbro. We are seeing a return to positive territory of the state's finances. However, we must avoid something that I call "Gorgonitis". Gorgonitis means that we have to avoid assuming that because there are some good things happening in government that we can sit back and assume that more good things will happen. From the government's point of view, we have to redouble our efforts to get off the ground the major projects to which the Premier often refers. We have to redouble our efforts to improve the approvals processes. The Premier has to work harder—lift yourself, I say; if I dare do so in this place! We have to do it.

Mr E.S. Ripper: This is a speech for cabinet, not Parliament.

Mr T.R. BUSWELL: I am simply updating the Leader of the Opposition on the position. It is a difficult situation because with improved economic conditions comes increased demand for economic infrastructure and for social infrastructure at a time when our fiscal capacity is reducing. That is why the state government will continue to focus on reining in the rate of growth of expenses. At the moment the rate is too high. The underlying rate is 9.9 per cent.

Mr E.S. Ripper: The member for Victoria Park will be happy to take over.

Mr T.R. BUSWELL: The problem with the member for Victoria Park—I wish him well regarding the reason for his absence this week—and the problem for the opposition is that they are a bit like two heads of the same beast. Every second day the opposition is a bit like a bad Britney Spears lip-syncing exhibition!

Several members interjected.

The SPEAKER: Members!

Mr T.R. BUSWELL: Every day the opposition talks about not spending enough money and yet it criticises us for spending money. So what do we do? Let me just quickly tell the house three things.

Mr E.S. Ripper interjected.

The SPEAKER: Leader of the Opposition!

Mr T.R. BUSWELL: Firstly, we are bedding in the corrective measures. There will be a \$7.3 billion reduction in net debt because of those corrective measures; it is hard work, but we will deliver on those measures. The second thing we are doing is the economic audit that will soon be processed through government. The economic audit is a road map for true reform in the delivery of public sector services in Western Australia, embracing the private sector and the not-for-profit community sector in a way that members opposite could only have dreamed about! The third thing that is happening is we have instigated a process called value-for-money audits. These value-for-money audits are line-by-line forensic examinations of expenditure in significant government departments. We have started with four: KPMG is at Health, PricewaterhouseCoopers is at Education, Deloitte is at Commerce and Ernst and Young are at the Department of Environment and Conservation.

Several members interjected.

Mr T.R. BUSWELL: How much do they cost? How much does it cost not to have them there? They are the tools that we will use to protect the state finances.

The SPEAKER: Members, before we proceed further with question time I wish to acknowledge the presence today in the Speaker's gallery of Mr Hiroyuki Mori, Mayor of Kagoshima City and his delegation, including Mr Hidehiko Uekado, chairman of the Kagoshima City Council, and Mr Takashi Hirayama, a councillor of the Kagoshima City Council. Kagoshima is Perth's sister city in Japan. On behalf of all members, I welcome you to the Western Australian Parliament.

[Applause.]

REGIONAL ROADS — FATALITIES AND CRITICAL INJURIES

870. Ms M.M. QUIRK to the Minister for Regional Development:

I refer to the alarming escalation of road fatalities and critical injuries on our regional roads.

- (1) What is the minister's response to recent comments by Royal Automotive Club president Alden Halse that the Nationals have turned their back on regional road safety?
- (2) Given the minister's concession in that article that regional road funding is inadequate, what is the minister as a member of the Ministerial Council on Road Safety doing to remedy the situation?

- (3) Does the minister accept the RAC's criticism that he has failed to make a long-term commitment to reducing the regional road toll?

Mr B.J. GRYLLS replied:

- (1)-(3) Yes, I accept the criticism of the RAC because we have not expended any royalties for regions money to the level that it has asked for on its regional road plan, so I do accept that criticism. I accept criticism every day because many agencies and organisations, such as the RAC, put to me good plans about regional Western Australia going forward. The job of government, however, is to work its way through that process, decide on priorities and fund those priorities. I make those decisions in concert with the Premier, my cabinet colleagues and the Parliament, and we do that.

I am alarmed at the fact that all of a sudden after one year of the Liberal-National government, country roads have become dangerous, member! Were they not dangerous under the previous government?

Ms M.M. Quirk: I did not say that.

Mr B.J. GRYLLS: No, that is right! Amazingly —

Several members interjected.

The SPEAKER: Members!

Mr B.J. GRYLLS: Amazing, the roads have done that! Can I just —

Several members interjected.

The SPEAKER: Take a seat, minister. I think everybody in this place is interested in the safety and welfare of their fellow Western Australians, particularly on the roads. I would like to hear the answer.

Mr B.J. GRYLLS: The Liberal-National government came to power with a set of priorities. I think that those priorities have been rolled out in very good time. The RAC plan for road safety was not one of the priorities that the National Party campaigned on in the election; it was not something that we countenanced prior to the election. We have ensured that we have funded the priorities that were put forward during the election campaign, as we should, and I think we have a very good track record of meeting those election commitments in the face of the difficult economic circumstances that have just been outlined.

Can I just put on the record, though, that the RAC's criticism that the Nationals have not funded road safety fails to understand that we are an alliance government that works with the Liberal Party —

Several members interjected.

Mr B.J. GRYLLS: I do! No; it is not their fault at all —

Several members interjected.

The SPEAKER: Members!

Mr B.J. GRYLLS: I just find it interesting that the RAC put out a public document to every Western Australian targeting the National Party because we did not fund the folder that it slipped under my arm two weeks after the election. My concern is that if that were so important to the RAC, it should have put that on the table and the National Party would have taken that up and decided whether we would campaign on it. We have not done that and I regret that the RAC has decided to take that tack, but that is up to the RAC because it is a group that has very strong significance in the state. It is well supported by Western Australians and it has a point of view that it is disappointed with the Nationals, and I accept that disappointment. It is delivered to me often, as it is by many groups, but I can assure the member that the Liberal-National government will focus on its priorities and will fund its priorities. It will never be enough in a state like Western Australia, but we believe that we are funding the important initiatives this state needs. With the RAC plan, I am requesting that the Regional Development Council, which comprises the chairpersons of each of the nine regional development commissions, look at it. I provide to the council all the funding submissions put to me almost on a daily basis by organisations and groups from Western Australia. I put that back to the chairs of the development commissions, and I ask them to come back to me with what they regard as the funding priorities for regional Western Australia. If they put forward the RAC plan as a funding priority going forward, it has a good chance of being supported.

REGIONAL ROADS — FATALITIES AND CRITICAL INJURIES

871. Ms M.M. QUIRK to the Minister for Regional Development:

I have a supplementary question: why is it that for the National Party regional road safety comes behind golf carts and fibreglass cows?

Mr B.J. GRYLLS replied:

Is the member suggesting that we should not devolve decision-making responsibility to the boards of the development commissions?

Several members interjected.

Mr B.J. GRYLLS: I am very happy to do it!

Several members interjected.

The SPEAKER: Members!

Mr B.J. GRYLLS: The member talked about golf carts—what was the other one?

Ms M.M. Quirk: Fibreglass cows.

Mr B.J. GRYLLS: The golf carts are for Shark Bay. They were prioritised by the Gascoyne Development Commission. All those projects are assessed by the development commissions, and prioritised and endorsed by cabinet. I really enjoy the opposition's unique focus on the plastic cows. This is a fantastic project. It is a \$900 000 project —

Several members interjected.

The SPEAKER: Members!

Mr B.J. GRYLLS: It is receiving Australia-wide publicity for the south west —

Several members interjected.

The SPEAKER: Obviously, fibreglass or plastic cows provoke a wide range of responses, which seem to be in this place. I ask the minister to wrap his comments up. I also suggest to other members in this place that this is the last question today because of continual interruptions again.

Mr B.J. GRYLLS: I am absolutely supportive of the South West Development Commission's plan to support *CowParade*. It will be a fantastic project. If the RAC is so concerned about *CowParade*—members opposite are as well—why does the RAC put out magazines like *Horizons* rather than putting all that available money into road safety?

ACTS AMENDMENT (WEAPONS) BILL 2009

Second Reading

Resumed from 14 October.

MR M. McGOWAN (Rockingham) [2.49 pm]: I am happy to speak on the Acts Amendment (Weapons) Bill 2009, but I indicate to the house that I am not the lead opposition speaker on this bill; the member for Girrawheen is the lead speaker. She will be back momentarily to carry on her remarks.

The opposition supports the Acts Amendment (Weapons) Bill, which deals with some of the dangerous weapons that are out there in our society. We, as an opposition, always want to be tough on the carrying of illegal and unlawful weapons. We have always been tough when it comes to the ownership and the proliferation of guns throughout our society. We have always led the debate on those sorts of matters because of the danger that they pose to members of our society. I find it interesting that there are places where such products can be purchased. Although a knife is a knife —

The SPEAKER: Members may not be interested in the bill before the house or they may have other business to do, but I ask that if they have other business to do, they take it outside or hold their conversations very quietly.

Mr M. McGOWAN: I find it interesting that there are places where such dangerous and easily concealed products can be purchased. A knife is a knife; there are knives in my kitchen that would be very dangerous if one were to carry them into an environment in which one wanted to do the wrong thing. Other sorts of knives are dangerous in the same sense. There are also other items of paraphernalia—knuckledusters and so forth—that are dangerous to ordinary citizens. If they are carried into a nightspot, it probably adds a little more danger. They look like implements that are designed not for ordinary household use but for people with certain proclivities who wish to carry them around and perhaps show to others. I have a strong attitude towards the carrying of weapons; I have a very, very strong attitude towards the carrying of firearms. Having seen what a firearm can do to living things, I have very strong views about minimising the level of firearm ownership in our community. By minimising the level of firearm ownership we will minimise the number of people who are killed or wounded or who indeed kill themselves with such weapons.

This legislation deals with matters to do with the age at which one can lawfully possess such articles. It provides for increased penalties to be put in place for people who carry such weapons. It deals with people caught

carrying prescribed amounts of cash and offensive weapons in public places, because of the relationship between carrying weapons and carrying drugs. There are some tough measures contained in this legislation, but I think that they are probably reasonably fair in the context of these matters. I think that this legislation, in conjunction with the laws that we already have in Western Australia, will be reasonable; I do not however think that this legislation will be reasonable in conjunction with some of the other legislation that we have been debating in this chamber over the past few days. The laws already in place in Western Australia allow a police officer who has a reasonable suspicion that a person is committing an offence or carrying an offensive weapon to search that person. Those laws are already in place, and have been for a long time. There are such laws in place in other states, and they reflect the idea that there should be some control over the exercise of power by police forces in Australia. The idea of some sort of fetter or control on police powers is something that I fundamentally believe in. As I said in this place yesterday, societies that move away from that idea go down a slope of unfettered police powers that will inevitably end in tears. I do not support unfettered police powers, and I think the other legislation we are dealing with will provide police with unfettered powers that are unnecessary in our society. However, the existing laws provide some checks and balances on the exercise of police powers, such as the power to search members of the community to determine whether unlawful weapons are being carried. The existing laws, in conjunction with this and other laws, are reasonable. The vast majority of Western Australians believe that the police should not have unfettered power; ordinary Australians show commonsense on this matter.

The opposition gave an undertaking to the government that it would not spend a great length of time discussing the Acts Amendment (Weapons) Bill 2009. It is my view, however, that we should spend a lot of time discussing the stop-and-search powers relating to the Criminal Investigation Amendment Bill. I know that the opposition has proposed some amendments to the bill, and it will prosecute them vigorously. That debate will take the lion's share of the time we devote to these matters over the next couple of days. The Leader of the House has told me that he is determined to push this legislation, the arson legislation and the stop-and-search legislation through the house this week. Opposition members were very cooperative on the arson legislation; we proposed reasonable amendments and the shadow Attorney General was very reasonable in his approach to debate. We put our amendments, we were defeated, and we supported the legislation. We will exercise the same approach to this legislation. In fact, I suspect that debate on this legislation will be over by four o'clock; that is certainly my expectation, depending upon what the Independent members, the Greens (WA) member and Liberal Party members might do.

However, the stop-and-search legislation is a fundamental point of difference for me. I have grave concerns about that legislative approach by the government; it will fundamentally change the nature of our community and society. The sorts of arguments I have heard in justification —

The SPEAKER: The member for Rockingham knows that he is addressing a different bill at the moment. I know that he appreciates that fact and that I have given him every opportunity to enable the return of the opposition's lead speaker, but I ask him to address the bill at hand.

Mr M. McGOWAN: I fully appreciate your advice, Mr Speaker, and always accept it unconditionally. I will return to the Acts Amendment (Weapons) Bill 2009.

During question time, the Minister for Police referred to types of weapons; I am sure he will wave some of them about shortly! Mr Speaker, your indulgence in that regard was perhaps the only blemish on your time in the chair, by allowing the member for Hillarys to bring dangerous weapons into this place! We will know within an hour whether it was a good or bad decision. It brings to mind the fact that the government and opposition are separated by only two and a half sword lengths; the only problem is that I do not have a sword! I suppose we are all at the mercy of the Minister for Police because of the weapons he has in his possession at the moment, although I suspect that most of us would be faster than he is and would probably escape!

Mr R.F. Johnson: I wouldn't bet on it!

Mr M. McGOWAN: I am pretty sure I could get to the mace before the minister could get to me!

That is largely all I have to say about these laws. I support measures to deal with the unlawful carrying of weapons. I do not like the idea that people might carry weapons; I particularly do not like the idea that people might carry unlawful handguns, rifles and other firearms. I think that is a very disturbing development. I do not think it is largely prevalent; I know that some significant changes were made by Prime Minister Howard in 1997 that made a big difference to the number of firearms in our community. I supported that initiative by Prime Minister Howard, although I always thought it was unfortunate that it did not happen in the early 1990s, following the Hoddle Street massacre. After what happened in Tasmania, steps were taken to remove such weapons. I have always thought that that was probably the finest hour of Prime Minister Howard's term in government. It came about after the shocking act of an individual, but I do not think it was something that Prime Minister Howard had on his agenda when he came to office. However, circumstances intervened and he took

what I thought was decisive action. It could have been done earlier; people would perhaps still be alive if it had. If the commonwealth wanted to go further than Prime Minister Howard went, I would think that would be a reasonable thing to do and it would receive the support of the state. Western Australia has always had pretty strong laws for the containment of weapons in the possession of people. However, I maintain that we could be a little tougher, because people in this state continue to suffer from firearms offences, and people continue to die and inflict injuries on themselves from the use of these sorts of weapons. One aspect of a gun, as opposed to other implements, is that it is very easy to use, if people want to use it for those purposes. On that note I conclude my remarks.

MS M.M. QUIRK (Girrawheen) [3.00 pm]: I thank the member for Rockingham for filling in in my absence. I am the lead speaker for the opposition on this Acts Amendment (Weapons) Bill 2009. I indicate to the minister that we need some clarification on the detail of certain issues, but that by and large the opposition is supportive of the bill. Having said that, we need to make a couple of points.

Firstly, the bill is in almost identical terms to one that passed the Legislative Assembly under the stewardship of Hon Jim McGinty, MLA and Attorney General, prior to the last election. It would therefore be extremely churlish of us to oppose this legislation in any way. However, the opposition has had a number of representations from people seeking clarification of the bill, and I will raise them either now or alternatively at the consideration in detail stage when I am sure the minister will have a satisfactory answer.

The rationale for the bill is to restrict the carrying of weapons in places of entertainment. It creates an offence of going armed in company; it increases penalties when weapons are possessed with either cash or drugs; and it prohibits the sale or supply of controlled weapons to minors. Without explicitly saying so, these changes are aimed at gang-style activity; at preventing the use of weapons to enforce other illicit activity, such as drug dealing; and, very importantly, to limit the supply of weapons to minors.

The opposition does have some concerns about the legislation. For example, the onus of proof for a person who has a lawful reason for possession of a weapon has been reversed. It could be argued that this puts persons who have a legitimate excuse for being in possession of such a weapon to the expense and inconvenience of proving that fact. It is hoped that that issue would be resolved prior to charges being laid, but it would be somewhat unfortunate if it did not. I will give an example of that shortly.

When we raised this issue at the briefing, we were given assurances that the decision to charge or not charge someone would be a matter of time, place and circumstance—I think those were the words used. That is not altogether reassuring. In any event, we can canvass that matter in a bit more detail shortly by referring to the example I referred to.

The bill prohibits the possession of dangerous or offensive weapons. That does not coincide with the definition of “prohibited weapons” and “controlled weapons” which is more readily understood under the Weapons Act; accordingly, the bill contains a much broader range of items. The definition of “place of public entertainment” is also wide. This raises a broader issue that is probably appropriate to raise in the current context; that is, the principle that the law should be readily accessible to those whom it purports to affect. In recent weeks two pieces of legislation on arson were introduced into the Parliament. People who are interested in knowing what the law is in a particular area will have to now refer to two pieces of legislation to sort out, for example, the meaning of “property” under the Arson Legislation Amendment Bill, as opposed to the Bush Fires Act and the Criminal Code. That is very unsatisfactory. Similarly, the bill before the Parliament deals with public places of entertainment, which will in fact be gazetted under amendments to the Criminal Investigation Act. This legislation has a broader definition. If someone wants to find out which rules cover a particular area, subject or issue, that person will be put to the expense and time of trawling through a number of pieces of legislation. Then that person will be left feeling not very confident that he or she has covered the field of legislation. I make that observation because it seems to be a trend that is currently occurring with the draftsmen, and I do not think it is favourable. It would be much better if more consolidation was given to these sorts of provisions.

One issue with the bill that I raised in the briefing was the example of archers attending the Royal Agricultural Society of WA showground for an exhibition being unwittingly caught up under this legislation.

Mr R.F. Johnson: No.

Ms M.M. QUIRK: I did in fact send a letter to the minister’s office about that issue, although I have not yet had a response. The member for Collie-Preston raised the issue with me and gave me a letter he had received from the Australian Bowhunters Association that reads —

I am concerned with the wider implications of the proposed amendments to the Weapons Act that on our sport of Field Archery.

ABA.W.A. is the Western Australian body of the National Organisation (Australian Bowhunters Association). The ABA is recognised as the controlling body for the development of Field

Archery in Australia and as such offers a wide range of benefits to its members. Field Archery is one of the few sports which has full participation irrespective of age or sex. The majority of members join as a family group with female participation as strong as the male at all ages. We have competing members as young as five ... and as old as eighty ...

Our aim and objectives are to promote the status of Field Archery to a high level of acceptance and recognition in Australia; to maintain a Code of Ethics for the sport of Field Archery and to educate members and non-members alike to attain and uphold that standard. We promote and preserve the less sophisticated forms of instinctive archery whilst allowing for, and assisting, the more competitive and sophisticated schools of archery.

The letter goes on —

Some of the implications of the proposed changes to the Weapons Act and the issues for our Association are as follows;

The bill would make it illegal for our junior members to be in possession of a bow. What will this do to the sport of archery? There are Archery programs running in most schools in Western Australia. How will these be affected? Our junior members are the future of our sport and without them the sport of archery in this state will not survive.

“Being Armed in Company” Would this mean that a gathering of archers at a competition event be an illegal gathering and the police could charge the competitors?

Mr R.F. Johnson: No.

Ms M.M. QUIRK: I know that the minister is saying no. I looked at the legislation and thought it was marginal, but the members of this association are seeking clarification. I would therefore be grateful if the minister could just listen. The letter continues —

“Having Ready Access to Both Weapons And a Prescribed Amount of Cash” Would an Archer travelling to or from an organised archery event with his equipment or be at their place of residence be in breach of the proposed changes if they were stopped or visited by the Police?

This bill has been introduced too quickly and without appropriate consultation with the appropriate sporting bodies that will be affected unintentionally by the proposed changes. Currently Bows are a Controlled item under the existing regulations and it is proposed that they become a prohibited item. This will affect all archers in this state and see the demise of archery as a legal family sport. Archery as a National and International Sport in this State will no longer exist. Western Australian Archery Associations will no longer be able to promote or hold events here as visitors will be turned away by the legal issues involved in bringing their archery equipment into this state.

We as an Archery Association would appreciate any help that you are able to provide in having the proposed changes to the Act amended so that legitimate sporting organisations are not affected to a point where they are forced to close down.

I am sure the minister can placate these very legitimate concerns, and we look forward to his response. That response will then, of course, be on the record so that if in future there is some contention, people will know exactly the intent of this Parliament. As I have said, because this is legislation that was brought in by the former Labor government, I do not know that the accusation about the lack of consultation is really valid. However, in any event, I am reporting the representations that have been made by that group.

I turn now to the provisions in the legislation about having access to both weapons and cash, and to both weapons and illegal drugs. I commend the minister for these provisions. I was involved in some amendments that relate to the possession of unlicensed firearms in conjunction with either cash or drugs. The reason that both these instances are particularly odious is that the implication can be drawn that these weapons are being used to enforce drug debts and to collect moneys owed, or to facilitate the distribution of drugs. I therefore commend the minister for introducing those provisions.

Of course, it would be remiss of me not to talk about the sale of weapons to minors. It would also be remiss of me, and I think the minister would be disappointed, if I did not upbraid him for the fact that about a year ago the opposition introduced private members' legislation relating to the sale of certain weapons to minors. Therefore, there is a bit of *Groundhog Day* here, in that it has taken this government a year to introduce what I consider are reasonably straightforward provisions. There is no question that a culture is developing whereby young people are going into public places armed to the hilt with a range of weapons. This is a culture that we should not condone and should do everything we can to discourage. I am very pleased that the minister is proposing to

prohibit not only the sale of certain weapons to minors, but also the possession by minors of certain weapons that they have no legitimate reason to have.

As I have said, during consideration in detail I will be seeking some clarification from the minister and some assurance that groups such as the Australian Bowhunters Association will not unwittingly fall within the purview of this legislation.

DR J.M. WOOLLARD (Alfred Cove) [3.11 pm]: I thank the Minister for Police and WA Police for the comprehensive briefing that they have provided on the Acts Amendment (Weapons) Bill, and for answering many of the questions that I have about this bill. Now is probably a good time to put on record again what the minister said in his second reading speech —

The government has been concerned for some time about the actions of certain people in our community who think that they can go armed in public to threaten others, cause harm and create fear.

In relation to people going armed in public, I want to remind the Minister for Police of the Western Australian Auditor General's "Third Public Sector Performance Report 2009". That report deals in part with the regulation of firearms. The Auditor General stated at page 4 of that report —

In Western Australia 85 000 people and organisations own approximately 300 000 firearms. This is the third examination we have made of this area since 2000 with past examinations finding important areas needing improvement.

He went on to state at page 5 that the number of firearms has increased by 20 per cent since 2004. He stated also —

The audit examined whether WAP now has appropriate procedures and practices to ensure that only people and organisations meeting the requirements of the *Firearms Act 1973* are issued with firearms licences.

The Auditor General went on to state —

WAP is not adequately regulating and overseeing the possession, use, dealing and manufacture of firearms.

The Attorney General stated at page 6 of his report —

WAP does not have a risk-based program for monitoring if licence holders comply with requirements, even though there are 300 000 firearms held by 85 000 licence holders. It carries out some proactive compliance monitoring, but procedures are not documented and records are patchy and inconsistent.

This is the third Auditor General's public sector performance report since 2000 that has dealt with the regulation of firearms. So, yes, I am pleased that this legislation, which seeks to decrease the number of assaults related to the use of weapons, is on the table. However, it is clear from these three reports that WA Police needs to do more to deal with the regulation of firearms.

The Auditor General said at page 17 of his report that although WA Police tracks the movement of registered firearms, data in the register is inaccurate in some crucial areas. He said also, at page 19 of his report, that WA Police does not always check that firearms are disposed of appropriately when licences are no longer current. I think it is appropriate that that be put on the record now as part of this legislation, because it is clear that there is room for improvement in the regulation of firearms.

Recently, constituents phoned me to complain about a radio program on which some people in the south west were advertising some blocks of land that were for sale and were offering the purchasers of those blocks a free firearm. I have written to the minister about this matter, and I will be seeking some clarification from the minister on this. The member for Jandakot is nodding. The member has probably also had constituents phone him to complain about the radio program on which this was being advertised. That type of advertising is certainly not appropriate, so I hope the minister will look into that and it will be stopped in the future.

One of my concerns about this bill is that it does not provide a definition of "armed". The government seems very happy to codify in some areas, but not in others. Proposed sections 68B and 68C of the bill hinge on a person being armed. Because a definition of "armed" has not been provided, we need to rely on the common law definition. A common law definition of "armed" is provided in the judgement in *Patrick Anthony Ashcroft v The Queen* as follows —

"Armed", as it seems to me, means simply having on the person or ready to hand . . .

It goes on to say —

I do not say that a man must necessarily have the weapon in his hand to be armed with it, but he must have it immediately ready for use.

It is one thing when a person has a weapon on his or her person. However, what will happen if the police apprehend a person who has a weapon in his or her car? I am concerned about how this legislation will stand up in court. I therefore hope that the minister will provide a definition of “armed” for the record and state how that will apply when a person has a weapon in his or her possession or a weapon is in the near vicinity of a person. I also note that section 68C of the bill states that the person is in a public place when in company with two or more other persons. When I checked with the legal advisers, it was made very clear to me that this phrase usually means the person with one other person. It does not mean—as some people might think when looking at this bill—the person who is armed, with two others. It is not. It is the person who has the weapon, and another person with him or her.

Again, I would like to thank the advisers for the list of weapons that currently come under this bill and the list of all the new weapons, some of which I had not heard of previously, that are now going to be covered by this bill.

MR M.P. MURRAY (Collie-Preston) [3.21 pm]: I rise to speak briefly on the Acts Amendment (Weapons) Bill. During the minister’s second reading speech, he stated —

The Acts Amendment (Weapons) Bill 2009 will strengthen the existing offences in the Weapons Act 1999 by increasing the relevant penalties. In addition, the bill creates new offences placing restrictions on the sale and supply of controlled weapons to persons under 18 years of age.

I do not have a problem with that. I must say at the outset that I absolutely detest people who go armed in public with any sort of weapon, whether it is a knuckleduster, a knife or whatever. I think it is the most gutless and cowardly way of people trying to get revenge on others. I have no sympathy for any of those people who have been jailed or whatever. It is quite different now; times have changed. In my day, if we had a bit of a blue and someone pulled a knife, that person got the biggest hiding of their life. Now it seems to have become normal practice. It is something that annoys me immensely. I certainly support the increased control and the increased penalties.

“Controlled weapons” includes a machete, bow and crossbow. The member for Girrawheen has already spoken about the club that has approached me. I hope that club is accommodated in this matter. In Collie, we have two state archers who have just received awards, and also a scholarship from Healthway. On one hand we talk about Healthway giving scholarships, and, on the other hand, we say that people cannot have their weapons to practise their sport. I am sure that the minister is flexible enough to adjust that.

I will continue with the list of controlled weapons. Then we go through to dagger, double-end knife, fixed baton, hand or foot claws, machete, metal whip, sickle or scythe. Then we come to spear and spear gun. The member for Scarborough is not in the chamber, but if this legislation is enacted it will affect her retail outlet. Over the Christmas period, I will see hundreds—and I mean hundreds, if not thousands—of youths, probably from the age of 12 years upwards, who will have spear guns and the very popular hand spears. I would rather see hand spears controlled so that the spear ends have to be taken off when they are carried in public. People will use these spears. They are for sale in every fishing and recreation shop. They probably come in around \$25 to \$30 each. I know the rubber ones cost \$8 because I bought one last year. In saying that, it is a tool. I suppose, just as kids get a pair of goggles and a pair of flippers to swim around the reef, they get these hand spears to shoot one or two parrotfish—that sort of thing. I have seen accidents. I have not seen or heard of them being used as a weapon as such. To take away the ability of a person under 18 years of age to buy such items, or any part of them, and utilise them would be a move in the wrong direction. The bill is not aimed at those people. I would love to see kids carry on swimming in the right spots over the reefs doing all the healthy stuff that comes with such activity—interacting with their mates and bragging about the biggest fish they have shot for the day. I really think the minister should think this through before he makes the decision in that regard.

The member for Scarborough would possibly have sold hundreds, if not thousands, of spears in her agencies. They are cheap and they are light. They unscrew in half. The spear end can be taken off the top. The same goes for spear guns. If a spear gun was in public, I would expect that the law would be changed so that people could not have the spear in the gun. The spear would not necessarily be in a case, but it would be required to be unloaded to become a “useless” weapon, unless it is used by the butt end. The spear can be taken out and it can be carried from one place to another.

I take many young fellows spear fishing with me, and most of them have a spear gun. Quite a few of them are in the 16 to 18-year-old range, and, really, it could be that they would be in control of an illegal weapon. I do not want to see that happen because such fishing is a way of life in Western Australia. It is something that has been around for many years. It will be interesting to see what the minister has to say in that regard as we go through the bill. Maybe some amendments are needed so that people are permitted to have control of hand spears. I have seen them on the beach Marmion way—not in the marine park, but around those urban areas, where young kids walk across the road from their houses with these spears in their hands. They have good intentions and certainly no malice in mind about trying to hold up a bank or do any of that sort of rubbish.

The handgun issue needs to be brought back on the table, even though it comes under the Firearms Act. Again, I do not see any necessity in any way, shape or form to have a gun, unless a person is in a sporting club or—the one that has been missed out in this debate—on a pastoral station. I believe there is room in the future to nominate the stations, not the person; that is, the weapon must stay on that station and be utilised only for what they are carried for. The unexpected can occur. A person may not be able to carry a rifle on a motorbike, but that person may run into a scrub bull and need a rifle for protection. I think we should be looking at those situations as well.

A couple of small amendments are required. I certainly support the main thrust of the bill and the attempt to disarm people. Knuckledusters are something that I have seen in recent times that are of concern. This aspect may not be written in the legislation. Knuckledusters can now be made out of plastic and not be picked up by metal detectors when people go into nightclubs and that sort of thing. I have seen the most awesome looking things that would just cut a person to pieces if hit by one. Carrying them is mainly bravado, but people use them from time to time. I would like to see knuckledusters included in the bill as well.

MR R.F. JOHNSON (Hillarys — Minister for Police) [3.28 pm] — in reply: I thank members who have made a contribution to the second reading of the Acts Amendment (Weapons) Bill 2009. It is an important bill. It is one that we, the government, when in opposition, supported. The member for Girrawheen is quite right when she said this was Hon Jim McGinty's bill. It is virtually the same. It has some very little differences. I am sure the member for Girrawheen is pleased that we have added the prohibitive sale of controlled weapons to minors. The member for Girrawheen wanted that in her bill, and I have accommodated that in this bill.

I want to try to allay some fears. If a person goes spear fishing, as long as that person is on his or her way to the ocean and not going to a pub or walking through Northbridge, he or she will have lawful excuse. If a person is going to spear fish, he or she will have lawful excuse to carry a spear gun.

In relation to the sale to minors, I will double-check the query raised. I know the member for Girrawheen wants to go into consideration in detail, which is a bit of a shame. In relation to bows, I have had the letters from bow and arrow enthusiasts, obviously. Once again, nothing in this bill prohibits a person who is a member of an organisation of archers taking a bow and arrow to a competition. I think the member for Girrawheen used the example of going to the Royal Show—it could be anywhere—but a person has to have a lawful reason to be in possession of that bow and arrow. There is no lawful reason to take a bow and arrow, or indeed a crossbow, into the streets of Northbridge or to the local pub or those sorts of venues. The now government supported the Labor Party's legislation, which, as I say, is before us. The member for Girrawheen also has concerns about the proof of lawful excuse. That was in proposed section 67F in the original bill.

Ms M.M. Quirk: That is fine, but I come from a different perspective. I am an ex-prosecutor, minister, so I take the view as to what can be proved and what cannot be proved.

Mr R.F. JOHNSON: The court of law decides what is accepted as proof and what is not.

Ms M.M. Quirk: I know, but I am just looking at it from a different forensic perspective from Mr McGinty, who first introduced it.

Mr R.F. JOHNSON: I think it was the member for Girrawheen who mentioned the archers attending the Royal Show. Of course they would have lawful excuse to carry their weapons, but they would not have lawful excuse if they took them into Northbridge, the City of Perth or the local pub. This government is not trying to prevent people from pursuing recreational activities, just as the previous government was not trying to do when it was in power. We certainly want to control the sale of any weapons to minors. That is a responsible thing to do and I know that the member for Girrawheen, as the opposition's spokesperson on this legislation, endorses that view completely. I think that every member in the house would agree with that view. A young person who wants to learn archery can go along to a club with his or her parents and, as long as the weapon is in the control of an adult, that young person will not be committing an offence.

Mr M.P. Murray: It is the uncertainty.

Mr R.F. JOHNSON: I am laying it on the table now that it will not be deemed to be an offence, provided that an adult is in control of the weapon of the young person who is learning archery. It is on the *Hansard* record, so any court of law and any lawyer can look at *Hansard* and read my comments. That is not the intention of this bill; the intention is that we do not want young people to be able to buy any controlled weapon from a shop, because we think that is irresponsible. We have seen the increase in violent crimes; every member of this house has seen it. Earlier I sought the permission of the Speaker to show members of the house some of the weapons that the police are taking from people in Northbridge and the central business district. I do not do this as a stunt. I was horrified when I saw these weapons this morning.

Ms M.M. Quirk: But I showed you some last year.

Mr R.F. JOHNSON: The member for Girrawheen did not show me anything like the weapon I am now holding up. This is a weapon that was taken from —

Ms J.M. Freeman interjected.

Mr R.F. JOHNSON: They can sell them, but no longer to a juvenile.

Several members interjected.

The SPEAKER: Members!

Ms M.M. Quirk: Do you call that a machete? That's not a machete!

Mr R.F. JOHNSON: I call this a machete. I promise the member that mine is bigger than hers!

The SPEAKER: Member for Girrawheen, is that a real knife, or whatever you want to call it?

Ms M.M. Quirk: It is a machete, as I understand it, Mr Speaker. Fortunately, I purchased it last year for the purpose of private members' legislation. I had permission at that time to show it in the chamber. I am sorry that I did not get that permission renewed. I understood that it was for the purpose of debate and that there would not be any issue. Of course, it is stored in secure circumstances when not in this chamber.

The SPEAKER: I advise members that the minister came to me in good faith earlier today and asked me whether it would be acceptable to show these weapons in this place. I provided him with some instruction because I was interested in allowing members to see these weapons. I have never seen such things. It was very important that this was not a stunt, and that the weapons would not be tabled. They were to be brought here by the police and returned immediately by the minister to the police. Therefore, I gave that permission. Member for Girrawheen, I also accept what you are saying in good faith, and I do not have any dispute with that. However, this chamber is not a place for weapons. In making my ruling and giving the minister permission to bring weapons into this place, I looked at other jurisdictions and considered a wide range of articles that had and had not been permitted to be displayed for the purpose of debate. In many places, weapons were absolutely banned. I will give the minister the opportunity to continue his speech. Member for Girrawheen, I suggest that the item that you have on the desk stay on the desk and that, perhaps even more so, it be transported out of this place immediately because it really should not be in here.

Mr R.F. JOHNSON: Mr Speaker, I assured you that this was not a stunt, and it is not. However, I think that some members do not realise the sorts of weapons that are being carried on the streets of Northbridge and the CBD. I think some members do not realise the quantum of weapons that are carried on the streets of Northbridge and the CBD. That is not isolated to just those areas. I have never before seen weapons like these.

Ms M.M. Quirk: You have, because this time last year I produced the same weapons. You've been asleep for a year.

Mr R.F. JOHNSON: I have never before in my life seen a weapon like this one. I have seen something similar to this one, but that was on television or in a magazine. I have never been this close to a weapon of this nature.

Several members interjected.

The SPEAKER: Members!

Mr R.F. JOHNSON: I will come to the member for Nollamara later.

Quite frankly, I brought into this place only three weapons. This is a smaller dagger. This could quite easily kill somebody. Any of these weapons could quite easily kill somebody. These are the sorts of weapons that we want to get off our streets. These are the sorts of weapons in particular that should not be sold to minors. Can members imagine people under the age of 18 years buying any of these weapons, including this one that I am holding now, because they can at the moment? They will not be able to buy them in the future under the bill now before the house.

Dr J.M. Woollard: Minister, when are they defined as being armed—when they are holding them?

Mr R.F. JOHNSON: I will answer that question when we go into consideration in detail, because the agreement that I had with the opposition has been broken. Members opposite said that they would do everything in half an hour and they used well over half an hour. I do not intend to labour the point any longer. I want to get rid of these weapons out of the chamber; I want the police to have them back. I wanted members to see them because it was very important that they see them.

I thank members for expediting this bill through Parliament. I think it is a very important bill. I put on the record that an almost identical bill passed through this house previously and was sent to the upper house, but nothing happened in that place because it fell off the table when the election was called.

I wanted to restate the commitment of this government on weapons, and that is why I introduced this bill. This bill goes hand in hand with the stop-and-search legislation, because the stop-and-search powers will give our

police the opportunity to seize the weapons that I have shown in the house today and others that are far worse. The member for Rockingham said that he considers handguns in particular to be the most serious weapons because they are concealable. I believe he has seen firsthand the damage and death that handguns can cause. These weapons will kill people; a handgun will kill people. I want all these controlled weapons to be taken off the streets of Western Australia, and this government has every intention of trying to do that.

I thank members who have taken part in the second reading debate. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mr R.F. JOHNSON: I answer a question that the member for Alfred Cove asked during the second reading debate, because I think it is the most appropriate time to do so. The member for Alfred Cove was interested in the definition under proposed section 68C, “Being armed in public in company”. “In company” means a person and two others, rather than a person and one other. That is what will be classed as going armed in public in company.

Dr J.M. Woollard: Did I misunderstand what was said at the briefing?

Mr R.F. JOHNSON: No, I am told that that was an error made by the adviser.

Dr J.M. Woollard: Does that mean that, although someone may have on him a terrible weapon, such as the minister held up in this house, because that person is with only one other person, for the purpose of the act he will not be classified as armed?

Mr R.F. JOHNSON: He would be classified as armed, but not in company. There must be two other people for it to be classed as being in company.

Dr J.M. Woollard: But would that person still be caught by legislation and classed as being armed with an illegal weapon, although, under this definition, he will not be considered armed in company?

Mr R.F. JOHNSON: Absolutely. Is the member satisfied with that answer?

Dr J.M. Woollard: Yes; I thank the minister.

Ms M.M. QUIRK: I am now confused. Will the minister repeat what he considers to be armed in company, and the circumstances in which that rule will come into play?

Mr R.F. JOHNSON: This description was designed by the previous government, and it was designed —

Ms M.M. Quirk: I want to know what the minister says it means.

Mr R.F. JOHNSON: I am saying it.

Ms M.M. Quirk: I do not need any embellishment; I would just like to know what it means.

Mr R.F. JOHNSON: If the member had been listening to her previous minister who introduced the original bill, she would know.

Ms M.M. Quirk: I want to know what it means; I do not want to go for a trip down memory lane, minister!

Mr R.F. JOHNSON: I am telling the member what it means. Do not be so grumpy; for goodness sake! Do not be so grumpy! Goodness me; she has been taking too many grumpy pills today.

The provision was designed to cover gangs.

Ms M.M. Quirk: I know what it was designed for; I just want to know what it means.

Mr R.F. JOHNSON: If someone goes armed in public in company, it means that he is with two other people, rather than there being that person and one other.

Ms M.M. Quirk: That is what proposed section 68C(2) states; is that correct, minister?

Mr R.F. JOHNSON: Correct; two or more persons.

Ms M.M. Quirk: If there are three people in total, does only one need to be armed to be captured by this legislation?

Mr R.F. JOHNSON: Correct.

Ms M.M. Quirk: I thank the minister. I hope that clarifies the member for Alfred Cove’s query.

Mr R.F. JOHNSON: I think the member for Alfred Cove was quite happy with my explanation.

Dr J.M. Woollard: I have one last interjection. It relates to case law and someone being in possession of a weapon of the type that the minister showed to the house. If, when the police come across the person, the person is standing next to an open car door and he puts the weapon down on the seat—so that he is not actually holding the weapon—will that person still be deemed as being armed under this legislation?

The ACTING SPEAKER (Mr J.M. Francis): Minister, before you answer that question, I draw to the attention of the members for Alfred Cove and Gírrawheen that we are dealing with clause 2, “Commencement”. I am struggling to see the relevance.

Mr R.F. JOHNSON: I was trying to be helpful.

The ACTING SPEAKER: I think we should be dealing with these questions —

Ms M.M. Quirk: The member for Alfred Cove started it!

Mr R.F. JOHNSON: I think we have almost concluded this; I was trying to be helpful to the member for Alfred Cove.

The ACTING SPEAKER: Please continue.

Mr R.F. JOHNSON: I have been sidetracked now. Was the question that if somebody had the sort of weapon that I displayed in the house today, which is a prohibited weapon, and he put it on his car seat, would he be considered to be armed?

Dr J.M. Woollard: Under this legislation, would that person be considered to be armed, even though the weapon is not on his person?

Mr R.F. JOHNSON: The normal definition under case law is that the weapon is readily available for the person to use. My understanding is that if the person has a weapon and he puts it on the car seat, because it is there it could be used; therefore, he would fall into the category of being armed. It is also in the context of constructive possession.

Dr J.M. WOOLLARD: I have one last question, and then I will leave the chamber.

The ACTING SPEAKER: Member for Alfred Cove, is the question to do with the commencement?

Dr J.M. WOOLLARD: I have one last question on that. One of the concerns I had about this legislation was that a person might have a Swiss Army knife or a diving knife or maybe a screwdriver, as well as some other tools that the person wanted to use for a purpose. I believe I was assured that, provided someone could give a reasonable excuse for why he had what could be classed as a weapon on him, the implement would not be classed as a weapon.

The ACTING SPEAKER: I will direct the minister: this, really, is a question that should be asked when we deal with clause 4, not clause 2. We are dealing with the commencement. Member for Alfred Cove, I will ask you to ask the question later.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Sections 68A to 68E inserted —

Dr J.M. WOOLLARD: A person might have on him a Swiss Army knife which is at the bottom of his backpack and which he uses for opening cans et cetera, or he might have a diving knife and other diving equipment or a screwdriver and some other tools in the car. Will the minister clarify whether those various items that I have mentioned would be classed as weapons for the purposes of this legislation, as I was given to understand from the briefing?

Mr R.F. JOHNSON: If somebody has a fishing knife and he is going fishing, that is absolutely a lawful excuse. It would not be a lawful excuse if the person was taking it to Northbridge, because he is not going fishing; he is going to Northbridge.

The ACTING SPEAKER: Minister, I ask you to direct your comments to the microphone a bit more.

Mr R.F. JOHNSON: I apologise.

If a person goes to Northbridge with a fishing knife, it will not be considered lawful. If he goes into a nightclub in Northbridge carrying a Swiss Army knife, it will not be lawful. If he was going backpacking, tracking or camping, that would be a lawful excuse to have a Swiss Army knife. They are still weapons; anything that can be used to cause damage to a person is a weapon. But in those circumstances people would be perfectly entitled to have those weapons because their activity—fishing, hiking or camping—would be a lawful excuse for having

those weapons with them. However, if people are going to the local pub carrying weapons, and not engaging in any of those sorts of activities, it would not be lawful.

Ms M.M. QUIRK: Proposed clause 68A(2) states —

In sections 68B, 68C and 68D, being armed for defence is not a lawful excuse unless the person —

- (a) has reasonable grounds to apprehend that circumstances necessitating defence may arise; ...

That clause, I think, brings squarely into play the issues raised by those associated with archery. We were told in the briefing that those circumstances would not give rise to possible charges under this legislation, because it was a case of time, place and circumstance. However, my concern, and I think the concern of stakeholders such as those involved in archery and other pursuits, is that people will be put to trouble, expense and inconvenience because of the reverse of the onus of proving something that is legitimate now and should continue to be legitimate.

Mr R.F. JOHNSON: The first circumstance to take place is the police officer's decision whether to charge somebody or not. If a police officer is satisfied with the explanation of the person carrying a bow and arrow that he is on his way to an archery club, I do not believe for one minute that a police officer would charge him. I can assure the member that police officers are not interested in chalking up a lot of work. However, as I said, if a person is carrying a bow and arrow and going into whatever town it may be, to shop or to go to the local pub or local restaurant, it would not be a lawful excuse. We do not want people carrying weapons in townships and metropolitan areas where they may have no intention of using a bow and arrow for the purpose for which they purchased it, which would usually be for an archery club. I think archery clubs and enthusiasts are jumping at shadows. As the member is fully aware, this bill is not intended to catch those people who are going from one place to another for the purpose of their recreational activities. Absolutely the same applies to spearfishing.

Mr M.P. MURRAY: I understand the time constraints, but I still have concerns that this is not clear-cut. What comes to my mind is somebody who has been to an archery club and stops in a car park on the way home to buy a loaf of bread. That person could still be caught because of the way this bill is constructed. We need some clarity. The minister might think that I am being pedantic, but we cannot allow this to happen. There are some concerns, whether it involves a spear gun or a bow and arrow. We must have it clear, because it is not at the moment.

Mr R.F. JOHNSON: Lawful possession exists now. If a person is on the way home from an archery club and stops off to buy a litre of milk, a loaf of bread or whatever, he still has a lawful excuse for possession of that controlled weapon, as long as he goes home afterwards and not on to a nightclub or somewhere —

Mr M.P. Murray: That is not what I am talking about.

Mr R.F. JOHNSON: Exactly.

Mr M.P. Murray: I am talking about a commonsense one, where commonsense does not always prevail.

Mr R.F. JOHNSON: We have to rely on our police officers for a lot of commonsense. I have faith in our police officers when exercising commonsense. They are not going to charge someone in those circumstances. The person would have lawful excuse for the possession of that item, whether it be a bow and arrow, spearfishing tackle or whatever.

Mr M.P. Murray: They would be in a satchel and not just lying around. They would be packed away. They are expensive items.

Mr R.F. JOHNSON: They are not readily accessible, so the person could not be charged with going armed, just as in the example I gave to the member for Alfred Cove. Nothing has changed here from the bill that passed this house when Hon Jim McGinty was Attorney General. The member supported the legislation then, and I have not changed it at all in that respect.

Ms M.M. Quirk: He is older and wiser, minister.

Mr R.F. JOHNSON: I am sure he is. He is definitely older! Nothing has changed. There is no intention to try to catch people out. What we want to do is to stop the sale of weapons to minors and to make sure that people who are carrying controlled weapons do so with lawful excuse. No person can claim lawful excuse if he goes into a nightclub in Northbridge carrying a bow and arrow, a knife or the sorts of weapons that I showed to the house earlier. He would never get away with lawful excuse, and I do not think members would want him to. However, in the member's country town of Collie if people want to go spearfishing, if people want to go from their home to the archery club, even via the home of one of their friends, there is not a problem; it is still a case of lawful excuse because their purpose and their intent is to go from their home to carry out their recreational or sporting activities. We are not saying that they must go straight from A to B otherwise they will be done for—not at all.

Provided their intent is to go from A to B, and they might take a circuitous route because they might want to pick up a litre of milk, one of their friends or that sort of thing, they still have a lawful excuse for possession of that weapon. I hope that puts the member's mind at rest.

Dr J.M. WOOLLARD: I believe that something has changed from when this legislation came to the house previously. What has changed is that the police will not now have to have a reasonable suspicion for searching someone. Certainly, when my children were younger and I was pushing prams there was a time when I carried a Swiss Army knife in my handbag. Swiss Army knives have scissors, a nail file, a screwdriver and all sorts of different gadgets. I carried one because I often found there was a need to have something like that. I think they also had tweezers and all sorts of other gadgets with them. I am concerned that there might be someone like me many years ago who might walk through Northbridge and be searched because of the other legislation and then convicted under this legislation for carrying a weapon, because the minister has said previously that a Swiss Army knife could be captured. I think therefore that things have changed. If the police do not have to have reasonable suspicion, why are we not allowing in this legislation that if somebody is able to give a reasonable excuse for carrying such an implement, that can be taken into consideration?

Mr R.F. JOHNSON: Under the weapons legislation people can carry an oleoresin capsicum spray if they believe that they may need to use it for self-defence purposes and for their own protection. Nothing else is changed in the legislation, other than the fact that we have increased the penalty for people in control or possession of controlled weapons who do not have lawful excuse. I have given enough examples of people being perfectly able to carry these weapons if they are going from A to B, if they have a lawful excuse, if they go to their local archery club, if they go to their local beach to do spearfishing, and all the rest of it.

Dr J.M. Woollard: That does not cover a person who carries a Swiss Army knife because of all the tools that the Swiss Army knife has on it, which she may find very handy to have in her handbag.

Mr R.F. JOHNSON: There are two areas that cover what the member is talking about. One is under the Criminal Code, and that is carrying a dangerous or offensive weapon. All these things we are talking about today involve people carrying dangerous or offensive weapons. They could carry a baseball bat. If they were to go into Northbridge with a baseball bat tucked down their trousers, they would not have lawful excuse to do that.

Dr J.M. Woollard: Would the fact that that person always carries a Swiss Army knife and finds it very useful be acceptable to a police officer apprehending that person and to the courts for why that person was in possession of that Swiss Army knife?

Mr R.F. JOHNSON: People carrying a Swiss Army knife cannot get onto a plane anywhere, for very good reasons. We want to discourage people from carrying Swiss Army knives if they are going into a nightclub in Northbridge. If they are going somewhere where they have a reason to use that Swiss Army knife, they would have lawful excuse.

Ms M.M. QUIRK: I will be very quick and put a question on notice to the minister. In light of these concerns, we have to act on the lowest common denominator. The minister would appreciate that a constable in regional Western Australia may not read *Hansard*. In relation to, for example, the mandatory imprisonment for assaults on police officers, an inspector overviews decisions to prosecute. I wonder whether it is possible for the first couple of years in which this legislation is bedded down for the minister to give an undertaking that maybe somebody senior will review all the charges under this clause. We would then avoid the situation where people unwittingly find themselves the subject of charges under criminal law and have to defend themselves under the reverse onus provisions.

Debate interrupted, pursuant to standing orders.

[Continued on page 8824.]

CRIMINAL CODE (ROCK THROWING AND LASER POINTING) AMENDMENT BILL 2009

Second Reading

MR J.R. QUIGLEY (Mindarie) [4.02 pm]: I move —

That the bill be now read a second time.

The Criminal Code (Rock Throwing and Laser Pointing) Amendment Bill 2009 amends the Western Australian Criminal Code by making it an offence to endanger, or likely endanger, the safe use of a vehicle, vessel or aircraft by throwing, dropping or placing an object or by using a laser pointer and/or endanger, or likely endanger the life, health or safety of any person by throwing, dropping or placing an object or by using a laser pointer to interfere with a vehicle, vessel or aircraft.

It is intended to address the particular deficiencies that have been identified in the Western Australian Criminal Code by specifically excluding the intention to cause criminal damage or to harm a person. It will ensure that we

have tough new penalties to punish those who engage in these activities and endanger the lives of ordinary Western Australians. The legislation is based on similar legislation recently passed in Queensland whilst also including elements of the New South Wales legislation passed in 2008, thus ensuring that Western Australia has the strongest elements of the legislation from those jurisdictions. The penalties should act as a strong deterrent to people who engage in these evil activities and send a clear message to the community that the actual act of throwing a rock or pointing a laser at a vehicle, vessel or plane is, in itself, a dangerous act.

Currently, offenders may be prosecuted under a variety of provisions, including sections 304 and 444 of the Western Australian Criminal Code. However, the need to prove the intention of the offender as required by these provisions has resulted in many perpetrators not even being charged. This bill will make it an offence to endanger the safe operation of a vehicle with a penalty of up to two years' imprisonment. If a person's safety is endangered, offenders will face up to five years' imprisonment. All types of vehicles, including cars, taxis, buses and trains along with boats, ships, helicopters and aircraft are protected by this bill.

In April 2008 the then Labor government introduced regulations to classify laser pointers as controlled weapons that required people to demonstrate a lawful reason for their possession or suffer strong penalties. The federal government also followed up by banning the importation of these devices. Unfortunately, despite these measures the dangerous use of laser pointers continues to be a problem from time to time.

As early as January this year the current government identified the need to bring in specific laws, similar to this bill, to deal with this serious problem in our community. Around the middle of this year the community became aware that there was a massive 37 per cent increase in the incidence of rocks being thrown at buses compared with the previous year. In the 2008-09 financial year, there were over 1 300 rock attack incidents on buses and over 100 train windows were broken.

In June 2009 an operator of approximately one-third of the bus fleet, comprising nearly 360 buses, identified that rock attacks on buses that it operated escalated from five to seven attacks a month to a staggering 20 to 25 attacks a month. Damage as a result of these attacks has cost the operator over \$200 000 in repairs for the previous 12 months. Even more importantly, they highlighted that these rock attacks seriously endangered the safety of drivers, passengers and other road users. In a letter to the Attorney General the operations manager of this bus operator advised, and I quote from my notes —

An object thrown at a bus has the potential to cause a fatal injury. This could occur in several ways: broken glass spraying a bus driver or passenger, a projectile hitting a bus driver or passenger, or the incident could distract the bus driver and this could result in a 12 to 16 tonne bus veering into the path of an oncoming vehicle or running off the road into pedestrians.

Bus security officers have told of their frustrations at seeing people caught throwing rocks walking away without being charged because of the current inadequate laws.

This bill will also provide much-needed protection for taxis, which play an important role in the public transport system. Taxis have also been subject to an increase in senseless rock attacks in recent years. It is therefore appropriate that this bill is introduced into Parliament on "WA Cabbie Day".

This bill is one part of a package of necessary measures to ensure safety for drivers and passengers on our public transport system. The Labor opposition recognises that this bill alone will not address the dramatic increase in antisocial incidents on our buses that we witnessed earlier this year.

In August this year the opposition released a comprehensive five-point plan to address the increase in antisocial behaviour on Western Australia's public transport system. This plan recognised the need to provide: greater protection to drivers through more security cages; the ability to seek urgent assistance when passengers or drivers are subject to antisocial behaviour by ensuring duress alarms on all buses; an increase in security officers and a zero-tolerance blitz to ensure offenders know that their behaviour is unacceptable and realise that there is a very real risk of being caught; urgent legislation that provides strong penalties to punish offenders and act as a deterrent; and the establishment of a parliamentary inquiry to examine the underlying causes of these crimes and what other measures could be taken to improve safety on our public transport. We welcome the action, to date, taken by the current government on the first three points and urge it to support the final two points, including the passage of this bill.

Summer and holiday periods are often times when we see a spike in antisocial behaviour like rock throwing or the pointing of lasers. It is important that we no longer delay the passage of legislation that will send a strong message to the idiots who throw rocks or point lasers at a vehicle, vessel or plane that their actions are dangerous and they will be punished.

Labor has introduced this legislation at this time to ensure that there is sufficient time for Parliament to consider and pass this legislation before we break for the summer recess. We recognise that the passage of this bill over the coming weeks will require cooperation from the government and other parties but we are willing to work

with them and consider any amendments they seek so that we can ensure the speedy passage of this bill through the Parliament. In this way, the Parliament can ensure that the public has the necessary protections that it deserves over the coming summer months and beyond. All public transport staff and users have the right to feel safe at all times.

I commend the bill to the house.

Debate adjourned, on motion by **Mr C.J. Barnett (Premier)**.

CRIMINAL CODE (IDENTITY THEFT) AMENDMENT BILL (NO. 2) 2009

Second Reading

Resumed from 14 October.

MR A.J. WADDELL (Forrestfield) [4.13 pm]: Identify theft is a growing epidemic. It is something that has been sweeping through Western Australia and has touched my electorate in recent times. It is one of those odd crimes because it does not happen at a point in time. It does not have any residual marks and it does not leave anything on a person but it can have an incredible impact on somebody's life. I would like the house to understand that identity theft is probably not a new crime. I suspect that it has probably been going on for decades in various forms.

Mr C.J. Barnett: Stealing passports.

Mr A.J. WADDELL: Yes, it involves stealing passports and forging all sorts of documents. We are now living in a time when we use a level of technology to carry out our day-to-day activities that bypasses the need for physical items. When we talk about identity theft and credit cards being stolen, we are not talking about the physical credit card being stolen; we are often talking about the information that is contained within that credit card. I am sure that most of us have been guilty of playing fairly loose and fast with some of our identity over time. I have assisted a number of people in this house with some of their technological problems with their computers and so forth. They have been relatively pleased to reveal their passwords for their accounts to me. In many cases they have very simplistic passwords. That might not seem like such a threat, but if members were to pause for a moment and contemplate the information that runs through their email accounts and the fact that they often link their financial institutions and so forth through their email accounts and the ability for somebody to access their email and therefore trigger a series of events that would allow them to access some very private confidential information, it would not be too difficult to see that that could be done relatively easily. I suggest that people here are relatively sophisticated. They are certainly not members of the community who are completely unaware of this risk.

During question time today the Attorney General indicated that he had some issues with this bill. He felt that it was not state of the art; it was based on a South Australian act that was probably passed when identity theft of this type was just being identified as an issue and maybe we could do better today. I am completely convinced that the Attorney General is correct in that respect. I suspect that this bill does not go far enough. I hope that the bill that the government will bring forward will go further. I still support this bill because something that goes half the way or three-quarters of the way is certainly better than something that goes none of the way. We need to recognise that today there will be dozens, if not hundreds, of people in our state who will be affected by identity theft. Tomorrow there will be more and the day after there will be more. The sooner we bring about action, the sooner we can begin to combat this scourge.

There are three points in the explanatory memorandum explaining the nature of this bill. First, the bill will make it an offence to obtain or deal with another's identification information for the purposes of committing an indictable offence. That seems fairly straightforward. Second, it will make it an offence to possess equipment capable of being able to make identification material or being used in an offence against this act. I suspect that that is probably the crux of the criticism that has been made against this bill—that we are not dealing with the communication of information. Communication is very cheap because the perpetrators of identity theft are often not within our jurisdiction or are working in cahoots with people who are not within our jurisdiction. Identity theft can happen anywhere in the world and can attack somebody quite locally. I regularly carry out transactions all over the world. I wonder how my credit card company copes with the fact that one minute I am spending money in London, the next minute I am spending it in China and a few minutes later I am probably spending it here in Perth. I have been contacted by my credit card company on several occasions to ask whether they are legitimate transactions. I usually say, "Yes, that's me, three o'clock in the morning, shopping online."

Mr C.J. Barnett: You need weeknight trading.

Mr A.J. WADDELL: I do not need it; I have online trading.

Ms J.M. Freeman: At three o'clock, you need a life!

Mr A.J. WADDELL: I agree that I may need a life.

I was recently contacted by my credit card company asking me whether I had spent 27c in Thailand, to which I indicated that I had not and I was greeted with, "Thought so." The credit card company's security software had detected an unusual transaction. I queried the nature of this transaction. I was told that these companies generate random credit card numbers and they keep throwing them at the system until they get a hit. They can throw millions and millions of numbers at them and when they get a hit, they start to scale it up a bit more and then a bit more. They start taking small amounts out of people's accounts, people often do not notice the small transactions and they get away with it. If we multiply that by tens of thousands, we see that they are making considerable money. That is probably where the criticism of this bill lies.

The third point interests me most. The explanatory memorandum states —

Enable a judge, after recording a conviction against the offender, to issue a certificate to the victim whose identity has been obtained confirming that the person's identity was stolen by the offender and other information that would help the victim explain it to financial institutions, credit providers, service providers etc.

This is the critical element.

Mr C.C. Porter: Which provision are you referring to?

Mr A.J. WADDELL: This is in the explanatory memorandum—the third point, explaining what an offence is.

This is the critical point, because when we think about identity theft we think about inconvenience. Somebody has made a fraudulent charge to my credit card and I must go through the effort of getting that reversed. Ultimately, who wears the cost? We assume that it is the big ugly corporation out there. We all know that ultimately that cost flows back to consumers, but within that larger corporate sense it seems to be a somewhat victimless crime. The problem is that it is not, because proving to these organisations that an identity has been fraudulently used and that the customer is not responsible for these charges can be quite a hurdle. This bill goes some way towards assisting people in proving that to these organisations.

I was the victim of a petty theft back in the 1990s. I left my suit jacket on the back of my chair and went to a meeting in the conference room of our office. I came back to find that someone had come quite brazenly into our office, searched through the various rooms, found my jacket and ripped my wallet out of the pocket. Even though I reported the theft within half an hour of its occurrence, for the next nine months I was inundated with statement after statement from my credit card company showing these \$50 transactions. These people were smart enough to sneak under the radar. They knew that if they spent less than a certain amount, nobody would check to see whether the credit card had been stolen. This was back before things were quite as electronic as they are today. On top of that, they also took my Commonwealth Bank Keycard, as it was then, and walked into the Commonwealth Bank, forged my signature and withdrew money from my account—something that I certainly had not expected. It took me about six months to clear up the mess that was created for me, in replacing all the cards, changing everything, letting everyone know that I now had different numbers, and then having to go through every statement systematically, identifying which charges were mine and which were not. But I got off lightly.

Mr M.P. Whitely: It's good training for being a parent.

Mr A.J. WADDELL: Yes, I think it may be! I have yet to experience that, but I see it coming!

I was doing a bit of reading on this matter, and I came across an article that quoted Detective Senior Constable Rod Shelton from the Queensland police fraud and corporate crime group. He said that organised crime rings are now making more money from identity theft than from the drug trade. He goes on and explains some of the problems associated with identity theft —

"It's very difficult. We estimate it can take two years and \$20,000 to clear your name.

That is \$20 000 out of one's own pocket to clear one's name; to go through the credit agencies and so forth to indicate that all of these transactions did not necessarily involve the cardholder. The article continues —

While you might be able to clear your name, there can be little hope of catching the person who stole your identity.

"If they're overseas, there's very little chance at all. With computers, email and the internet we just don't know who people are.

"Depending on the international obligations of different police services, sometimes we can try to work out who it is, but most times we'll never know."

We need to acknowledge that we live in an extraordinarily complex environment. We, as a state legislature, can pass laws that impact here in Western Australia, but when we are dealing with international organised crime, there are limits to what we can achieve. There is therefore an obligation upon us to focus on the remedy rather

than necessarily the criminalisation of the problem. The remedy here is to help our citizens recover from a fairly traumatic event. We need to do that by empowering the citizens to go up against large corporate entities. We need to recognise that they will be dealing with organisations that operate by the numbers, by computers and by particular procedures that do not deal very well with people in unusual circumstances. We must look at it from the credit card providers' point of view. How are they to differentiate between somebody who just does not want to pay a bill and somebody who has a legitimate claim? We need to create a pathway to enable people to identify themselves as victims of identity theft and obtain a certificate to that effect that has the force of law and will make the credit providers stand up and take notice, so that it is not just a story that somebody is running up.

In my reading I came across the case of a chap called Roderic from the Gold Coast. He did not give his surname. It seems a lot of this sort of thing happens in Queensland. He was talking about an event that happened to him. He did not discover that his identity had been stolen until he received a letter from a car company congratulating him on the new car he had purchased, which was a bit of a surprise to him. He then found over the succeeding months that loans were being racked up against his name, mobile phone accounts were being opened and all sorts of things were happening in his name. He went on to say that the hands of the police were largely tied because they had to wait for the financial institutions to recognise that there had been an identity breach. He was not taken seriously for about two and a half years; he could not get anyone to listen to him. His whole life was, and sometimes still is, completely spent sorting out his identity. He lost his job, his marriage was under extreme stress, and he estimates that it cost him over \$10 000 to clear his name.

I came across another report on the effect of identity crime. It reinforces the point that this is not a victimless crime, and it is a crime that reverberates long after its initial occurrence. It is very traumatic for people who have had a very good credit record to suddenly have a collection agency hounding them to prove that they have done nothing wrong. They are having the usual collection agency tactics used on them, because the agencies are used to people disowning their debts. Victims of identity theft really have no experience in dealing with that type of problem. For up to 20 per cent of people who suffer identity theft, it takes about two years to work out that it has actually happened. I have been guilty of not really monitoring very closely what happens on some of my statements, and not noticing a dollar out here and there. I sometimes wonder what a particular entry was for, but it is not worth a phone call to sort it out. Only in the second or third month might a person notice something unusual on his account and decide to do something about it. I am led to believe that some people never look at their account statements.

It is this secondary wounding of identity theft that is of critical concern to me here. People will experience continuous interaction with financial institutions and various debt collection agencies trying to indicate that they have done something wrong when they have not. It can really damage their view of themselves and it can damage relationships. Their families are often not particularly supportive; their work life is affected and they are unable to carry out normal activities. Trying to get a bank loan with a bad credit rating is very difficult. We really need to consider that, and that is an appeal for us to do something as fast as we can. This is a plea to the Attorney General, if he feels the need to proceed with his own legislation in the place of this bill, to consider the question of certification of identity theft, so that we can arm our citizens with a tool to combat the problems they face in proving to the banks and various other agencies that identity theft has happened.

We must also be cognisant of the fact that technology moves extremely quickly. Banks will say that they are secure, and that they are putting new chips on cards and all those sorts of things. That is all well and good. I remember when I visited the United Kingdom about four years ago, I rocked up with my Visa card to buy some fuel. I was quite surprised when I was asked for a personal identification number. I said that I did not have a PIN; I just press "OK" and away we go. We now have PINs here in Western Australia. However, I saw that the UK had introduced something much earlier than we had in that instance. The UK had to accommodate the fact that it was operating in a global environment. In our situation, the lowest common denominator tended to rule, which was no PIN, no protection.

Even though these security features are put on our cards, we need to recognise that often it is a marketing exercise by the banks to give us a sense of security. The security does not actually exist. I challenge people to use their credit card to pay for their next purchase and sign "Mickey Mouse" for it. I guarantee that the majority of those transactions will pass. That is because we, as a society, are not thinking about security and identity theft as a real problem. We take it all for granted that it will work out in the end. Unfortunately, it is only when we are victims that we realise it does not always work out for the good.

MR W.J. JOHNSTON (Cannington) [4.31 pm]: It is not my intention to speak for long on this bill, but I want to commend the member for Mindarie for bringing both the previous bill and this one to the house to deal with issues that are important in the community. Identity theft is clearly recognised by the community as a major issue. We can read about situations that are quite complex. For example, people assume an identity, not to notch up minor transactions on a credit card, but to create a bit of a credit history so that they can get a mortgage to

purchase a house. That major step is what they are after, so they can create that other identity to do something very large—not just notch up \$20 or \$40 on their credit card when they pay a bill.

When the McDonald's scam became apparent, I think it came as a real shock to people in Perth to learn that the arrangements that financial institutions have for the security of our identity were not as effective as people thought they were. The member for Mindarie, who had come to deal with this issue at an early stage before the matters highlighted in that case became apparent, has demonstrated the way in which he is approaching his role as the shadow Attorney General. He wants to be ahead of the game on these issues and make sure that proper protections are in place.

I listened with interest to the Attorney General's answers in question time today. If he makes a contribution to this debate, I will be very interested to hear from him about how the arrangements that are proposed in this bill can be improved. I have not heard anyone say that the arrangements in this bill are not worthy; it is just that they could go further. If the Attorney General wants to bring additional steps to our attention, we would all be very happy to consider them. Of course, to say that we can do more is not a reason to do nothing. Unfortunately, early this year the Parliament decided to not do anything, and we then had the situation that arose subsequent to our decision to take no action.

I have a friend who works in the information technology industry at a very senior level, and he does not use any internet banking because he believes that the security arrangements on internet banking are too weak, even though that is his profession. He is a successful person who has worked at a very senior level for various companies. I will not name them, because they might get embarrassed about their executive selling their services in this area but not personally using those services because he believes the arrangements are inadequate. These are serious issues, and the community needs protection.

Australia was one of the early adopters of EFTPOS and credit cards. We were a leader in that regard. I remember visiting the United States in 1985. By that time, people in Australia were very used to using plastic cards, not just as credit cards, but to access their bank accounts. When I went to the US, people still could not effectively transact from one state to another. If a person banked in California and went to New York, he could not do any daily banking transactions in New York because the banking system in the US was so fragmented, whereas in Australia, even by 1985, we were very used to the idea that no matter where we went in Australia, we could transact our affairs. It is a huge benefit to the community to have the ability to go everywhere and use not just credit cards, but our own money as we proceed. However, I believe that people have a high expectation of the security arrangements, and it is true that those security arrangements are not as good as they should be.

I will listen with interest to the Attorney's criticism of the bill, but it appears that what he is saying is that we are not going far enough—not that the steps we are taking are not worthy, but that somehow we have not gone far enough. I say to the Attorney that we now have the opportunity to do what should have occurred earlier this year. We will support this legislation and go further in the future. That would be welcomed by me and, I imagine, by others. Alternatively, some amendments could be proposed to improve this bill if the Attorney thinks that we need to go a bit further. Either way, I think that the community can recognise that the Labor Party is ahead of the game on this issue. In Parliament, we were raising the issue of identity theft before it was something reported on in the popular media. It reflects the energy and the effort of the shadow Attorney General that the Labor Party got in front of the media circus on this issue. Therefore, I commend the bill, and will wait with interest to hear what the Attorney says.

MR C.J. TALLENTIRE (Gosnells) [4.37 pm]: This bill is one that I support wholeheartedly. It is certainly one that has come ahead of the sorts of concerns that people in my electorate have been expressing. In essence, the bill is about government playing its part in maintaining consumer confidence in our banking system. People who have come into my electorate office have told me about the misfortunes they have suffered, the concerns they have and how they now prefer to use cash. They are losing confidence in all the good points of our sophisticated banking system, with its strong emphasis on technology. That is why this legislation is so urgently needed.

One person in my electorate office told me about her experience and how she was able to trace things back and eventually realise that her problem was probably due to transactions she had made at McDonald's a few weeks before. Her credit card had been used by someone else. In one instance the amount was \$109, and on two separate occasions after that the amount was \$436.35. It seemed from the statements that the perpetrator of this theft was located in the city of Montreal in the Canadian province of Quebec. Fortunately, her bank was able to reimburse her very quickly—within about two and a half weeks. I have been looking at some announcements by the Australian Bankers' Association. It realises just how dangerous it is that the community perception of the security of our banking system could get so seriously undermined by these sorts of problems. Therefore, the Australian Bankers' Association has taken it upon itself to make sure that people are reimbursed as quickly as possible. That is the industry playing its role, but clearly government must play its role too. This legislation is responding to that. As the member for Cannington was saying, the member for Mindarie, our shadow Attorney

General, is to be commended for his foresight for getting ahead of things and having this legislation ready to go before this problem had grown to the proportions that we now see in our community.

I think the advice from the Australian Bankers' Association is a salutary reminder of just where this could go. As I say, at the moment the banks seem very prepared to reimburse people as quickly as possible, but they are giving people advice to take action to ensure that this does not happen to them or to mitigate or reduce the extent of possible financial loss. The banks are also suggesting that people should in fact lower their credit limits. That is a good thing for some people. I know that many of us receive letters from financial institutions urging us to increase our credit limits, and perhaps that is because the banks like us to spend big on credit cards and then have big interest bills to pay, which helps their profitability. However, the message is now going the other way. Perhaps people should reduce their credit limits so that if their identities are stolen, they will have a ceiling on the extent of the losses that they might incur. I think that indicates how potentially serious this problem is and how urgently we need this legislation.

Another aspect that has come up in my electorate is that people are saying that not only are some retailers or fast-food outlets notorious places for skimming devices, but also this problem is manifesting in some shopping centres as a whole—it is the virus-type concern that people have. I have heard from retailers in shopping centres in my electorate that word is getting around that there may be skimming devices in their shopping centres, and as a result they are seeing a reduction in patronage. Therefore, the Criminal Code (Identity Theft) Amendment Bill (No. 2) 2009 is a very serious piece of legislation that needs to be passed as quickly as possible so that we can ensure that our commercial and banking sectors are not undermined by something that could be a real threat to the profitability of both small and big retailers. Indeed, I gather that the rumour going around on one website was that skimming devices were rampant in the Coles stores. I do not know what Wesfarmers was able to do to counter that; probably its best tactic was to keep relatively quiet about it. The last thing any retailer wants is that kind of bad publicity. I think we need to acknowledge that the banks are trying to do their bit, which is seen when they make rapid restitution to customers who have amounts debited illegally from their bank accounts or credit cards.

I commend this bill to the house and I look forward to hearing from the Attorney General about the details that he is talking about. I understand that he has some interest in transmitting devices that are associated with skimming devices. No doubt there are ongoing technological changes to skimming devices that mean that the legislation will have to evolve in time, but I think that, more than anything, we must have good legislation in place as quickly as possible.

MR J.M. FRANCIS (Jandakot) [4.44 pm]: I will keep my contribution to the debate on the Criminal Code (Identity Theft) Amendment Bill (No. 2) 2009 fairly short, but I want to make a couple of points and tell my little personal stories on these issues.

Ms J.M. Freeman interjected.

Mr J.M. FRANCIS: No, the member is starting to believe in conspiracy theories!

My first story happened in about 2003. I remember I was at HMAS *Creswell* and I was buying a new laptop from Dell online. My mum and dad lived up the road in New South Wales, and for whatever reason I gave mum the money and asked her to put it on her credit card. We had the choice of buying this \$2 000 laptop—it would have been the second half of 2003—by giving the credit card details over the phone or using Dell's online order form. Much to my own silliness I said, "I'm not quite sure if online is the most secure way of doing it; let's do it over the telephone so that you know you're speaking to a real person." I can tell from members' faces that they know where this story is going! Of course, this is Dell—it has one-third of the world's retail market for computers. It is a reputable company, so I thought that surely I would have nothing to worry about. We rang and gave the credit card details over the phone, and \$2 000-odd came out. The great thing about Dell is that people can watch their laptop get built, so to speak; they can track it online and monitor the assembly and the shipment. People can also customise the size of the hard drive and all those things. Two days later I went to use the credit card and, sure enough, it was over the limit. I thought that was a bit strange; there should have still been a few thousand dollars on it. We rang the bank and we found out that there was another transaction for exactly the same amount made to some Russian mafia company in France somewhere. Clearly, some guy who worked for Dell in Malaysia was writing down credit card details and of course Dell refused to have any liability for it—Dell did not want to know about it. However, it was interesting that it was exactly the same amount of money to the cent.

The second great story, which is a little more embarrassing, happened this year. I have a Visa card —

Ms J.M. Freeman: So you learnt nothing from the first experience!

Mr J.M. FRANCIS: This one gets better! I had a Visa card and I started —

A government member interjected.

Mr J.M. FRANCIS: I do not know whether I should be telling this story in Parliament! It is almost like my stories last night about the metal lights—halides—above the fish tanks and the police thought I was growing marijuana!

A government member: You know you are in *Hansard*!

Mr J.M. FRANCIS: I know. Anyway, I am not one of these people who religiously check their credit card statements. I am religious but I do not go through my credit card statements every single month; I just have a quick scan of them. I did notice that for the past 12 months an amount had been coming off my Visa card and I noticed that generally it was the same amount, but the company had changed and it was an American phone number. Of course I tried to ring this phone number and I suddenly realised that I had no idea what this \$71, or whatever, that was coming out of my credit card every month was for. I thought that I had better find out. The weird thing is that when people put in a claim because someone has been taking money from their credit cards illegally, there is a three-month statute of limitations. The credit union that I bank with could only investigate and repay me for some very dodgy porn site taking my money, which I can absolutely assure the house I have never visited in my life!

Several members interjected.

Mr J.M. FRANCIS: My wife knows about it too—trust me! The site had been taking \$71 —

Dr M.D. Nahan: What was this dodgy porn site?

Mr J.M. FRANCIS: I can tell the member for Riverton it was in the United States. I was hoping he might know more about it than me!

The point I am making is that I was in this position in which I guess \$500-odd had been stolen from my Visa card over the past 12 months. There was nothing I could do about it other than to lodge a claim. I did get the last three months' worth credited back to me—\$200-odd—but I had to write the rest of it off. The most frustrating thing about it is that I use this credit card regularly. My car insurance, internet access, mobile phone, health insurance and all those things are paid for with that one credit card, which is probably why it slipped through the keeper for so long. I have no idea how those people got my credit card at the end of the day. The only way I could stop it from happening was to cancel the credit card and get a new one. That means that every so often I get a phone call from someone to say, "You have not paid your health insurance this month—your credit card has been rejected"! I have to say, "That is right, because I have changed the credit card details." I am finally sorting this nightmare out.

The point is that people are stuck in these situations, and I sympathise wholeheartedly with people whose details are stolen and whose details are scammed. It is morally wrong to steal someone's money, and the people who do so put other people to great inconvenience in their lives through no fault of their own.

Ms J.M. Freeman interjected.

Mr J.M. FRANCIS: It has occurred to me. I have given it some thought because I have just been through this in the past few months. Luckily enough, it was not identity theft as such; it was my credit card details. My whole identity was not stolen. To this day I have no idea how the details got out, but ever since, I have to say, I have been far more cautious about how I use a credit card. Ever since my 2003 experience I had this faith that the safest way to use a credit card was online; never again would I give numbers over a phone, especially to someone in a foreign country. Unfortunately, the great people at McDonald's Cockburn—up the road from my electorate—have found that theirs has been one of the more targeted McDonald's. People have skimmed information off cards onto data machines. I am aware that that is still subject to an ongoing inquiry, so I do not want to speculate on exactly how it was done. I have had a change of heart from saying, "I'm not going to provide my details over the phone anymore; electronic transactions must be perfectly safe", to now taking very good care and giving great consideration when using a credit card electronically and online.

I, like the member for Forrestfield, like to shop online. I have 252 points of feedback on eBay! I normally use PayPal and I have never had a single problem with PayPal. I think it is an outstanding company. It provides brilliant insurance for people who make transactions online.

An opposition member interjected.

Mr J.M. FRANCIS: No, I am not on its payroll! We now have to start being very careful, because people who are motivated by greed, who are a bit more IT savvy than the rest of us, get up to all kinds of shenanigans to get hold of our money. One does not have to be very IT savvy to be more IT savvy than me! I am a bit of an analog man in a digital world, I suspect!

Having been through these two experiences, I sympathise greatly with others who have suffered similarly. I am still not sure what the answer is. My credit union, which was bound by the rules of, I guess, Visa, provided excellent service in getting my money back, but only for the last 90 days. Unfortunately, any transactions before

that were basically written off. The only way out of it was to cancel the credit card. I sympathise with what the member is trying to do, but I am not sold on whether it is the right way to do it. I will be listening with great interest to the rest of the debate. It is something that is a bit close to my heart through personal experience. Although I sympathise greatly with the intent of the member's legislation, I am cautious about the way we should go about dealing with this matter. I will be paying very close interest to other members' comments.

MS A.R. MITCHELL (Kingsley) [4.55 pm]: I rise to indicate that I will not be supporting the Criminal Code (Identity Theft) Amendment Bill (No. 2) 2009. It is not because I do not support the intent of the legislation, because I actually believe that something needs to be done, but I am confident that the legislation that is being prepared by the Attorney General will be more comprehensive and probably prepare us better for the future than what is proposed in this legislation.

There is no doubt that identity theft is a very frightening experience. It is very traumatic and it is something that leaves one very scared about what is going on around us. I have to be honest and say that I am very fortunate that I have not had any experience of these sorts of things. But talking with people that have, I sense the utter despair of the realisation that someone has taken information about them. Unfortunately, once upon a time a person could probably say to others, "Were you careful with that product? Were you careful where you left your valuables? Were you careful about where you made a transaction?" Nowadays it is completely different. Nowadays it is not about whether I left my handbag on the front seat of the car or whether I left my diary open that had all my codes to get into certain accounts. It is much more sophisticated than I can comprehend. I am probably a bit like the member for Jandakot—I am not into that world—although, I will be very honest, I use a lot of those facilities because it is convenient and easy. I am also, probably similar to the member for Jandakot, not the sort of person who double-checks everything all the time. I do not go through my credit card statement every month. I am sorry, but I never have. I have multiple credit cards. I have multiple codes that I need to remember. I do not always remember them and I have got them listed in a place that I probably should not. But they are the sorts of things that we now have to be conscious of, because this whole situation has turned around so much.

As I said, I am very fortunate that I have not personally experienced identity theft. I have travelled much. I have made sure that I have done the best I possibly could when I have been travelling. I have made sure that I have used hotel safes. I have been fortunate to stay in hotels that have safes in the rooms. I have used such facilities so that I could protect myself as much as possible. I tend to be a very careful person. I make sure that the things that I need are close by me at all times—basically under my arm. People laugh at the size and weight of my handbag, but I say that my life is in my handbag. My protection is to have it with me the whole time. Having said that, it is not with me at the moment; it is in the office! It is those sorts of things that I try to make sure I do. What goes on in the wider world is far beyond me. I think it is a great risk when people do not understand what is happening. That is why I said that I support the intent of the proposed legislation but I am not going to support it because I believe the Attorney General is preparing much stronger and more comprehensive legislation.

If we think about what we need our identity for, there are very few places one can go that some sort of proof of identity is not required. Photographic identity is the obvious. How many times do we have to give a code? How many times do we have to give something else? Perhaps I had better talk about myself. How many times are we asked on the phone, "What is the code?" I say, "Can you give me a clue?" because it will be one of a number that I have. How many times do we say, "Just use this"? I am sure that if anyone really wanted to, they could work it out. There are not many places we go to now where we do not have to produce some form of identity, whether it be verbal, visual or any other. Passwords and codes are constant.

Those sorts of things are going to be a big part of our future. That is why I believe that it is really quite essential that we develop legislation that will be prepared for the future, and not quickly adopt something that sets us back—I think the Attorney General used the phrase "the 2003 version". I think it is very important that we work towards getting the best legislation for this situation now and that we do not rush something through that is not quite right. I have been assured by the Attorney General that the legislation that he is preparing is very, very close to being ready; hopefully it will be ready within the next week. For that reason alone we should make sure that we get the best legislation, not just quick legislation. I commend the member for Mindarie for doing something along these lines. However, we have the opportunity to make sure that we get the legislation right; hence, I have chosen not to support the legislation in its current form but to wait and see if we can get the best one. As I said, our identity is what we are about, it is something we must protect, and it is something we must put a lot of time and effort into making sure that we protect people in society. Obviously, they have to do some of their own work in their own protection factors, but we also need to make sure that we get the best legislation to protect those people.

MR J.E. McGRATH (South Perth) [5.00 pm]: I will take just a few minutes, as the member for Wanneroo is very keen to speak on this amendment bill put forward by the member for Mindarie because I believe the member for Wanneroo has been a victim of card skimming.

I am a person who uses credit cards. I have a credit card with just about every bank that offers them. I have always lived by the rule: why use your own money when you can get credit? Sometimes that is a good thing and sometimes it is a bad thing. However, it is a concern to see that credit card skimming has extended around the world. Some years ago I told my wife to be very careful when she used an automatic teller machine. The biggest fear back then was about being mugged. There were a lot of incidents of people, particularly females, being mugged at ATMs. We were warned about not using ATMs unless someone else was around and to be careful about using them in fairly quiet spots at night and times like that. Now, with modern technology we have seen the rise of this far more insidious crime of people getting the details of people's cards and getting into their accounts.

I am also a bad money manager in that I do not check my bank statements, which my wife continually reminds me about. I am inclined to just look at the bottom line and think that things are going okay. I would not know generally what was going in and out of those bank accounts, and I suppose my credit cards are the same. I think I am saved by the fact that there is very little credit in most of my cards; therefore, if anyone got hold of them there would not be much at the end of the rainbow. I always say that if I keep the balance close to the limit, there will not be much there for skimmers. That is my safety net.

I have been reading a bit about skimming as I have been listening to the other speakers. We do have to be careful. There are various steps that we should be aware of and we should take. We need to be ever vigilant. I recommend that people look at the internet and google card skimming, as I have done. There are many warnings for consumers. Some of the top warning signs, for instance, are: when shop assistants take a card out of the sight of a customer to process a transaction; when people are asked to swipe their card through more than one machine; when people see a shop assistant swipe the card through a different machine from the one they have used; when people notice something suspicious about the card slot on an ATM, for example, an attached device; and when people notice unusual or unauthorised transactions on their accounts or credit card statements. I guess most of us would have noticed when we have checked our statements—this happens often with credit cards—that a quite different name appears on the statement from the name of the organisation we bought something from. I have wondered where I have spent \$275 and then realised when I finally checked the statement that I had bought something at a franchise and it was processed through a name I did not recognise. I think, therefore, that we are all aware that we have to be careful in this world of credit cards. The risk that we are talking about now is one that has arisen because skimmers are very clever. The internet has allowed them to work on an international basis. People can be scammed from any other country, as the member for Jandakot has experienced.

Other advice is to keep credit cards and ATM cards safe by not sharing personal identity numbers with anyone; do not keep any written copy of the PIN with the card; check bank account and credit card statements when they are received; if a transaction cannot be explained report it to the credit union or bank; and choose passwords that would be difficult for people to guess. People can often, for example, guess someone's birthday or someone's wife's birthday. If I had played in the 1969 grand final, that might have been an obvious one. I did not quite get to that level.

The member for Mindarie is obviously very keen for this amendment bill to be accepted. I am confident that the Attorney General, with whom I have discussed this matter, is aware of a very acute problem here. I believe that some legislation will be coming into the Parliament, possibly as early as next week, and I am very keen to support that legislation. At the same time, I understand that the member for Mindarie in opposition has foreseen a problem and has been very keen to put some protective measure in place for the people of Western Australia. As a government, however, our duty is to make sure that the legislation that comes forward is the best possible legislation, that all the boxes are ticked and that we bring in penalties for people who insidiously steal from unsuspecting Western Australians. We need very strong penalties; we need to make it as difficult as possible for people to commit this offence; and we need to make sure that we have the best possible methods for tracking down the people who commit this offence. Once people are apprehended for identity fraud, we must have proper penalties in place. I am therefore confident that the Attorney General will do that and we will see some very positive and forceful legislation presented to the house in the next week or so.

We in this house, including members on the other side who have spoken in this debate, acknowledge that this is a serious problem. There is no getting away from the fact that we live in a world of high technology and people are often asked to produce proof of their identity. I do not think there are any secrets any more. Most of us do not have many secrets about our credit or business transactions or about our tax file numbers and things like that. The days of total anonymity in that regard are well and truly gone. I personally have no problem handing over some of that information. However, at the same time, we need to put in place the highest form of protection so that the average person can be reasonably confident that he will not be caught by the crime of identity fraud. I will be interested also to hear what the Attorney General has to say later today. However, I would now like to hear from the member for Wanneroo, who I believe has some first-hand experience of identity theft. The member for Wanneroo is obviously a far more affluent person than I am, as someone has obviously targeted him

as a person who had plenty of spare cash! I am sure the member for Wanneroo will be able to make a contribution to this very important subject.

MR P.T. MILES (Wanneroo) [5.10 pm]: I am reminded of that old joke we used to tell about the bank manager ringing a person up and telling him that the bank had found out that his wife's credit card had been stolen, and when the person finds out how much the thieves have been spending, he says that they are spending less than his wife! The incident I will relate to the house happened after a Wednesday evening sitting of the house. I got home, made a cup of tea and sat down, and at about 9.30 pm I got a phone call—which I thought was very odd.

Mr J.M. Francis: Did you have sugar in your tea?

Mr P.T. MILES: No, I do not have sugar in my tea, but I have a proper pot of tea, not your scabby dippy-dippy teabags!

Mr J.M. Francis: That's very English of you!

Mr P.T. MILES: Yes.

I received a phone call from a representative of the ANZ bank, who told me that their security system—namely, Falcon—had detected a transaction in Italy that night for a large amount of money. Unfortunately, I am very similar to the member for South Perth in that my bank accounts are very scarce of money. Living in a marginal seat, I tend to spend it as fast as it comes in.

Dr M.D. Nahan: Not overloaded?

Mr P.T. MILES: Definitely not overloaded; overdrawn, maybe! The thieves had been unable to withdraw money.

During the phone call the bank representative asked me where I was, and I said I was sitting in my lounge room, having a cup of tea. They asked if I was in Australia or overseas; I told them I was definitely in Perth.

Mr J.M. Francis: They didn't ring you on your home phone?

Mr P.T. MILES: No, no, they rang me on my mobile.

I told them I was at home, having a cup of tea and trying to catch up on some relaxation, and they told me that this event had happened 15 minutes prior. Fortunately, the transaction had been unsuccessful, but it caused a lot of aggravation for me and my wife because the debit card, not the credit card, was skimmed. If that happens, the bank immediately freezes the account and cancels the card, and basically the person has to start again. As we all know, that means we cannot use either internet banking or phone banking. Fortunately, I had no money in the bank anyway, so it did not make any difference for the couple of days until another emergency card was sent out to me. The bank really did well and I congratulate it for the security services it has in place.

However, once we had gotten through that initial half-hour of the phone call, the bank also wanted to know roughly where I had been using my card. As members of Parliament, I do not think too many of us in this house remember which automatic teller machines or EFTPOS facilities we use, or which banks we use.

Dr M.D. Nahan: I do!

Mr P.T. MILES: Does the member?

Dr M.D. Nahan: Yes.

Mr P.T. MILES: That is why the member has more money than I do!

Between us, the bank employee and I worked out that the card had been skimmed, funnily enough, in the member for Mindarie's electorate, at the Clarkson ANZ ATM at Ocean Keys. The bank representative then proceeded to tell me what I should look for to avoid this happening again. Basically, if there is no flashing light by the slot where the card is inserted, do not push the card in, because it means that there could be a device over the top of it and that somebody is skimming or photographing the card and all the rest of it. The bank then emailed me some pictures and asked whether I had seen this or that; I did not know because it was too long ago. The bank reckoned that the data had been captured on the Sunday, and by 9.30 pm on the Wednesday—our time—the thieves were using the card in Italy to access my bank accounts. In this electronic day and age of emails and systems, they do not need to do too much to get some of our money.

Mr J.M. Francis: Did they get your details from the ATM or because of an EFTPOS transaction?

Mr P.T. MILES: At that point they did not know whether it was an ATM or an EFTPOS transaction, but it was done electronically. They had a card.

Mr J.M. Francis: So the money was not taken out of an ATM and put into someone else's account?

Mr P.T. MILES: No, they attempted to use a forgery of my card at an ATM in Italy.

Mr J.M. Francis: So they skimmed the details of your card and made a replica card?

Mr P.T. MILES: Yes.

Mr J.M. Francis: They recorded your personal identification number and magnetic strip and made a replica card and used that in Italy?

Mr P.T. MILES: That is correct; yes.

Some credit card companies and banks now produce cards with little microchips on them. I had thought that people who have one of those have a fairly good chance of not being skimmed. But after what happened to me, I do not trust any of that any more.

During my time on council we had a bin outside for all our council papers—all the bills and acts and all that sort of stuff. Because we got so much of it, we could not just put it in the normal recycling bin; we were actually provided with a secure bin. That was done because a couple of City of Wanneroo councillors had been visited in the night by people who had taken documents from those bins. We then had to start leaving those bins inside our garages. Time and again we hear the police telling us to take care with our identity and to ensure that we cover our hand when we are keying in PINs on the doors to our offices or at ATMs. I am probably one of the ones who knows what I am supposed to do but does not do it because I am always rushing from A to B. Not only that, even my five-year-old knows my ATM PIN. He also knows his mother's PIN, and he even knows her iPhone number and how to get into that, which is even more of a worry because he keeps downloading games!

Mr I.M. Britza: And he's five years old?

Mr P.T. MILES: He is five years old. The member has only got a two-year-old, so he has three more years; start saving!

We should also take care with what we put in our yellow recycling bins at home. I bought a shredder to use at home and I shred my bank statements and all the rest of it. We have to, and we have to convey that very important point to everybody, because there will be somebody who will want to try to take something from us.

Dr M.D. Nahan interjected.

Mr P.T. MILES: We do not need bank statements for that.

Dr M.D. Nahan: Yes, you do.

Mr P.T. MILES: No, we do not—go and see the member for Carine; he fixes it!

I have read through the Criminal Code (Identity Theft) Amendment Bill (No. 2) 2009, and I have also spoken to the Attorney General about it. I think the intent of the bill is quite clear and quite good, but it does not quite go far enough. We know that if we get a very good lawyer—we know that the member for Mindarie, who is not in this place currently, is sometimes a very good lawyer—that lawyer will be able to find a clause to get somebody off, if need be. There are some holes in this bill, and I understand that the Attorney General wants to fix those problem areas. It is not just about the collection of data from our ATM and bank cards; it is also about transmitting that data by mobile phone or email, or any other means that will enable the data to be sent across the world in days, resulting in the loss of people's funds.

To further safeguard my accounts I have limited the daily withdrawal amount to \$1 000. That can become an issue if two people go shopping separately and then decide to go out for dinner that night. They might be unable to withdraw any money because they have spent over the \$1 000 for that day. But I would rather work around that than get skimmed again and take the chance of losing money. Fortunately, I did not lose any money, but the biggest problem was that it was about a month before I could get all my systems back online, such as my banking details, phone banking and all the rest of it. That is the important thing. I think we need explore that further, and I understand that the Attorney General will talk to us about that a bit later.

Members should remember that it is also important to not leave stuff in their cars. I was at a residents' meeting on Monday night in Banksia Grove. The Neighbourhood Watch lady told the residents that kids are walking through the neighbourhood, and that, first of all, they try the door of the car, and then they look through the window into the car. Quite often we pay a bill and leave it on the front seat of the car. Everybody has a mobile phone with a camera, making it easy for somebody to take a photo of our bank details and then take the mobile phone. Also, people might go to somebody's house and look through the bin for personal papers so that they can start accumulating the data to steal the person's identity and then steal money. That is how it is done. They can get a birth certificate and a few other personal details, although I do not think that people always need to show their birth certificate to prove their identity. As long as a person can prove that he is paying some utility bills, he can get credit at some of the large department stores.

When it comes to personal data protection, perhaps some advertising should be undertaken. It is hugely important to mums and dads, who do forget when they are picking up their food at the local IGA or Coles, depending on where they live —

Mr C.J. Barnett: Or what time of the day it is.

Mr P.T. MILES: I was wondering whether the Premier would come in there.

Members will notice that the bigger stores, including the IGAs, are putting the EFTPOS unit up high, allowing everybody to see the PIN that a person is keying in. I understand from the recent McDonald's case that people were skimming and taking the data from people's cards and photographing people keying in their PIN. As a consequence, they are able to steal those unsuspecting people's money later. With the McDonald's situation, what made it an easy crime, which the offenders got away with for a long time, was that they were stealing small amounts of \$9 or \$10. People would not really notice whether they had been skimmed for \$9. If such a transaction was made every couple of weeks, the person would think that either he or his wife had just bought a burger. It costs about \$10.45 for two burgers and a coke.

I am now leading up to the point that it is McHappy Day this Saturday and I will be flipping burgers with the guys at the Wanneroo McDonald's store, which I frequent a lot because it is the best place to find Sergeant Bob O'Sullivan, who is the police officer for the area. The Minister for Police is not in the house, but Bob O'Sullivan is excellent on issues of crime prevention and getting down to the nuts and bolts of what is going on in the community.

I will draw my comments to a close and allow other members to contribute to the debate. I ask members to please start observing where they leave their credit card details, bank statements or whatever. Whilst we trust our friends, we need to be vigilant about where we leave our credit cards and bank statements in our home. We have been reminded a few times that we now find ourselves in a different situation. None of us is rich by far, but people think we are and will try to steal our identity if they can to ascertain what we have or to steal what we have.

MR A.P. JACOB (Ocean Reef) [5.23 pm]: I will very briefly follow on from the member for Wanneroo's comments in praising Sergeant Bob O'Sullivan, who is an excellent local police officer. He works very hard in the area and I add my compliments to those of the member for Wanneroo. He writes a column in the local newspaper and frequents as many Neighbourhood Watch and residents meetings as he possibly can.

I refer now to the Criminal Code (Identity Theft) Amendment Bill (No. 2) 2009. Identity theft is a very complex and fluid issue; it is constantly changing with information technology. Almost everyday we can say that there are newer and more readily accessible means through which people can illegally appropriate somebody's identity.

I would typically like to think I am somewhat insulated or protected from this problem, but not because I am diligent in observing my credit card statements. I am as guilty of being lax in that area as is the member for Jandakot. Perhaps it is mainly because my wife keeps a very close eye on the accounts via the internet. That is not because she is worried about identity theft, but because she is the budget master and watches my spending quite closely.

Mr C.J. Barnett: She is worried about you.

Mr A.P. JACOB: She is worried about me, the wise young lady that she is. She monitors our accounts very closely. Often if I have made a transaction I receive a phone call within half an hour. I feel secure in knowing that somebody is watching my accounts very closely.

A government member interjected.

Mr A.P. JACOB: She is indeed my falcon. I will probably be in a lot of trouble for saying that, because she reads what I say in *Hansard*. She watches me very closely.

Several members interjected.

The ACTING SPEAKER (Mr P.B. Watson): Members, I know it is a happy group on the government side of the chamber, but it is very hard for *Hansard* when members are talking and laughing. I ask the member to address his comments to the Chair.

Mr A.P. JACOB: My point is that even though I have a very diligent person in my household keeping an eye on our accounts, we are clearly still fallible, and I can say that after hearing the experiences of other members.

I am sure that all members have been contacted at some point by a Nigerian prince or some such person via the internet who wants to deposit millions of dollars into their bank accounts.

Mr C.C. Porter: His name is Bruce.

Mr A.P. JACOB: I thank the Attorney General for mentioning his name, because I came very close to being caught out. It was quite distasteful actually, given the timing. A couple of years ago I had an email from the Congo. It was bizarre. A lot of these people randomly type in names of people and one of them typed in my name, Albert Jacob, and sent a message saying that I had a connection with the Congo. This particular email talked about the estate of an Albert Jacob from Congo and asked me whether I would like to claim it. Members can laugh, but we all get emails of this sort, because these people apply them to the law of averages. However, I

stopped and read this email, because my father was actually born in the Congo. My grandfather worked there for decades and I am named after my grandfather. My grandfather was Albert Jacob and he worked in the Congo. I read that email and took it seriously for a minute—probably for more than a minute. But given that it was a Congo email address, I thought that it was unlikely. I think I made a wise decision not to follow it up.

A government member: It could have been real.

Mr A.P. JACOB: It could have been real, but I would rather not take a risk. Members can see how easy it is to get caught. If these people send out a thousand emails, what does it matter if they get only a 0.1 per cent hit rate? It is only an electronic process. My point to this story is that there is no limit to the creativity that these people can apply or to the changes to technology. Whichever way a program can be written, somebody will seek it.

One part of this bill that I question is proposed section 440F, which excludes an attempt to commit an offence. Many of the perpetrators of internet thefts or email chains will be outside our jurisdiction. No doubt many of them live overseas. However, it is possible to set up an overseas email account from Western Australia. When the government drafts its legislation, it should consider the inclusion of a provision to deal with an attempt to commit an offence so that we are not waiting for these people to get a hit. If somebody is working from a computer down the road and is building up a Nigerian email address to try to get people's identity through the internet, how long do we wait for that person to pick up somebody's identity and run with it? I am not a lawyer, but I do question proposed section 440F of this legislation.

This is a very complex area of legislation and, as such, it should be as thorough as possible in the first instance. Given that the Attorney General has flagged that he will be drafting a version of this legislation using government resources, I am more than happy to express my strong support for the intent of this bill. However, I will vote against this bill because there is an opportunity to use the resources of the Attorney General's office to introduce a watertight bill so that we can get around this issue and provide protection for years to come.

MR C.C. PORTER (Bateman — Attorney General) [5.29 pm]: My contribution will be to talk about some of the legal aspects of the Criminal Code (Identity Theft) Amendment Bill (No. 2) 2009 and some of the legal aspects of the government's bill, which, as has been correctly indicated, will be in the house shortly. One thing that struck me when I have spoken in this place on matters involving legal principle is that members' attention spans become somewhat short. I have been trying to work stratagems around that. It occurred to me while I was listening to the contributions to this debate that I did lecture in criminal law at the University of Western Australia for two years and, similar to many of members present, the students often showed something of a short attention span. I would hit that 45-minute mark, papers would rustle and there would be a blank face competition staring back at me and I would have to try to find some way of amusing the students to try to get my point across. I thought I would do what I did with my students and tell a story that I used to tell them to try to illustrate a point that is pivotal to the issues that are meant to be dealt with by the member for Mindarie's legislation and that will be dealt with by the legislation that the government will put before the house shortly. It relates to the issue of attempts—attempts to commit offences. What would be the case, members of the house, if the police, for one reason or another, in a lawful search went into a house full of people who perhaps were from the Congo and they found an enormous amount of equipment, the sort of equipment that looks like it has come from a Tandy store? The police knew that these were people of low repute, and they had fairly strong suspicions that this equipment was going to be used for the purposes of placing a device in a McDonald's EFTPOS machine or a skimming device over an automatic teller machine. What would the police do without the laws that have been proposed by the member for Mindarie and without the laws that we will shortly bring to this place? Generally speaking, they would charge those people, or seek to build a brief against those people, for attempt to do another offence—an attempt to steal, for instance, the stealing being the taking of money from someone's bank account.

The law is very particular about how attempts work and what one has to do and not do to be charged with an attempt to do another offence—an attempt to murder, steal or whatever it might be. I will give an example that I think will illustrate that and that government members, being all good conservatives, will like very much. It is an example involving a fellow named John Stonehouse. John Stonehouse had a trade union upbringing. He joined the Labour Party in the United Kingdom at the age of 16. He was educated at Taunton's College, Southampton, and later at the London School of Economics and Political Science. He was an economist—apparently a very, very good one—and he became involved in a cooperative enterprise and was a manager of an African cooperative society in Uganda. That is interesting but it has nothing to do with his later fraudulent behaviour. He was then elected as a Labour member of Parliament in the House of Commons in 1957 in a by-election. He was the member for Wednesbury. He had previously contested a range of seats before that. He served as a junior minister for aviation, then in the colonial office and then as Postmaster General under the Wilson government. When the Wilson government was defeated at the 1970 general election, he was not appointed to the shadow cabinet. He obviously had some time on his hands.

In 1970 John Stonehouse set up various companies—he was a very erudite economist and a very learned man—to try to secure himself regular income outside of his parliamentary duties, which is very much a feature of

British parliamentary life. In 1974 he ran into some financial trouble and basically started cooking the books of his various financial enterprises. He then became aware—I am not quite certain how; I think to this day no-one is—that the Department of Trade and Industry was looking into his affairs. He decided that his best choice was to flee the jurisdiction. We should keep in mind that he was still a sitting Labour member of Parliament at this time. All of the documents, including those relating to the investigation, became declassified in 2005. They make for fascinating reading. In any event, in or about 1974 or 1975 he spent enormous amounts of time rehearsing his new identity. He was to assume the identity of Joseph Markham, the dead husband of a constituent in his electorate. Knowing the constituent and knowing that the husband had recently died, he started assuming the identity of Joseph Markham.

Mr J.M. Francis: Did he vote for him as well?

Mr C.C. PORTER: I am not sure. That might be in the declassified documents. He maintained a pretence of normality until he pretended to suicide on 20 November 1974. He left a pile of clothes on a Miami beach and everyone, for all intents and purposes, presumed that Mr Stonehouse had committed suicide and died. Obituaries were published. No body was ever found, as will become obvious by what I am about to tell the house. In reality, rather than having committed suicide by drowning at a Miami beach, he was en route to Australia. He was hoping to set up a new life with his mistress, who also happened to be his secretary, Ms Sheila Buckley.

Mr J.E. McGrath: A famous case.

Mr C.C. PORTER: Yes, it is a very famous case. When the police caught him, they had mistaken him for Lord Lucan, who was involved in another famous case. John Stonehouse assumed the identity of a dead constituent, took his secretary and came to Australia. Only a month after he had been in Australia, the police apprehended him on Christmas Eve, thinking that he was Lord Lucan, another famous absconder. Interestingly, he applied for what is known as the Chiltern Hundreds while he was still in Australia, which is one of the ways for an MP of the House of Commons to resign. Then he decided not to sign the papers. In any event, he was extradited to the United Kingdom and deported from Australia. That was about six months after he was discovered in Australia. He returned in June 1975 and was remanded to Brixton prison until August. Throughout that period, he continued to act as an MP. That is one of the quirks of the British system, which is remarkable in itself. It speaks volumes for having a written constitution. In April 1976 he resigned as the Labour Whip, making his party a minority government. He was very important at the time.

John Stonehouse went on trial and he was convicted for fraud and attempts to fraud. He tried to get at his insurance money, amongst other things. One of the issues that was critical in the trial was the idea of what is an “attempt”. Interestingly, he also conducted his own defence at trial, another no-no. There is a very famous saying about what actually constitutes an attempt to an offence, in this case an attempt to a fraud. Did he actually mean to defraud the world at large? I think it was a matter of getting insurance money by deceiving people into thinking that he had actually died. There was a very famous statement by one of the law lords who had considered what would constitute an attempt. In a moment I will describe how one has to have some intent but one has to do an act that is more than merely preparatory. What that act might be will depend on all the circumstances at the time. In this matter, Lord Diplock took what appeared to be a proximity requirement very, very far to something that resembled a last-act test. He said that it may be necessary for the offender to have crossed the Rubicon and burnt his boats, to have gone so far along the line of offending that he was all but committing the offence. There have been various formulations of that test as the law has developed. That is a very extreme version of a test for attempts.

I return to my example of going into someone’s home under warrant and finding a range of equipment. Perhaps an enormous amount of credit card data has been found stored on a thumb drive or perhaps something has been found that is capable of fitting inside a McDonald’s EFTPOS and transmitting the swipe data. The way the criminal law would generally and traditionally go about that is to charge the person with an attempt to do another offence. But a problem has arisen. It will be a problem in all cases but it may be a problem in many. First of all, one has to prove the intent to commit the eventual offence but then show that that person has done something that is more than merely preparatory. It might be that the mere possession of the types of equipment that we are talking about, which people are able to buy from a Tandy store, is not in itself more than merely preparatory.

The two other very famous cases about the law of attempts are both Queensland cases—the Crown v Chellingworth and the Crown v Edwards. One of them involved a very famous incident where an individual was charged with an attempt to have sex with a horse. He was caught by local police standing naked behind the rear end of a mare and in a state of excitement. This was a case from the 1950s. It was held that he had not done something that was more than merely preparatory. The law has wound back from that extreme test of attempt. We might ask ourselves what else could he have done in that circumstance. The students loved that example. It is hilarious.

We have now wound back but there still has to be some considerable proximity between one’s acts—what one has done—being in possession of something and the actual offence.

The ACTING SPEAKER (Mr P.B. Watson): Member, I know you are trying to address your group, but it is proper procedure to face forward so that Hansard can hear. I know that you like to play to the crowd, but if you could just talk to the front it will be clearer on the microphone. The people at this end are feeling a bit left out.

Mr C.C. PORTER: They are also a good crowd.

This is the idea of the offence of attempt, and this is where the criminal law falls down in this particular area. That brings me now to the case of David Hicks, which I think is also very illustrative of the types of problems that we are dealing with here. There was a lot of debate about David Hicks, and he was charged, as I recall, with two offences. One of them was the offence of material support for terrorism. Supporters of Hicks' return to Australia made much of the idea that no such offence existed under Australian law at the time. Had David Hicks been returned to stand trial in Australia, the offence would have had to be created, and David Hicks would have had to be prosecuted retrospectively for an offence that did not exist at the time of his actions. There is obviously a very large degree to which we all feel that retrospectivity is very unpalatable. There was argument amongst the American prosecutors, particularly the American prosecuting colonel, that the idea of the offence of material support for terrorism had always existed in American criminal law.

Even more interesting was the idea that Hicks was also going to stand trial for the offence of attempted murder. This is incredibly interesting, because a person must first of all have had an intent to commit the eventual offence and then done acts that were more than merely preparatory. I am not sure about the circumstances in which he was caught, but it was said by many who criticised the idea of an attempted murder charge that he had not actually done anything that was preparatory, let alone more than preparatory. Some people said that the best that could be alleged against Hicks was that he had a gun at the time of his arrest and was intellectually or philosophically prepared to use it to shoot US soldiers, had he been in the right place at the right time; he just lacked the opportunity to do that. In those circumstances it would have been very difficult to charge and successfully try David Hicks for attempted murder, because although he was in possession of the tools of his criminal calling, and he may have had some form of intent, he had not done acts that were more than merely preparatory.

The kind of offence that this legislation is trying to create, amongst others, is the idea of trying to criminalise the very possession of the tools of the trade. If I were to apply that to David Hicks, it would be criminalising his possession of a gun and also his possession of the intent to use it for a criminal purpose. It is very interesting that what we do not do in criminal law is charge someone for thinking about doing something criminal. This was very put pithily recently, when I read that if that were the case, even Jimmy Carter might have found himself stoned to death under Sharia law. In a 1976 *Playboy* article, Jimmy Carter said this —

I try not to commit a deliberate sin. I recognize that I'm going to do it anyhow, because I'm human and I'm tempted. And Christ set some almost impossible standards for us. Christ said, "I tell you that anyone who looks on a woman with lust has in his heart already committed adultery". I've looked on a lot of women with lust. I've committed adultery in my heart many times.

Jimmy may well have done that; I am not disputing that. But the point that he is trying to make is that that intent, or that thought, even though he might have possessed the tools of his trade for lust—they may have been on him—those two things in combination are generally not an offence.

Mr J.M. Francis: He was a submarine officer.

Mr C.C. PORTER: That is not a matter that I can comment on.

We are creating new offences here. The first offence that we are creating is stealing someone's identity. I will come back to that whole idea in a moment, but it is the idea of using or supplying someone's identity, possessing someone's identity with intent to commit an offence; alternatively, what I have initially been dealing with here, possessing equipment that could be used, in the case of the member for Mindarie's legislation, or, in what we will present, to make, use, supply or transmit identification information. We are trying to create special circumstances because the law of criminal attempt somewhat falls down in this particular area.

I might now talk briefly about some of the comments made by the member for Forrestfield. I listened very intently to what he had to say in his contribution. No doubt when the government's legislation reaches the consideration in detail stage he will have much to contribute. I will be listening very carefully with a view to considering any suggestions that he can make. The one thing that has struck me about the developmental process of this legislation is that the technology is changing at a pace faster than this Parliament can ever hope to keep up with. Drafting legislation broad enough to at least give us some breathing space over the next five to six years, or even the next three to four years, is very important. That is why it is worth waiting the extra week or two, because there are some significant improvements in the breadth of the behaviour that will be covered in the government's legislation.

What was also interesting about the contribution of the member for Forrestfield was that he used, colloquially, as everyone has used it, and as I have used on occasions, the idea of “identity theft”. It is interesting, because if we go back to Mr Stonehouse, who assumed someone’s identity, identity theft was not what he was ever charged with. The reason for that is probably that someone’s identity is simply not a thing under our Criminal Code that constitutes property that is capable of being stolen. It is the equivalent of saying that someone’s personality has been stolen. Maybe some of us need to do that, I do not know, but it is just not something that the criminal law in this jurisdiction recognises as capable of being stolen. In fact, the bill that will be brought before the house by the government will be talking about identity crime rather than identity theft. This was a matter that came out yesterday in relation to the arson legislation. The Criminal Code contains a definition of property that is very wide. The term “property” includes real and personal property, and anything animate or inanimate capable of being the subject of ownership. Someone’s identity does not necessarily fall within that definition. Their credit card might, and even arguably some details stored in some area about them might, but simply assuming an identity—saying that I am the member for Forrestfield or the member for Riverton—and passing myself off as another person might constitute a fraud but it is not necessarily a separate offence such as what we would call identity theft. This legislation, in part, cuts into the area of attempts to offences, with respect to the idea of equipment, and it also goes into the area of creating a new offence, which is the assumption of someone’s identity—pretending to be someone else through whatever means are available. It is a delicate process to try to get that absolutely right.

I will return now for a moment to the idea of attempts or inchoate offences. Understanding the circumstances in which someone possesses the offending equipment or the tools of the trade is so critical in the drafting to make sure that we have it absolutely right, because the equipment is already quite variable in the current state of knowledge and technology, and it will no doubt be different in six months’ time. The mechanisms and processes will be different in a very short period. Section 4 of our Criminal Code sets out what it means to commit an attempt at an offence. There must be a person who intends to commit an offence—that is the mental element. That person must begin to put that intention into execution by doing an act that is more than merely preparatory to the commission of the offence. However, the person cannot fulfil his intention to such an extent as to actually commit the offence. There must be the intention, and a person must do something that is more than merely preparatory but must not go so far as to have actually committed the offence. The member for Ocean Reef made a very important point when he was quizzing the reason that the member for Mindarie stipulated in his legislation—something very similar will happen in the government’s legislation—that a person cannot be charged for one of these offences and charged with an attempt, because if we were to try to do that we would be covering exactly the same facts with two quite different offences, and these are meant to be stand-alone offences. There may be a time when we determine to charge someone with an attempt to steal, on the facts, because we think they are doing something that is more than merely preparatory. Not only have they been caught with all the skimming material, but they are standing over the automatic teller machine bolting it on, in which case there would probably be very few problems in proving that they had attempted to commit another offence such as stealing. An intention speaks for itself and juries are instructed all the time that that is a mental element of an offence; someone has to have an intent to do a certain thing, in this case something criminal.

I come back to the issue that I raised with the idea of Stonehouse, Chellingworth and Edwards; that is, this idea that we have to ask ourselves this question: how far must the accused have gone in possession of the equipment to have been said to be committing an offence—an attempt? The problem in a nutshell is that simply finding people in possession of the offending equipment is not going to be enough to say that they have done something more than is merely preparatory because in many instances the equipment might itself be quite benign. It might be the sorts of things that anyone who is a boffin in the area, and has an interest in it, could have on him or in his study or attached to his computer. Some of it might be as simple as a computer program that is able to transmit and collate data. Therefore, we cannot criminalise someone’s mere possession of that sort of equipment. We are having difficulties criminalising people where we can show they have an intention to commit an offence but are also in mere possession of the equipment, which is what we are trying to do here. In Williams, which is one of the Queensland cases, is probably the best description of what an attempt to an offence is that I have read. It states —

... the first step along the way of criminal intent is not necessarily sufficient and the final step is not necessarily required. The dividing line between preparation and attempt is to be found somewhere between these two extremes; but as to the method by which it is to be determined the authorities give no clear guidance ... for that would mean the discovery of a legal formula universally applicable to the enormous variety of method by which nefariously inclined individual persons apply their infinite disparity of intellect and capability to the carrying out of criminal intentions. This is just a long way of putting the evergreen truth—each case depends on its own facts.

I think that gives some idea of what an attempt is and why criminal law is very much struggling to try to keep up with technology in this area.

What are the types of offences that legislation in this area and the other jurisdictions has tried to come up with and has tried to enshrine in law and make criminal? I will just go through not a summary of the member for Mindarie's bill but look at basically the types of offences that we can have. Firstly, we need to have some definition of what identification material or identity material is that is broad enough to determine whether people are in possession of it. Generally speaking, the types of offences we are looking at are the offences of making, using or supplying identification material; that is, the actual material that goes to someone's identification. Then there is the offence of possessing the material with some kind of intent to commit a criminal offence. Finally, there is some kind of offence for possessing the equipment people can use to make the material. In my view, that is perhaps one of the most critical features of any legislation of this type because it covers that scenario of people who have equipment that could be used to enact criminal intent but all they have done is possess the equipment. It is absolutely critical. The complaints, which I will go into detail on later, that I have about the member for Mindarie's legislation is that that critical offence criminalises the possession of equipment with intent, but only the possession of equipment that is used to make identification information or material. The problem with that goes back to the genesis of the South Australian act, which the member for Mindarie has followed in this legislation. In 2003 what was the skimming offence that everyone was concerned about? It was people putting a rather cumbersome block over an ATM and also having a camera on the ATM; the block that sits over the front of the card insert slot would read the card and the camera would read the personal identification number as it was being put in. That sort of equipment, we could imagine, might be found in someone's home and we might be able to prove his or her intent to use it and therefore we could prove the offence of possessing the equipment that could make identification information, which would be the offence. The member for Mindarie's bill does that. However, the bill does not go the step further. In 2003 the types of offences that we saw at McDonald's were distant, but we are now seeing them. The equipment that was used in the McDonald's scam is very, very different from the type of equipment that we might describe as the equipment that we use for making identification material. The type of equipment that slides into an EFTPOS machine does not make the identification material; it transmits it. It simply shoots it off in cyberspace to somewhere else.

Mr J.R. Quigley: Does it shoot off into cyberspace to take money out of someone else's account?

Mr C.C. PORTER: That is quite correct; yes.

Mr J.R. Quigley: Therefore, that is using personal information for the commission of an offence.

Mr C.C. PORTER: That is right and it might be caught at that point in time. But imagine this, member for Mindarie: we find the chip that goes into the McDonald's EFTPOS machine at someone's home during the course of a search warrant for this or that. At that stage it is not being used; it is merely sitting there. Those people are merely in possession of equipment that might be later transmitting. If we can prove the intent in that case, then we have the offence.

Mr J.R. Quigley: And if it is used in the McDonald's situation, it would be caught by new section 440D(1).

Mr C.C. PORTER: I do not think that is necessarily the case and if the member argues that then he must necessarily argue that he never needs the substitution attempt offence, which is what possession of the equipment plus intent will be.

I might just add to that the point that the other offences in this legislation all sit around—there will always be overlaps—the decision of a prosecutor to try to determine which is the best charge to judge under. That is a complicated decision and there will not always be clear delineation between the offences in this case. The point is that we must have an offence in legislation of this type. If we want to even stay close to keeping up with the criminality, we must have an offence that makes it unlawful to possess equipment with intent where the equipment is very, very broadly defined because it is hard enough to prove the intent. Once we have overcome that barrier, we have the situation whereby we can prove that an individual has committed the offence of possession of equipment of a certain type broadly defined, plus with intent.

I will now make a couple of comments about some of the other contributions from members opposite. The member for Gosnells raised the issue of the temptation that people in commerce and trade now have to revert to cash or decrease their credit limits. My inclination is to believe that in the not too distant future there will not be such a thing as cash; it simply will not exist any more in the way that western societies have come to view it. Although no doubt some core of society will always keep money under the mattress and so forth, these types of offences will be important because not only are we such an electronic economy, but also a reversion to cash is very difficult. One of the matters raised by the member for Gosnells, which was echoed by many members on my side of the house, was that in addition to creating criminal offences about the use and supply of identification information, about the possession of identification information with intent, and about the possession of equipment used to make identification information with intent, is that other than criminality, other than losing money, and other than people breaking the law, there can be enormous inconvenience occasioned to someone who has had his identity assumed or used by another person. That is something that the member for Mindarie's

bill does, and again it is something that the government is conscious of and will be in the bill that we present to Parliament; namely, we have to provide some kind of mechanism to assist the victims of an information offence of this nature in court by granting them some kind of certificate as to their identity so that they can show the world at large that they are who they say they are and are not the person from the Congo or wherever it was that the member for Ocean Reef was the subject of a fraud from. Therefore, that also becomes very, very important.

I will return to the genesis of the South Australian legislation, which the member for Mindarie has chosen to replicate. For its time, in 2003, it was a good bill. However, what the member for Mindarie inserted—the South Australian legislation, which he has copied—was recommended as the model legislation for Australia by the Standing Committee of Attorneys-General Model Criminal Law Officers' Committee's final report into identity crime, although it was not actually the bill that was recommended as the model law by that very erudite and learned group. The South Australian legislation was the first legislation in any jurisdiction to even attempt to deal with the issue and it was that legislation that the model criminal code group started to look at in terms of producing the best possible legislation that might be replicated amongst the states.

Debate adjourned, pursuant to standing orders.

Sitting suspended from 6.00 to 7.00 pm

ACTS AMENDMENT (WEAPONS) BILL 2009

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 4: Sections 68A to 68E inserted —

Debate was interrupted after the clause had been partly considered.

Ms M.M. QUIRK: Before the dinner break, I had asked the minister a question about the fact that there is some uncertainty about when a person may have a lawful excuse. The minister said that that will be a matter for the discretion of the police. I asked the minister whether it would be possible to introduce a regime—such as the one that we have for the mandatory sentencing legislation for assaults on police—under which for a couple of years, at least until this legislation is bedded down and people understand what their rights, liabilities and obligations are, any decision to charge under these proposed sections must be overseen by a person of inspector-level rank.

Mr R.F. JOHNSON: What happens at the moment—I am sure the member is aware of this from her legal experience—is that a person is charged by a constable, and that is overseen by a sergeant. The police prosecutors use the same criteria as are used by the DPP. If they do not believe that there is a justifiable stand-up case to proceed with, they will not proceed. So, to answer the member's question, there is already someone who would oversee any charges that might be laid against an individual in respect of the bill before the house.

Ms M.M. QUIRK: Would it be possible to get some prosecution guidelines in relation to offences under this legislation? That would be of great assistance to interested groups such as the archery group that I talked about earlier, and also to the Sporting Shooters' Association of Western Australia, which has 80 000 members, all of whom, I am sure, want to be law abiding. I think even the Deputy Premier is a sporting shooter. Would it be possible to put out some guidelines that they can disseminate to their members so that they will know what is anticipated and so that we can make sure that Western Australians who are pursuing their hobbies do not fall foul of the law?

Mr R.F. JOHNSON: There are so many different permutations that come into play in this area that it would be too difficult to do that, quite frankly. I have faith in the police—I would think the member would also have faith in the police—and in the fact that a more senior officer will be overseeing these things. We have had meetings with the Sporting Shooters' Association. The information I have is that it is now generally happy with the intent of this weapons amendment bill. It was concerned about the consequences for firearm owners if they were in a public place and had to account for why they had a firearm in their possession. It was explained to the association that if a firearm owner was going from point A to point B and stopped at a service station, for instance, that would be considered to be part of the journey, and that would give that firearm owner a lawful excuse to have carriage of that controlled weapon. There is no question about that. However, if a firearm owner decided to take a detour and go into a built-up area that was within 50 metres of a place of public entertainment, that firearm owner would have a bit more explaining to do. I would have thought that such a firearm owner should have a bit more explaining to do, quite frankly, and I would have thought the member would think the same. I believe the safeguards are there. I am told that the Sporting Shooters' Association is generally happy with the intent of the amendments. I am told that the association would generally support crossbows being made a prohibited weapon. However, it did have a difficulty with prohibiting longbows, which are the bows that are used in archery. I agree with that. There is no intention in this bill to prohibit the use of bows and arrows by people who engage in archery and similar sports. We have no intention of preventing people from pursuing their sport or recreational entertainment. I do not believe this bill will present any problem for those people who use

bows for the purpose of engaging in archery. I do not know what else I can say to convince the member. I think people have been jumping at shadows that are not there. There is no intention in this bill, and there was no intention in the bill that was introduced by Jim McGinty, to stop people from pursuing their genuinely-held interest in that activity. The Sporting Shooters' Association deals mainly with people who use handguns, shotguns and rifles. It does not have a lot to do with the people who engage in archery, but it wanted to speak up for those people, and good on it for doing that. I have had meetings with Ron Bryant from the Western Australian branch of the Sporting Shooters' Association. I am sure he has also been in touch with the member. I think the association saw problems where there were no problems. I can understand that. When we bring a bill before Parliament, people often say, "Oh jeppers!" But this bill is no different from the bill that was put before Parliament in the early part of 2008 by Jim McGinty. He was able to get that bill through this house, and it almost went through the upper house. That bill was no different in that context from this legislation. The member mentioned during the second reading debate that people have had a lot of time to look at this bill and to consult. People have consulted with me. I am sure they would have consulted with Jim McGinty and his advisers when he had carriage of almost the same bill in this house. As I have said, people have no reason to feel nervous about this bill. There is no intention by either the government or me to try to stop people from carrying out their lawful pursuits.

Ms M.M. QUIRK: At the risk of flogging a dead horse but in the interests of time, I will raise one more issue in relation to that and also some other issues in relation to clause 4. If I do it altogether, it should save time. I asked a question about why there cannot be some prosecution guidelines, which is very common. I am not asking for them to be enacted in the regulations or anything else, but there may well be some standard operating procedures put out in terms of this legislation. I do not see why there could not be something promulgated that assists and can assuage concerns, however illegitimate the minister believes they are, of organisations such as the sporting shooters organisation that represents 80 000 Western Australians.

That is my number one comment in the interests of time. Secondly, the "place of public entertainment" has a very broad definition. I think there needs to be a little guidance on that. Thirdly, section 68D relates to being in possession of weapons and cash, which is all part of clause 4. I understand that the amount of cash is prescribed under the Firearms Act and, presumably, its regulations. I want to know what that amount is at present.

Mr R.F. Johnson: It is \$3 000.

Ms M.M. QUIRK: Is there any thought of changing that at this stage, or is \$3 000 a figure that is going to remain for the time being?

Mr R.F. Johnson: We have given no consideration to that at this stage, but we could if we felt it was worthwhile doing so. Does the member want to go up or down?

Ms M.M. QUIRK: Up what?

Mr R.F. Johnson: Up or down from \$3 000.

Ms M.M. QUIRK: I just wondered whether it was staying at that for the foreseeable future.

Mr R.F. Johnson: It certainly is at the moment, yes.

Ms M.M. QUIRK: In terms of a response now, could the minister list, for the purposes of *Hansard* so people can interpret the legislation, what he considers to be places of public entertainment and also respond as to why it is not possible to bring in prosecution guidelines that would assist the enforcers of this legislation?

Mr R.F. JOHNSON: I have dealt with section 68C. The definition of "place of public entertainment" is set out on page 4 of the bill —

place of public entertainment means —

- (a) a place where the public is present and where entertainment of any kind is about to be, is being, or has just been provided to the public, whether on payment or not; or
- (b) licensed premises, as defined by the *Liquor Control Act 1988* section 3(1);

prescribed place means —

- (a) a place of public entertainment; or
- (b) a public place within 50 metres of a place of public entertainment.

To me, that is quite simple. "Place of public entertainment" is defined in the bill. That is the same as it was before. It has not changed. I have not changed it. Indeed, the reference to 50 metres is the same. Fifty metres is not exactly a great distance. I would not want people to go with weapons in anyway, certainly not within 50 metres of a place of public entertainment.

Ms M.M. Quirk: Bear in mind that “weapons” is quite broadly defined. For example, if a jamboree was held at Langley Park, that might be a “place of public entertainment” and Scouts might, quite legitimately, have Swiss Army knives with them.

Mr R.F. JOHNSON: They would have a lawful excuse to have them.

Ms M.M. Quirk: Then they have to jump the hoops, because the onus is reversed, of proving that they have a legitimate reason for the Swiss Army knives.

Mr R.F. JOHNSON: Police would not charge them in the first place.

Ms M.M. Quirk: Minister, how do we know that?

Mr R.F. JOHNSON: I have got confidence in our police officers to use their commonsense—never mind their discretion but their commonsense. I do not believe for one moment the example you have given of the Scouts at a jamboree carrying Swiss Army knives would encourage a police officer to charge those young Scouts in what is a very, very worthwhile pursuit, I am sure you will agree. Maybe I have got more faith in our police officers than the member has. I really do not believe the police would do anything other than use their commonsense to start with. As I have already said, if a police officer charged somebody, that police officer would have to get a sergeant, who would oversee whether that charge should be sustained or whether it should be dropped. It is not just the probationary constable who has done something; a seasoned and experienced sergeant of some years standing will oversee to make sure things are done properly and that a zealous a young constable does not overstep the mark. I really do have faith that our police would do things properly.

Ms M.M. Quirk: Can I stress that I am not making aspersions about the competence of the WA Police but more a question of zeal on some officer’s part?

Mr R.F. JOHNSON: I can understand that. In every walk of life we get people behaving differently in their professions; none more than in this place! Some will have more zeal, if I can put it that way, in trying to achieve certain outcomes. Others will take a more placid and more thinking approach. I believe that police officers are no different from that. If anything, police officers are more disciplined. Police are more highly trained in the job that they do than any member of this house is in the job that he or she does. It is true. That is why I have got a lot of faith in our police officers. There are principles and guidelines.

Ms M.M. Quirk: I would not want some people in this place to have access to a Taser, that’s for sure!

Mr R.F. JOHNSON: Of course not. I do not think I would either, quite frankly! I trust the overwhelming majority of our police officers would do the right thing. The member has heard the Commissioner of Police talk to graduating police officers, as I have. The commissioner gives an excellent speech to the new probationary officers. They get that sort of ethos and message compounded over the first few years of doing the job.

Ms M.M. QUIRK: I have one final matter. The minister mentioned representations from both the archery and the sporting shooters groups. Is the minister able to advise whether he has responded to those representations in writing? I think the minister said that he regarded certainly the sporting shooters’ groups as being satisfied after their meeting with him. Has the minister formally responded to their concerns in writing?

Mr R.F. JOHNSON: The truth is that I do not know whether I have or not. I have been away on holiday for two weeks, as the member knows. I have got a pile of letters that deep that I have got to sign in the next day or so. As I have five bills before this Parliament at the moment, I have been a little busy. I cannot give the member an absolute answer but I can assure her that those people will be responded to. The problem I have had with some people is that they send letters to my personal email address rather than my ministerial address. Everything that comes into my ministerial office gets logged, as the member would know, and everything gets responded to. I have every intention of responding to all those people who have emailed or written to me. I cannot give the member an answer as to whether I have done that yet or not. Of course, it is probably more prudent that if I have not done it I wait until this bill has passed this house at least so that I can tell them what this house has determined so they have the most up-to-date news possible.

Ms M.M. QUIRK: Sorry; I lied when I said “finally”, it was penultimately! Can the minister get advice as to whether any computer systems, any framework or any data platform changes need to be made in relation to the implementation and enforcement of this legislation; and, if so, has it been costed, how much will it cost and is it in the budget?

Mr R.F. JOHNSON: The system is already there. The only change will be when police log a new charge or a new case.

Ms M.M. Quirk: But modifications have to be made to the system, would that not be correct?

Mr R.F. JOHNSON: Not to my knowledge; not in relation to this. It is just a different charge or a different offence.

Ms M.M. Quirk: I think the minister’s adviser is saying they do have to make some changes.

Mr R.F. JOHNSON: It is all routine work. Obviously the new offences and the new penalties—the offences predominantly—will be loaded onto the computer system. But there is no costing involved. That is done within the existing police budget. I can assure the member the police have not come to me to say, “Minister, we need an extra \$1 million to cope with X, Y or Z to do with this bill.”

Ms M.M. Quirk: Will any additional FTEs be needed to enforce this regime? For example, there will now be inspections; police will need to go to the premises where these items are sold. Has any allowance been made for that, or will that be covered under existing resources?

Mr R.F. JOHNSON: Obviously, there will be a 28-day period before this bill comes into effect, so the police will be able to advise the dealers who sell controlled weapons. That will be done in the normal course of their work. Will there be any extra full-time equivalents to deal with this? There may well be, but only inasmuch as we promised to put on an extra 500 police officers and an extra 200 public servant officers. We will outsource a lot of this activity to Australia Post to make it easier for people. Rather than going to a police station, they will be able to renew their licence at the local post office. I believe that if a person is deemed responsible enough to be given a firearms licence, it does not matter whether that person has one firearm or six firearms; that person will be just as responsible, unless something comes to light to show that that person is not responsible. It will depend on the type of firearm licence that a person wants. Some people might have different guns, or even handguns, for the sports that they take part in. My son is a sporting shooter, so I assure the member that I hear firsthand whether there are any problems: “Dad, you’ve got to do this, you haven’t done this and this is what people aren’t happy about.” I am not hearing that at the moment. He is happy. I am told that most people are happy, particularly with the new regime, because it will be easier for them to go to a post office than to a police station.

Ms M.M. QUIRK: On that point, it is one thing to avoid the licensing obligations, but it is another to supply guns to minors. We are concerned about the enforcement regime and other enforcement aspects of this weapons legislation. The Auditor General’s recent report states that virtually no inspections were done of storage facilities for firearms and that an upgrade of computer systems is needed to track down those people who are dead but who are recorded as having a firearms licence.

Mr R.F. Johnson: That is happening.

Ms M.M. QUIRK: Given that there was an impost on the resources of the police, the minister is now adding some extra duties. Is the minister confident that that can be dealt with and that the legislation can be vigorously enforced?

Mr R.F. JOHNSON: The answer is yes. It will be just another offence. I do not believe there will be any extra impost on police; they have not said to me that they believe there will be.

Ms M.M. Quirk: Finally, how long after this legislation is passed by the upper house do you anticipate the legislation will be proclaimed?

Mr R.F. JOHNSON: We are looking at 28 days.

Ms M.M. Quirk: Will any additional regulations need to be drafted in the meantime?

Mr R.F. JOHNSON: I am advised that we have not identified any and do not anticipate any, but who knows? Every day is a different day. Something may come up that needs a regulation to be invoked or altered, so I cannot give the member a hard and fast guarantee that there will not be any regulations. Certainly, no regulations are anticipated at this time; and, if there are, I am sure that the member will be the first to know.

Clause put and passed.

Clauses 5 to 12 put and passed.

Title put and passed.

Third Reading

Bill read a third time, on motion by **Mr R.F. Johnson (Minister for Police)**, and transmitted to the Council.

CRIMINAL INVESTIGATION AMENDMENT BILL 2009

Second Reading

Resumed from an earlier stage of the sitting.

DR J.M. WOOLLARD (Alfred Cove) [7.25 pm]: Before the debate was interrupted earlier today, I was thanking the Minister for Police for the briefing on this bill. I mentioned that this bill has been introduced because the minister has stated that there has been a proliferation of weapons and an increase in instances of violence. I was shown the figures for the past 15 months. In fact, during the break the member for Riverton showed me some figures from the past 15 years. It was interesting to note that over the past 15 years the figures

for Northbridge had increased slightly until 2005-06, but have fallen since then. Even though the numbers, particularly for assaults, have fallen over the past couple of years, the number of assaults in that area is unacceptable.

I stated earlier that, although I support intervention that will ensure that there are improved safety measures for the community, I am concerned that this bill will remove the requirement for reasonable suspicion by police. It will allow police to stop and search a person or a vehicle without reasonable suspicion. I said that this was a fundamental principle of stopping and searching community members across Australia. The legislation of all the other states uses the term "reasonable suspicion". I also referred to the fact that Australia is a signatory to the International Covenant on Civil and Political Rights, which states that no-one shall be subject to arbitrary or unlawful interference with his or her privacy, family home or correspondence and that everyone has the right to the protection of the law against such interference. The minister will recall that when the previous Attorney General introduced the terrorism legislation in this house a few years ago, many members who now sit on this side of the house were unhappy at the content of that terrorism legislation, but we supported it because there was a concern that if we did not support it and there was an explosion at Subiaco Oval, for example, we probably would not be able to sleep again.

At the briefing, the police and the legislative research officers explained that the removal of the requirement for reasonable suspicion will assist with the difficulties associated with the prosecution proving reasonable suspicion. The minister in his second reading speech said —

Currently, under the Criminal Investigation Act 2006, police officers may stop and search a person or vehicle in a prescribed or declared area and seize any thing found that is relevant to an offence or that the officers reasonably suspect may endanger the place or people within it. However, these powers are limited and can be exercised only when the person provides consent for the search to occur. The problem with this is that if a person does not consent to a search, police officers can then only refuse the person entry to the relevant area. This leaves the potential for drugs and weapons to remain in public, which therefore may lead to their engagement in violent and other antisocial acts of behaviour.

Although I was unhappy that "reasonable suspicion" was coming out of the legislation, and I believe that safeguards should be put into the legislation to protect the police, to ensure the accountability of the police and to protect the community, I am pleased that the minister put on the table that this legislation will not only help to identify weapons and get people with weapons off the streets, but also be used for the problems that arise from drugs. The statistics that the police and the minister's research officers showed me during the briefing were on assaults and burglaries. I cannot remember all the categories on the list. It is a shame that the table of offences on assaults did not show in the next column how many related to alcohol and drugs. How many of the burglaries were related to alcohol and drugs? Some people would say that, although the intent of this legislation is to protect the community, most of the problems that occur in entertainment and other areas are the result of the abuse of alcohol and drugs. Perhaps the legislation coming to this house should be primarily aimed at preventing the abuse of alcohol in the community.

Mr R.F. Johnson: We are doing our best to achieve that.

Dr J.M. WOOLLARD: Some very good measures have been introduced. The Director of Liquor Licensing has put forward some very good suggestions, particularly for some of the remote areas. Accords have been introduced at Fitzroy Crossing and other areas. Because we know that alcohol and drugs are the main cause of the problem, we should be spending much more time on that than on many of the other things that we seem to waste time on in this place.

I was told at the briefing that at times a case can fall over because police are unable to prove that they had a reasonable suspicion when they conducted a search. I asked for some case material. The briefing was held only a few days ago, so the minister's department has not been able to get me that case material. This legislation is supposed to be evidence based. Although those cases have not been provided to me in this place, I hope that if this bill goes through this place this week, before it is put on the table in the upper house, the minister asks his staff to find those cases and put them on the table. There is the question of where the evidence is. Because the cases have not been given to me, I wonder whether there are limited occasions in which a case has been thrown out of court because the prosecution has not been able to prove reasonable suspicion.

I have been able to find some cases, particularly one in which police were unable to prove reasonable suspicion. Evidence identified through a search can still be admitted on the grounds of public policy, because courts can exercise discretion to admit illegally obtained evidence. The police could conduct a search and find weapons. The Director of Public Prosecutions could charge somebody, who could be taken to court. In the case of the *Police v Richard Noel Edwards* in 2007, illegally obtained evidence was admitted on public policy grounds. In that case police were called to a residence after an attempted break-in. A police officer put a call out on the police radio requesting officers to be on the lookout for the offender and a description was given. An officer

noted the respondent cycling towards him without a light on his bike in the vicinity of the attempted break-in. The respondent was carrying a torch, which was not illuminated, and he matched the description of the alleged offender. When the case first went before a magistrate, the magistrate found that the evidence of items on the respondent was inadmissible because the search occurred only after the respondent had been illegally stopped. However, on appeal the judge concluded that the police officer did not have reasonable suspicion, but found that the evidence was admissible on the grounds of public policy discretion. The judge stated that on a public policy level it was his view that the evidence should be admitted because it was in the safety interests of the residents of that area that persons involved in theft-related crimes be apprehended.

The minister has not put other cases on the table. Without being able to look at those cases, I wonder whether the minister has evidence showing the number of assaults, burglaries and all those other factors that occurred within the Northbridge area and were provided in that table. I wonder whether the minister could leave “reasonable suspicion” in the legislation. I believe the minister could make a ministerial statement in which he could describe the evidence that has been provided to him as Minister for Police.

[Member’s time extended.]

Dr J.M. WOOLLARD: I believe that, under that public policy discretion, the people that the minister wants to have apprehended because of weapons or drugs could be apprehended and that there could be a successful prosecution.

Mr R.F. Johnson: “Could be”, not “will be”. We are in the hands of a magistrate’s discretion or a judge’s discretion. They all rule differently. I am told that there are some cases. I do not know how many, but I am sure we will be able to give them to the member at some stage. The police have told me, and I believe them, that defence lawyers use the grounds —

Ms M.M. Quirk: Defence lawyers are showing —

Mr R.F. Johnson: You can interject in a minute. The member is taking my interjection at the moment.

Mrs M.H. Roberts: You are talking drivell.

Mr R.F. Johnson: Welcome back. It is nice to see you in the chamber once in a blue moon!

Mrs M.H. Roberts: Have you had some nasty pills for dinner?

The ACTING SPEAKER (Mrs L.M. Harvey): The member for Alfred Cove has the call.

Dr J.M. WOOLLARD: This is my time!

Mr R.F. Johnson: Let me just tell you what I am told. Very often some slick defence lawyers spend more time trying to question a police officer about the reasonable grounds for suspecting something like this rather than on the fact that a police officer has found a machete, gun or whatever in the person’s possession. Where is the priority, I ask?

Dr J.M. WOOLLARD: The court has to make decisions based on legislation, reports and public policy. This is public policy. The police also outlined that the omission of reasonable suspicion would alleviate the practical problems faced by the police, that being confusion and perhaps a lack of consistency among officers as to what constituted a reasonable suspicion. Perhaps this lack of clarity could be addressed not by taking on auxiliary police officers but by providing further education to our officers. I am concerned about the potential for these powers to cause community disharmony. In the UK, where similar powers were introduced, it was found that particular ethnic groups were targeted. The abuse that occurred at that time was a result of the Terrorism Act 2000.

Dr M.D. Nahan interjected.

Dr J.M. WOOLLARD: No, I cannot because I will run out of time and I will have someone jumping up.

When the Terrorism Act 2000 was passed in the UK, basically, searches increased for ethnic groups, with the biggest rises being for black people and then for Asian people. Because of the problems that were experienced in the UK after it had introduced the Terrorism Act and taken reasonable suspicion out of those stop-and-search powers, and it was found that particular ethnic groups were being targeted, the Macpherson review, which undertook an inquiry into the death of Steven Lawrence, highlighted the effect of the stop-and-search policy on police, community and race relations. The report made a number of recommendations designed to ensure that the powers were exercised in a way that would be as effective as possible in reducing crime but would also promote trust and confidence in minor ethnic communities. Recommendation 61 of this report stated —

That the Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all “stops” and “stops and searches” made under any legislative provision (not just the Police and Criminal Evidence Act). Non statutory or so called “voluntary” stops must also be

recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped.

This recommendation was accepted, and following a number of pilot programs, police forces in England and Wales have been recording stops since 2005. Basically, when the 2000 legislation threw reasonable suspicion out the window and it was found that particular groups were being targeted, there followed an inquiry into why particular groups were being identified and what could be done to improve relations in the community. Recommendation 61 provides that a stop is when an officer requests a person in a public place to account for himself, his action, his behaviour and his presence in an area or his possession of anything. A requirement was introduced that when a police officer stops a person, that information is recorded at police headquarters and included in an annual report that is given to the Parliament to prevent any abuse of these stop-and-search powers.

The ACTING SPEAKER (Mrs L.M. Harvey): There are a number of conversations in the house and I cannot hear the member for Alfred Cove.

Dr J.M. WOOLLARD: To ensure transparency and accountability, I believe that we should adopt procedures similar to those in the UK. If reasonable suspicion is to be removed from the act, then adopting the UK measures would give some protection to police who stop and search someone; it would ensure that police are accountable to the community; and it would also give some protection to members of the community.

It is inappropriate that this legislation will not be reviewed for five years. A review of the terrorist legislation in the UK resulted in annual reports being laid before Parliament. Because these stop-and-search powers are going to be so different from the law in all the other states, I believe that this legislation should come back to house within 12 months for review, and should go through both houses. If the Parliament then is not satisfied, I think reasonable suspicion should be reinserted into the act.

MR P.B. WATSON (Albany) [7.47 pm]: I stand here tonight very proudly as the member for Albany. Albany has a proud heritage. The Anzacs were formed in Albany. They left Albany and went away to war to fight against bills like this. This sort of thing would not happen: people being stopped and searched in the streets, in our cities, in Albany! Anywhere in Western Australia the police could come in. Down in Albany they could say, "The Albany show is on and there might be a few suss people there, so let's go there; we can search anyone." The police could go to the football grand final and say, "We think there's going to be trouble there today, and we can search people."

I am a great supporter of the police. I think they do a tremendous job. I go out quite regularly with our local coppers and they do a tremendous job. I think this legislation will cause more trouble for the police than it is worth. It is weak, badly thought out and reactionary. It is a breach of basic civil rights.

I have met Karl O'Callaghan on a number of occasions over eight or nine years. I have found him to be a very smart man—not good in his band, but a smart man—and he has come down to Albany quite a lot. I think when he saw the new Minister for Police, he thought, "Hello, hello, haven't we got one here!" And he was right. He has put this right across the minister. I can imagine that when the Minister for Police goes into the commissioner's office, the minister lies down on his back and the commissioner tickles his tummy! The commissioner must think, "Here he comes again; I'll get some stuff for my policemen."

Mr R.F. Johnson interjected.

Mr P.B. WATSON: I do not want any interjections. I want to get my message across for my constituents.

Dr K.D. Hames interjected.

Mr P.B. WATSON: I have not heard the Deputy Premier speak. If he wants to speak, he can.

Mr R.F. Johnson interjected.

Mr P.B. WATSON: That is different; the deputy leader of the government did not ask for protection.

Western Australia has had some really good police ministers, including Michelle Roberts, John Kobelke and Kevin Prince, a former member for Albany, who was a very good police minister. The present minister is a joke. When he stands in here, he is seen as a joke by the chamber. From what I have heard from the police in my district, there is not much respect from them.

Mr J.R. Quigley: No-one's listening to Lord Haw-Haw.

Mr P.B. WATSON: There are a lot of good coppers.

Withdrawal of Remark

Mr R.F. JOHNSON: Once again, the member for Mindarie has insulted me by using unparliamentarily language. He has adversely reflected on me and my character by referring to me as Lord Haw-Haw. He knows who Lord Haw-Haw was, because he is very much like him.

Mr T.G. Stephens interjected.

Mr R.F. JOHNSON: Why does not the member keep quiet and go back to the Pilbara?

The ACTING SPEAKER (Mrs L.M. Harvey): Member for Pilbara, I am taking a point of order.

Mr R.F. JOHNSON: Once again, Madam Acting Speaker, he has adversely reflected on me as a member of Parliament and I ask that he be made to withdraw.

Mr M. McGOWAN: I do not think that referring to the member for Hillarys as Lord Haw-Haw is unparliamentary. As part of his point of order, the member for Hillarys referred to the member for Mindarie as Lord Haw-Haw, so I call upon him to withdraw, if the member for Mindarie has to withdraw.

The ACTING SPEAKER: I request that all members stop calling each other Lord Haw-Haw until I find out what that means.

Debate Resumed

Several members interjected.

Mr P.B. WATSON: Members, I am speaking. But I am not in the chair, now!

Some members should go to Kings Park in the morning and read some of the plaques on the trees and take note of the age groups of the young men mentioned. I stop every time I go there; there are 18, 20, 22 and 24-year-olds who went away to war and gave up their lives for their country so that we could have freedom of speech and be able to walk through the streets without anything happening to us.

Mr M.J. Cowper: People get assaulted.

Mr P.B. WATSON: Yes, people do get assaulted, and I think something should be done about that, member for Murray. However, this legislation goes too far. It offends basic human rights. The member for Murray is a country member. What happens when the local footy team comes to Perth? The team members might like to go out and have a few beers, and while they are walking along the street the police come and say, "Look, get up against the wall." All of a sudden, these guys are up against the wall and some of their mates come along and then more mates come along. There will probably be four or five coppers there. We were concerned before about the police being bashed, but what will the situation be like when people are up against the wall being searched and everything like that? They might not be guilty of anything. What will the crowd do? If young people are involved who have had a few beers, they will get angry. All of a sudden when those poor four or five coppers are enforcing the government's law, someone will do something to be smart and there will be a full-on brawl. My main concern is that this legislation will have an adverse effect on the way people view the police. We might be taking our family out for dinner and end up in an area where there has been an incident and the police have declared it a stop-and-search area. We might have our wife and daughter with us and be told to get up against the wall because some of the people in the area are a bit suspect. Would the Minister for Police and Emergency Services like that for his family?

Mr R.F. Johnson: Where are you getting this "up against the wall" from?

Mr P.B. WATSON: The police will be able to search us, yes.

Mr R.F. Johnson: Read your own private member's bill.

Mr P.B. WATSON: No, no, no.

Mr C.J. Barnett: Do some work for a change.

Mr P.B. WATSON: I should do some work! The Premier is a reactionary Premier. He wants headlines on the front page of the newspaper; he is not worried about the person on the street. He is worried only about getting the Premier re-elected. This is terrible legislation.

Proposed section 70B(5) reads —

The Commissioner must publish the written record of the declaration in the *Gazette* as soon as is practicable after the declaration is made, but the validity of the declaration is not affected by a failure to comply with this subsection.

The written record is supposed to be published, but if it is not published, it is okay. What is the good of something like that? It will be constantly abused.

Let us talk about Northbridge. The Premier wants to take pressure off his budget surplus, so he has raised the issue of getting people into Northbridge and getting people into town. He is saying, "Let's have late-night shopping." When late-night shopping happens and we want people to go to Northbridge, there should be a big sign erected in Northbridge saying in 16 languages, "Welcome to the police state of WA. When you come to Northbridge, you may be searched." That will certainly encourage people —

Dr M.D. Nahan: Where will those people be coming from?

Mr P.B. WATSON: All over the world. Some of them might not speak English. I remember bringing the first-ever Denmark basketball team to Perth. They had never even been on an escalator before. There is no way in the world that they will know about these sorts of new rules.

Dr M.D. Nahan: Are you saying Denmark does not have escalators?

Mr P.B. WATSON: No; the member for Riverton should listen. I speak English; he speaks a different language! I said that when they came from Denmark to Perth, they did not know what an escalator was. They were people from the country. People from the country will come up here who do not read the *Government Gazette*.

Dr M.D. Nahan interjected.

Mr P.B. WATSON: I will speak slower if the member likes.

Dr M.D. Nahan interjected.

Mr P.B. WATSON: I said that when I brought the first basketball team from Denmark near Albany —

Mr R.F. Johnson: You did not say near Albany. I thought you were talking about taking foreigners from there.

Mr P.B. WATSON: It does not matter.

Mr T.G. Stephens interjected.

The ACTING SPEAKER: Order, member for Pilbara.

Mr P.B. WATSON: What will happen when tourists come to WA? Are we going to encourage them to come? When was the last time there was a fight in Northbridge involving machetes and knives? Most of the fights in Northbridge are fist fights. The police reports will show that. One-punch legislation has been passed, and that is great. How many times do the police break up a fight in Northbridge in which knives, guns or machetes are involved? The government has introduced this legislation that will allow everyone to be searched for hidden weapons. Will it ban people from making fists or make them wear gloves when they go into Northbridge so that they cannot fight anyone? Most of the fights in clubs are fist fights. The police minister is shaking his head. Can he tell me the last time there was a knifing in Northbridge?

Mr R.F. Johnson: I have never heard so much rubbish in all my life as you are spouting tonight.

Mr P.B. WATSON: Okay, the majority of incidents are fights that happen when groups of people get fuelled up by alcohol and amphetamines and want to fight.

Mr M.J. Cowper: Have you been on patrol in Northbridge?

Mr P.B. WATSON: No; I have been on patrol in Albany because that is my electorate.

Mr M.J. Cowper: What about Northbridge?

Mr P.B. WATSON: I am talking about Albany. I have been to Albany and spoken to our young people.

Mr R.F. Johnson: You were talking about Northbridge. Are you aware that 10 weapons were taken from individuals in the Northbridge CBD area in the past 10 days alone?

Mr P.B. WATSON: Okay. How many of those weapons had been used?

Several members interjected.

The ACTING SPEAKER: Order, members. The member for Albany has the call.

Mr P.B. WATSON: Thank you, Madam Acting Speaker. I cannot understand why metal detectors are not placed outside nightclubs. That would be a much better idea. If people carrying weapons are trying to enter enclosed areas such as nightclubs, they would be stopped at the door by metal detectors.

Mr R.F. Johnson: Most nightclubs have metal detectors inside. That is not where the fights are happening; it is outside.

Mr P.B. WATSON: That is where people are in crowds when fights are caused.

I am concerned. As I said, my dad and my uncles went away to fight a war so that we would have freedom in Australia. My dad would be rolling over in his grave if he thought that he could be searched in Northbridge on a Saturday night.

I have sat in this place and listened to some of the remarks of members. I am sure the member for Southern River who spoke last night did not realise what he was getting into when he spoke as he did. The member for Mount Lawley said that women should not be allowed to wear scarves. We can only wonder about the attitudes of members on that side of the chamber.

Dr M.D. Nahan: He was referring to burkas.

Mr P.B. WATSON: That is not what was in *Hansard*. He said they should not be allowed to wear scarves.

Dr M.D. Nahan interjected.

Mr P.B. WATSON: No, he was talking about scarves. I will speak more slowly for the member for Riverton, because I know that he has trouble keeping up. I have been in Parliament for nine years and I have seen a lot of legislation. I have seen legislation introduced by members from this side of the house and from members on the other side of the house. I have agreed with some of that legislation and I have disagreed with some of that legislation, but this is the only legislation that I have seen that I believe is abhorrent. It goes against our basic rights and it will be a hassle for the police to implement. There are not enough police on the streets and those we have are under pressure because they are not properly trained. The Liberal Party said that it would provide extra policemen but it has not done that. That is another of the Liberal Party's broken promises. I do not like to see violence occur in either Northbridge or at the Albany nightclub. As I said, I have been out with the local coppers and I know what they have to put up with. We need new laws, but this is going too far. It is too open and could be abused. As I said, most coppers are good. I used to work with Australia Post, which employs thousands of people, and every once in a while someone would steal \$20 from a letter. There will be people who will abuse this law. That worries me because when nine or 10 coppers are confronted by 40, 50 or 100 people with intent, the police will be under more pressure. There is a better way of doing it. I have never been picked up by the police but, as I said before, times have changed. When I was younger and went to Pinocchio's nightclub —

Mrs L.M. Harvey: That is a tragic admission!

Mr P.B. WATSON: Is that something else that the member does not know about?

Mrs L.M. Harvey: I read about it in urban legends.

Mr P.B. WATSON: There is a lot that the member does not know about this place, although I am told that she knows who the Unknown Soldier is.

When I was younger, if we messed around, the coppers would tell us to go home for giving them cheek. They would give us a kick up the backside and we would go home. That was accepted by society in that day. That is probably what made me the person I am today, for good or bad! I feel sorry for the police today. If they touch someone, that person will get a lawyer. I sincerely believe that this legislation was badly thought out and is a knee-jerk reaction. I believe also that Karl O'Callaghan has put one over the minister, and good on him; he is a very good Commissioner of Police. This legislation will be a hassle to implement and will put more pressure on the police. I would prefer to see more police on the street and more metal detectors, even if people who go into Northbridge have to go through a metal detector.

Ms M.M. Quirk interjected.

Mr P.B. WATSON: That is right. It worries me that the Commissioner of Police can put in anywhere in the state at any time.

Mr W.J. Johnston interjected.

Mr P.B. WATSON: The Carousel Shopping Centre, as the member for Cannington said. These laws are scary. The member for Southern River said that it is a bit like Germany in the bad times. I am concerned about what the next step will be. Where do we go from here? The government says that it is a tough-on-crime government. This legislation will come back to bite members of the Liberal Party. I have spoken to seniors and I went to a nightclub the other night and talked to the young people out the front. I have been to shopping centres and to seniors' villages, and people do not want their children and grandchildren in Perth, or anywhere, to be in a place where one person can say that anyone in the area can be searched at any time. That goes against everything our forefathers fought for. I was very impressed by the member for —

Ms M.M. Quirk: Girrawheen?

Mr P.B. WATSON: No, not Girrawheen. The member for Warnbro.

Mr V.A. Catania interjected.

Mr P.B. WATSON: It is funny that the member for North West should interject —

Several members interjected.

The ACTING SPEAKER (Ms L.L. Baker): Members! The floor is held by the member for Albany. Can other members stop interjecting so we can get on with the discussion?

Mr P.B. WATSON: It is funny that the member for North West should have interjected when I was talking about a patriot. They are two opposites. I am talking about a patriot and a traitor has interjected. He stuck his head up. I would grow that moustache over my mouth if I were the member for North West.

Several members interjected.

The ACTING SPEAKER: Order, members! If the member for Albany addresses me, he might avoid some of the interjections.

Mr P.B. WATSON: Do as I say, not as I do!

This is the worst legislation that I have seen and I cannot possibly support it. I am the member for Albany and I look after my constituents but I am also a Labor Party member. This legislation goes against everything that the person in the street who elected me—people of both political persuasions elected me, much to the chagrin of the Premier—stands for. I am a Labor Party person to the core. To me, this legislation is taking away a basic right of the people in the street. Members opposite who say that only the bad people will get caught are absolutely wrong. Any person could get caught up in a situation. I am very surprised that the National Party has not spoken on this because many of their footy teams —

Ms M.M. Quirk: I reckon the Wagin Woolorama is under threat.

Mr P.B. WATSON: Is it?

Mr C.J. Barnett interjected.

Mr P.B. WATSON: Being a farmer, the Premier is probably invited to that.

Mr C.J. Barnett: They don't like my sheep.

Mr P.B. WATSON: This is the worst legislation that I have seen. It is badly thought out. I can understand why the commissioner wants to do it, because he does not have enough police and the police are not given enough training. I would hate to be a young copper coming out of the academy. An academy recruit could be in Northbridge with all his mates and he could be facing a number of people and the police could say that they must search the recruit and his mates. The police might pick five or 10 people, which is fair enough, but I hope that we have the support to protect our police. I have seen what it is like in Northbridge. I have been on patrol with the police in Northbridge. I have been there when incidents have occurred and I have been with our local coppers in Albany when an incident has occurred. It is the worst job in the world to be out there when people who are fuelled with alcohol want to belt anyone and they see the poor copper.

I cannot possibly support this bill. I think it is the worst legislation that I have seen in nine years. It was very interesting to listen to some of the comments made in the maiden speeches of some members opposite who said that they would look after the people because it was their religious belief and that they would do the right thing, but as soon it comes to the crunch, they will fall in line behind the Premier. The Premier wants to be tough on crime. The member for Warnbro said today that that is the greatest cheap one-liner there is. Anyone can say it. This bill is the worst bill that I have seen. It will affect the rights of my constituents and my children who live in Perth. This will come back to bite everyone on the other side who votes for it.

MR C.J. BARNETT (Cottesloe — Premier) [8.09 pm]: It is very unusual for a minister to speak on a bill for which he does not have carriage. However, given the debate we have had on this bill today, I want to say a few things.

Mr T.G. Stephens: Political opportunism is driving you.

Mr C.J. BARNETT: No.

Ms M.M. Quirk interjected.

The ACTING SPEAKER: The Premier has the call.

Mr C.J. BARNETT: As members are aware, today is Remembrance Day, and so this debate about stop-and-search powers has had a certain military-cum-remembrance theme about it. We heard a very passionate speech by the member for Warnbro, and I acknowledge and respect his distinguished military record. A number of members have taken it upon themselves to interpret, as they see it, the values of the Anzacs. They have sought to preach to us across the chamber about what the Anzacs fought for.

Mr T.G. Stephens: Freedom.

Mr C.J. BARNETT: I am not going to do that, but I want to place it on the record, as I have done previously, that my father was a Rat of Tobruk. He was wounded at El Alamein, and he fought in New Guinea and Borneo. My uncle, to whom I was extremely close, was captured at the fall of Singapore. He survived the Burma railway and worked as a slave labourer in coalmines in Japan, and he lived through the experience, through courage, and came back to Australia. I do not appreciate members patronising me or this side of politics by telling me what the Anzac tradition is; I do not take that at all well.

Today I made the point that the Labor Party is soft on crime. That is not an accusation about the Anzac tradition; I happen to think that Labor is soft on crime. That is a political point of view that has nothing to do with the

tradition of the Anzacs or Remembrance Day. Members in this chamber will remember—the member for Murray-Wellington probably better than most —

Several members interjected.

The ACTING SPEAKER (Ms L.L. Baker): Member for Bassendean, the Premier has the call.

Several members interjected.

The ACTING SPEAKER: Order, members!

Mr C.J. BARNETT: Members on this side of the house remember when several thousand police gathered outside this Parliament to protest in support of mandatory sentencing for people who assault police officers and cause bodily harm. It was interesting to watch the Labor members of Parliament taking a photo opportunity with police officers to create the impression in their local newspapers that they supported mandatory sentencing. When they came back into this chamber, literally an hour later, they argued against mandatory sentencing. Members opposite tell me that they are not soft on crime; they are. They went out there and spoke to police officers in support of mandatory sentencing, and came back in here and did the exact opposite. The member for Murray-Wellington, a former police officer, observed it at first hand, as we all did.

Several members interjected.

The ACTING SPEAKER: Member for Pilbara, I call you for the first time.

Withdrawal of Remark

Mr J.M. FRANCIS: The member for Pilbara made the comment, “You have crooks in your cabinet.” He knows that that is unparliamentary, and I ask you, Madam Acting Speaker, to instruct him to withdraw the comment.

Mr M.P. Whitely interjected.

The ACTING SPEAKER: Member for Bassendean, I do not really want to be in a position of having to call another member at this time. Because there was so much noise in the chamber, I did not actually hear any unparliamentary language. I am sorry; I will have to turn my hearing aid up at this rate, but I ask members to please keep the noise down.

Debate Resumed

Mr C.J. BARNETT: The duplicity of the Labor Party on mandatory sentencing was there for all of the Western Australian public to see.

Ms A.J.G. MacTiernan interjected.

Mr C.J. BARNETT: We heard the member on the radio this morning, as did her potential voters, who will no doubt now vote for Don Randall. We are debating the issue —

Mr M.P. Whitely interjected.

The ACTING SPEAKER: Member for Bassendean!

Mr C.J. BARNETT: Today we are debating the issue of stop-and-search powers. These powers are limited to designated areas. The police already have the right to search, but this legislation will mean that people who are found to be carrying weapons of the kind displayed by the Minister for Police earlier today will not be able to use the defence that the police did not have proper grounds for stopping and searching them. What sort of search will this be? It will be nothing more than what routinely happens when we go through an airport. We have heard descriptions of people being straddled against walls and all sorts of other idiotic stuff. This displays to the public that when it comes to making tough decisions on law and order, the Labor Party will not be there for the people of Western Australia. A number of young people have come up to me, as I am sure they have to other members of Parliament, to say that they support what we are doing, because when they go to a nightclub or pub in Northbridge, they want to know that the guy standing next to them does not have a knife in his pocket. They want to know that it is safe. They want to know that they can go to Northbridge and enjoy the entertainment, have a few drinks if they want to, and be safe. Once again, the Labor Party is standing in their way.

Today we have heard moralising from Labor about the Anzac tradition and moralising about this legislation somehow impinging on people’s freedoms and rights as individuals. Whose rights are being infringed more than an innocent person going to a place like Northbridge, knowing that people are walking around with weapons concealed on their bodies? Whose rights deserve to be protected? This side of the house is on the side of law-abiding citizens and decent young people; I do not know whose side the Labor Party is on, but it is not our side.

Several members interjected.

The ACTING SPEAKER: Members, this debate is getting a little out of hand. I ask members to allow the Premier to complete his 15 minutes of speaking time.

Mr C.J. BARNETT: Another aspect of this debate is the holier-than-thou attitude of Labor Party members. We have heard speeches about the rights and freedoms of the individual from Labor members—these people of ethics and courage, apparently. I will provide one example that is not relevant to this bill, but I ask the Acting Speaker to indulge me for a moment. At this moment there is an Australian government ship, the *Oceanic Viking*, with 78 asylum seekers on board. When the *Tampa* came to Australia, those opposite made similar speeches about civil rights and the freedoms of the individual; not one Labor member has been prepared to stand up on the issue of the rights of asylum seekers and Australia's responsibilities. Those self-righteous, pious individuals —

Several members interjected.

The ACTING SPEAKER: Members, this is not a football field; it is a debating chamber of Parliament. I encourage members to respect where we are and to conduct themselves with decorum; that has not happened for the past 15 minutes since I took the chair. I ask that we lower the temperature a bit.

Mr C.J. BARNETT: We have been lectured on the rights of asylum seekers, how dreadful John Howard was on the issue of the *Tampa*, and how the Pacific solution was a disgrace. What do we have now? An Australian government ship with 78 asylum seekers on board —

Point of Order

Mr P.B. WATSON: This has nothing to do with the bill before the house. I fail to see what the *Tampa* has to do with it.

The ACTING SPEAKER: I thank the member for Albany. Premier, I gave you some indulgence in taking this a little further. I ask you to please return to the debate.

Debate Resumed

Mr C.J. BARNETT: I simply make the point that we have listened for hours to arguments about civil liberties, freedoms and rights. I make the simple point that when we have a clear issue on Australia's frontier—it happens to be in Indonesian waters—not one of the people opposite who lectured us about the *Tampa* has the integrity, ethics or courage to stand up against a federal Labor government that ignores the rights of asylum seekers. Not one of them has had the courage; they are all absolute failures. Indeed, last Friday when I was with the Labor Premiers from the other states I made the comment, "You are the bleeding hearts; when are you going to make a comment about the asylum seekers on the *Oceanic Viking*? Are you going to support my simple proposition that maybe they should be brought to Christmas Island?" They shook their heads; they are not allowed to.

The ACTING SPEAKER: Order! Premier, would you please return to this bill and to the debate.

Mr C.J. BARNETT: Madam Acting Speaker, I am simply responding to the hours of lecturing that we have had from members opposite.

The ACTING SPEAKER: Order! Premier, I have asked you to return to the debate, please.

Mr C.J. BARNETT: I am. We have been lectured, have we not? We have been lectured on civil rights and on freedoms, and on how the great Anzacs would have been so offended by this law. Well, I can tell members opposite that my dad would not have copped someone walking around Northbridge with a knife. He would not have copped that. I am not going to go through his military history, but he would not have copped that. His brother—my uncle—would not have copped it. The World War II generation would not have copped the sort of behaviour that members opposite are defending by rejecting our position of taking a strong stand on security and safety in public places. So, forget the fact that today is Remembrance Day. Get back to the legislation. The hypocritical, self-righteous, pious approach of Labor members has been exposed in this debate. When it comes to the crunch, if it offends their Labor mates in Canberra, they do not have one ethical bone in their body.

MR B.S. WYATT (Victoria Park) [8.30 pm]: Madam Acting Speaker, I appreciate the call. I preface my comments on the Criminal Investigation Amendment Bill by saying that, technically, for tonight and for the remainder of this week I am paired. However, I did want to return to the chamber to make some comments on this legislation. I thank the house for its indulgence in giving me the opportunity to speak on this legislation when, technically, I will not be able to vote on this legislation should it come to a vote this evening.

I was not here when the member for Warnbro spoke on this legislation earlier today. Clearly, his comments have gotten to the Premier.

Several members interjected.

Mr B.S. WYATT: Clearly, they have rattled him! They have disturbed him! He is not terribly happy!

It is interesting that today is Remembrance Day. The Premier may have some problems with the fact that members on this side of the house have invoked the Anzac spirit in their speeches. I have not heard those speeches. I have heard the discussion about them, but I have not heard them. If the Premier is going to bring in

legislation that has its origin in totalitarian regimes, he will have to expect this sort of debate. He will have to expect some discussion about what happened in World War I and World War II. He will have to expect a reflection on Australian soldiers and when they go and fight. No-one is casting any negative commentary on the Premier's clearly superior relatives in his father and his uncle. No-one is casting any negative commentary on them at all. But the fact of the matter is that the Premier clearly knows that much of what has been said by members on this side of the house is correct. That is why the Premier got up this evening and put on another of those petty, attacking and nasty performances that we have become used to in this chamber.

Mr R.F. Johnson interjected.

Mr B.S. WYATT: Oh shut up, minister! I am responding to the Premier. That is why the Premier got up this evening and gave us that sort of rant. I am delighted that the Premier has left the chamber, because he usually brings down the tone of debate by a significant level. The Premier always seems to raise this straw man of clever lawyers who are able to win arguments about reasonable suspicion and get all these people off. The Premier or the minister—I cannot remember who it was now—said on either Channel 7 or radio today that he would bring evidence to the house or provide information later today on the number of times a person had gotten off because a lawyer had attacked the reasonable suspicion element that must be invoked when a police officer searches a citizen of Western Australia. As far as I am aware, that information has not yet been provided. I have not seen it on the news. Certainly in the extensive second reading speech from the minister—all of one and one-third pages—there is no information about those statistics. In light of the fact that this seems to be one of the key defences that the government has put forward for bringing in this despicable legislation, I would have thought the Parliament would be well within its rights to ask for that information to be put before it during this debate. That would certainly enable members on this side of the house—and also those members on the other side who might wish to speak on this issue in a more substantive way than the Premier has done—to make a deliberate and conscious decision before they vote to either support or oppose what is perhaps one of the most offensive pieces of legislation that has come before this Parliament in a very long time. That is why I have come into this chamber tonight, even though I have been paired, to express my views about this legislation. I do not think the Premier did himself any justice or any favours in talking about asylum seekers. I really cannot see the relevance of that. But the fact of the matter is that this side of the house will continue to raise the issue of why Australians have fought in wars. The Premier may not like it. It may sting a bit. But the fact of the matter is that that is reality, so we will continue to do that. If the Premier insists on bringing legislation into this place that has its origins in totalitarian regimes, he will have to expect to have these sorts of discussions.

I want to make a number of points tonight. Firstly, I want to refer to the source document for the Criminal Investigation Amendment Bill 2009—namely, the minister's second reading speech. It is not the most impressive document, but it is all we have. The minister states in the first paragraph of that speech —

The government is introducing this bill in response to an increasing concern by government, police and the community in relation to the proliferation of weapons and the increasing number of incidences of violence and antisocial behaviour in entertainment precincts. As a result of this, it has been identified that powers of search need to be extended to enable police officers to stop and search people and vehicles in these areas without the consent of the person and without the need for the usual reasonable suspicion test.

That is the reason behind the legislation as outlined by the minister in his second reading speech. There is an increasing concern held by government—not increasing evidence put to the government, but increasing concern—about entertainment precincts. Of course, the legislation goes a lot further than simply focusing on entertainment precincts. I will come back in a while with some statistics about crimes that have occurred in entertainment precincts.

I make a prediction that in the not too distant future the police will come to this government or a future government and request that this legislation be changed. The member for Albany has already hit on this point. He is absolutely correct. This legislation will undermine the police force. A police force can operate only if it has the confidence and support of the broader community. This legislation will undermine that support. It may not have done that yet, but over time it will undermine that support. We have seen in other jurisdictions the terrible and tragic outcomes that result from a breach of trust between the police and members of the community.

It is worth noting that the Premier had some angst about the reference by members on this side of the chamber to individual civil rights. Interestingly enough, it is this sort of legislation that raises and increases the profile of debate about individual rights, about citizenship rights and about human rights acts. In the last term of the former Labor government, the then Attorney General, Jim McGinty, set up a committee chaired by Hon Fred Chaney to look at introducing a human rights act in Western Australia. I was one of the few members of this Parliament who put in a submission to that committee. In my submission, I outlined why a human rights act is not compatible with the Western Australian Westminster system of government. It is not. Although my view is now a bit shaky, I still stand by that view. A human rights act will not work. That is because, whether we like it or

not, and despite any protections that we might put into that legislation, it will transfer power from this place to the courts. However, the fact of the matter is that if we bring in this sort of legislation—which will have far-reaching, deliberate and nasty consequences, and which will not deal at all, as I will outline in a moment, with the increasing level of crime in our entertainment precincts—we will find ourselves in a position in which a human rights act will become inevitable. It will become inevitable for the very reason that we in this place have failed in our duty to protect those rights that a Westminster democracy demands that we protect through the common law. I do not know if any member supports a human rights act in our system of government. I think everyone broadly opposes it, as do I—although, as I have said, as I read this sort of legislation, my view is rapidly changing. If members opposite do oppose a human rights act, they are undermining their own position by supporting this bill, because this bill will fundamentally change the relationship that the people of Western Australia have with this place, with their elected members and with the courts.

The bill provides the right for police officers to conduct a basic search. Clause 5 of the bill seeks to insert proposed section 70A, which provides that police officers—I assume that they will be real police officers, not the pretend police officers the minister will soon be employing, although we cannot tell the difference between the two—may do a basic search of a person in that place. The legislation is not qualified at all and that is deliberate, and I will come to that in a moment. A basic search is defined in the Criminal Investigation Act 2006; however, a basic search is certainly much more serious than the search that a person consents to when he or she goes through an airport. The powers of a police officer are greater than those of officers at an airport. It is not just about a person who goes through an airport and is pulled aside for a couple of minutes to be tested for explosives and then goes through a metal cage. The powers are much broader than that. That is clearly outlined in sections 63 and 65 of the Criminal Investigation Act 2006. A basic search is a significant imposition on civil rights. We cannot forget that. We cannot assume that, just because a search at an airport is not that intrusive, this is something that can take place anywhere and everywhere and that we can live with.

Several members interjected.

The ACTING SPEAKER (Ms L.L. Baker): Members! The member for Victoria Park has the call. If he wants to take an interjection, he will let members know. Please do not scream across the chamber.

Mr B.S. WYATT: Thank you, Madam Acting Speaker; it seems that the member for North West has just realised what he will be voting for. I dare say that he has not given it much thought to this point. He has woken up and realised exactly what he is doing.

Several members interjected.

The ACTING SPEAKER: Members! I cannot hear the member for Victoria Park, and I do not know how anybody else in this place can either. Will members please stop the backchat and the chatting across the chamber.

Mr B.S. WYATT: As I have said, the day will come when the police will approach the government to have this legislation amended, if not repealed. My view is that the police will not want this power in the future. It will simply come to a point at which it will undermine their position vis-a-vis their relationship with the general community and it will simply become impractical for it to continue.

I know that the minister will be aware of the Scarman report. Is the minister aware of the Scarman report? I am not convinced that he is.

Mr R.F. Johnson: I know about it; I don't know it word for word.

Mr B.S. WYATT: The Scarman report was a significant report that was released after the Brixton riots in London in 1981.

Mr R.F. Johnson: I was there at the time.

Mr B.S. WYATT: That is why I hoped at the very least that the minister might have been aware of if not the riots then certainly the subsequent report. I will quote from a report in volume 8 No 2 of the *International Journal of Police Science and Management* entitled “Stop and Search in 2004: A survey of police officer views and experiences” by Qureshi and Farrell. It states —

The Scarman Report (1981) suggested numerous deficiencies in the manner in which police conducted stop and search procedures. It made recommendations to improve both stop and search operations management training for Inspectors and Sergeants as well as the objective application of ‘reasonable suspicion’ ...

The English kept their reasonable suspicion qualification for their stop-and-search powers, unlike the government has done in this legislation, which is a significant change. The report continues —

A key aim of the recommendations was the improvement of relations between the police and ethnic minority communities.

That report was followed by the Lawrence report and a report by Lord Macpherson, both of which effectively said the same thing, although they dealt with subsequent legislation that flowed from each report after the Brixton riots. The Brixton riots were obviously the result of a significant breakdown in the relationship between the police and a number of ethnic groups in Brixton. It saw the loss of control of law and order in that part of London and significant disruption took place as a result.

Mr R.F. Johnson: They set fire to shops, they damaged things and they injured people.

Mr B.S. WYATT: Yes, the minister is right. I thank him for arguing my point.

Mr R.F. Johnson: Do you want to blame the police or the perpetrators for that?

Mr B.S. WYATT: The minister sells himself very short. His ministerial meetings in the east must be very interesting. I dare say that he must be the butt of many jokes when he goes there.

I know that the minister is very familiar with the United Kingdom system, even though he did not appear to know much about the results of the Brixton riots. The Police and Criminal Evidence Act 1984, known as PACE, came up with a code of practice for police officers. Police officers have statutory powers of stop and search. I think that Western Australian Police Commissioner O'Callaghan can look to this to perhaps explain to his police officers and to members of the broader community why it is in the interests of the police to continue to meet the reasonable suspicion requirement and why members of the community should be aware of their rights in their relationship with the police, particularly now that we will have police officers who will not have the powers of police officers. Things have blurred significantly in the relationship between members of the public and police officers.

Reasonable suspicion of itself is not that difficult to prove, which is why the minister has not been able to bring to the house cases in which lawyers have been successful in throwing out an arrest on the basis that the requirement for reasonable suspicion was not met. He has yet to do it, and I dare say that he cannot do it. I do not have a great and deep knowledge of or background in criminal law, but I dare say that the Attorney General will not have too many examples either. I know that the member for Mindarie, who has a significant criminal background, cannot recall any situations in which that has occurred, and that apparently is the fundamental reason that we are opposing —

Mr R.F. Johnson: We'd agree with that!

Mrs C.A. Martin: We know what he meant!

Mr R.F. Johnson: He's a lawyer; he's supposed to choose his words carefully.

Mr B.S. WYATT: The Police and Criminal Evidence Act 1984 Code A code of practice, which deals with police officers' statutory powers of stop and search, outlines in detail what constitutes reasonable suspicion. As I have said, it is very broad. It outlines —

Reasonable suspicion can never be supported on the basis of personal factors ... cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. A person's religion cannot be considered as reasonable grounds for suspicion and should never be considered as a reason to stop or stop and search an individual.

That was obviously the fallout of the Brixton riots. The code of conduct goes on to state —

Searches are more likely to be effective, legitimate, and secure public confidence when reasonable suspicion is based on a range of factors. The overall use of these powers is more likely to be effective when up to date and accurate intelligence or information is communicated to officers and they are well-informed about local crime patterns.

Significantly, for the interest of the minister, it continues —

Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or weapons or controlled drugs, and wear a distinctive item of clothing or other means of identification to indicate their membership of the group or gang, that distinctive item of clothing or other means of identification may provide reasonable grounds to stop and search a person.

Reasonable suspicion is a broad concept. This document that was prepared for all United Kingdom police officers clearly outlines that. That is why they have had some significant success in focusing on those areas of crimes in those areas, as this piece of legislation purports to do, even though it is significantly broader than the minister indicated in his second reading speech.

In the United Kingdom, and traditionally here in Australia, there are three qualifications for a stop-and-search power. One is reasonable grounds for suspicion. The second is reasonable belief. In respect of the Terrorism Act 2000, there was still a qualification much greater than the one in this legislation, and it was expediency for the prevention of acts of terrorism. The old Parliament of Westminster understands that we cannot, as this legislation

does with no qualification whatsoever, simply hand over to police officers a power to do a basic search. The English have had time and time again report after report after report. They have refused to remove that qualification on what is a significant power. It involves much more than simply walking into an airport where people consent. They know that they are getting on a plane and going into a secure environment. They therefore understand that they will go through some security checkpoints. When they are walking down William Street, it is a different thing altogether—very different. As outlined in section 65 of the Criminal Investigation Act 2006 the basic powers are much greater than the powers people consent to when they walk through an airport.

[Member's time extended.]

Mr B.S. WYATT: The minister in his second reading speech said that the reason for this significant, offensive bill is —

... in response to an increasing concern by government, police and the community in relation to the proliferation of weapons and the increasing number of incidences of violence and antisocial behaviour in entertainment precincts..

He does not say anywhere in that speech that it is because lawyers are getting crooks off because they keep arguing that the test of reasonable suspicion was not met. That is not in the minister's second reading speech; that is fodder for the media out front. That is different. He does not mention it in this place and he does not provide any evidence whatsoever about how many times somebody has got off because a lawyer has made that argument, and that is because he cannot.

It is worth having a look at the 15 months in the lead up to September 2009 and the number of offences involving weapons that took place in Northbridge. That tends to be the focus of debate. The Premier likes to wander around lost in Northbridge and look as though he is part of a crew there. If I may just outline the figures, in the 15 months leading up to September 2009 the offence of carried or possessed an article with intent had a grand total of 17; carried an article with intent to injure, four; possessed an article with intent to injure, seven; carried a controlled weapon, one, which is not a complete offence; carried a prohibitive weapon, four; possessed a prohibitive weapon, nine; possessed a controlled weapon, seven—maybe they are all rolled up into one; and carried a controlled weapon, two. Therefore, all up in the 15 months to September 2009 there was a total of 51 offences in respect of carrying weapons, which the minister has said is the prime motivator for this legislation. If we incorporate Perth into that as well, the grand total is 235 offences in the 15-month lead up to September 2009. The number of offenders charged in Northbridge and Perth in the 15 months leading up to September 2009 was 229. It is clear when we look at these monthly figures that there has not been a dramatic increase over the past 15 months at all. Most months there are one, two or three. That is the situation we are in. That is the reality of the police figures for offences and charges in respect of possession of prohibited or controlled weapons in Northbridge.

Mr C.J. Barnett: Don't you think there is an issue in Northbridge?

Mr B.S. WYATT: Of course there is an issue. No-one says that is great or that is good. As has been said, if the government is going to introduce legislation that has its origins in totalitarian regimes, the government must expect a reasonable discussion on it. It must expect a demand from this side of the house to bring the evidence to this place. The government did not bring that evidence for the mandatory sentencing debate and the government has not brought that evidence here tonight. The Minister for Police has said time and again on radio, on television and on the steps of Parliament House that tricky lawyers get people off because they argue that reasonable suspicion was not there. Then silence! We are yet to be given one example. I daresay that the minister cannot find any to justify and warrant one of the most significant increases in powers for police officers that we will see in our time in Parliament.

I return briefly to the concept of reasonable suspicion. As I have said, it is a broad concept and not something that lawyers have had a significant amount of luck in arguing to get people off charges. The member for Mindarie could not come up with any example over a legal career in excess of 20 years. I hope that the Commissioner of Police, Karl O'Callaghan, is at least vaguely interested in the debate and listening and can provide the opposition with those figures, because the government seems intent on not providing any information that might provide that first skerrick of evidence for why we are giving such significant powers to the Western Australia Police.

This has nothing whatsoever to do with being soft on crime. I had not realised that had been said until the Premier stood up and carried on, but obviously "being soft on crime" has been thrown around during the course of this debate. The minister does not have an overwhelming majority support for this bill. I am confident of that. He does what the police have requested him to do. We know that. I think that the police will regret this bill because of what was outlined in the Scarman report and the Lawrence report by Macpherson in the United Kingdom. Through all those reports reasonable suspicion was still a qualification, but it is a very broad concept. However, the relationship between the police and the community fundamentally broke down. I think that the

member for Alfred Cove, who is no longer in the chamber, was trying to make this point when she was examining some of the research that fell out of the United Kingdom legislation on stop-and-search powers. I refer to an article in the *Modern Law Review* by Benjamin Bowling and Coretta Phillips, titled “Disproportionate and discriminatory: reviewing the evidence on police stop and search”. They made the point at page 944 that in England and Wales for 2005-06, in respect of stop-and-search powers, the figures were 15 incidents for white people, 90 for black people, 27 for Asian people and 23 for people of other ethnic origins. These figures show that in England and Wales black people were six times as likely to be stopped and searched by the police in comparison with their white counterparts.

Inevitably we do not have a clear set of guidelines, as the English have with their Police and Criminal Evidence Act outline on how stop-and-search powers are exercised. They are made public. People can go to the website, print them off and look at them for themselves. They are detailed and they outline the history of why stop-and-search powers have been controversial in the United Kingdom. These laws will fail. As was outlined in the previous article I referred to by Qureshi and Farrell, what was found in their research on stop-and-search powers in 2004 was that fewer than half of officers reported having received any formal training on the changes to stop-and-search procedures and fewer than 40 per cent of officers believed that changes introduced by the Criminal Justice Act 2003 had made stop and search better from their perspective.

The government needed to expect that if it was going to bring this legislation into this place, the debate would be emotional, and that people would have strong personal opinions about this legislation. The Premier can come into this place and carry on, as he does, all he likes. He can refer to his uncle, quite rightly, and why would he not. However, as I have said, this legislation has its origins in some fairly nasty places in some fairly nasty times. It is up to the opposition to raise these issues. It is coincidental that we are here on 11 November. Obviously, what would happen was that the Anzac spirit would be invoked in this debate, and quite rightly. Read any of the poetry written by the Anzacs or written about the Anzacs, or any of the stories, and this is what they talk about. Therefore, this is what we are going to talk about. The federal government may not like it, and the member for North West can snicker all he likes, but when Roebourne is a declared area and he is wondering why his constituents are being stopped and searched, I daresay he will have a different view.

We all know who will be subject to these laws, and I will be very interested to hear from the National Party. I asked the leader of the National Party, who at the time was sitting in this place during debate on the mandatory sentencing legislation, when he was going to speak because I wanted to hear his views on the impact on people in regional areas—on Aboriginal people. He said that he would speak, but he did not. I would like to hear what the leader of the National Party thinks about the impact this legislation will have on regional areas. I would like to hear what the member for North West thinks will be the impact on some of his constituents. I would like to hear from the Attorney General, who has not spent much time in this chamber during this debate. I can understand why. It is because he knows that this legislation will be hanging around the neck of the Minister for Police in years to come—hanging around his neck in a shameful way. It is going to be up to the police to bring this back to the government and request that it changes this law. It is not soft on crime to argue this point, it is a —

Mr R.F. Johnson: It is very soft on crime.

Mr B.S. WYATT: You're a boofhead minister; back in your box.

Withdrawal of Remark

Mr C.J. BARNETT: Madam Acting Speaker —

The ACTING SPEAKER (Ms L.L. Baker): Yes, Premier, that is fine, I take your point of order.

Could the member please withdraw that?

Mr C.J. BARNETT: It was the member for Victoria Park I was referring to. I know the insults came thick and thin, but I think the member for Victoria Park should also withdraw.

The ACTING SPEAKER: Premier, what was your point of order?

Several members interjected.

The ACTING SPEAKER: Excuse me! Premier, I did not catch the point of order. What was the point of order you were making?

Mr C.J. BARNETT: The point of order, Madam Acting Speaker, was the expression used by the member for Victoria Park in reference to the Minister for Police, which was clearly unparliamentary.

The ACTING SPEAKER: I am terribly sorry, but someone is going to have to tell me.

Mr C.J. BARNETT: An honest person, a person of integrity would stand up and withdraw.

Mr B.S. WYATT: I think I may have referred to the Minister for Police as a boofhead.

The ACTING SPEAKER: That is unparliamentary.

Mr B.S. WYATT: And for that I withdraw. Apparently it is unparliamentary.

Debate Resumed

Mr B.S. WYATT: In conclusion, I would very much like the minister to provide evidence about those tricky lawyers and those cases where people have got off because the defence of reasonable suspicion was attacked in court, found to not be met and people walked away from the courts. He cannot. This is despicable legislation. Liberals and conservatives on the other side of the house know it. This legislation is not going to change anything, particularly in the environment where the evidence of increasing crime and increasing weapons crime, from the police's own statistics, is not there; it does not stack up. This legislation goes way too far. The Minister for Police knows it and I know that in the future we will be back in here and the government will regret having brought this legislation on. I implore the Minister for Police—it is not being soft on crime; it is against the western democratic system that we have been elected to represent.

MR J.M. FRANCIS (Jandakot) [8.52 pm]: I will keep my remarks very short. I want to thank the Leader of the Opposition for once again highlighting to the people of Jandakot and Western Australia the great divide between the Australian Labor Party and the Liberal Party in this state on the issues of law and order. Once again, the Leader of the Opposition has proved to my constituents and to the rest of the state that the Labor Party cares more for the rights of criminals than it does for the rights of victims. The Labor Party cares more about the rights of people who believe it is okay to carry weapons into Northbridge than it does about the rights of people who want to feel safe on the streets of Perth.

If members want to hear about something that highlights the hypocrisy of the Labor Party in this state, it is not long ago—with all due respect to the member for Alfred Cove—when members opposite were happy to support laws that gave police the power to fine people for smoking in cars but they will not support laws that give police the power to stop people from carrying guns into Northbridge.

Mr W.J. Johnston: So you are opposed to that, are you?

Mr J.M. FRANCIS: No, I am not. I am highlighting the hypocrisy of members of the Labor Party supporting anti-smoking laws but it will not support anti-gun and anti-weapons laws. That is how ridiculous and absolutely ludicrous the Labor Party's position is!

I want to make one other quick point about this debate. I have heard members opposite try to invoke the name of Australian service men and women in this debate. I have this very simple message for the Leader of the Opposition: he does not have a monopoly on interpreting the thoughts and beliefs of my grandfather, my father, me or anyone else who has served in the defence forces, neither do Labor Party members have a monopoly on those thoughts. I can tell members opposite that they were not fighting for Labor Party beliefs or Liberal Party beliefs but for democracy and freedom, and that freedom includes the —

Mr W.J. Johnston interjected.

The ACTING SPEAKER: Member for Cannington, please! The member for Jandakot has the call.

Mr J.M. FRANCIS: That freedom that they were fighting for includes the freedom for people in this state and this country to be able to walk safely down the streets in our towns and cities without the risk of being stabbed or assaulted by people carrying illegal weapons. That was part of the freedom that they were fighting for; it was not for the philosophical beliefs of the Labor Party.

Once again, I will give the Leader of the Opposition another insight. Like on trading hours and on so many other issues, the Labor Party has been hijacked by the left wing of its caucus, and the Leader of the Opposition has grossly misread the mood of the people on this issue. If the Leader of the Opposition wants to come into my electorate and tell my voters that I voted in favour of this and he voted against it, he would be doing me a huge favour. The Leader of the Opposition has misread the mood of the electorate and he will stand condemned for that.

MR J.J.M. BOWLER (Kalgoorlie) [8.56 pm]: Being an Independent member of Parliament now, I obviously see things in a different light. I have a history of being, first of all, a backbencher in government, then a minister in government, then an Independent, and now an Independent aligned to a government. I have observed over those eight and three-quarter years debate in this chamber that has seen one side and then the other take extreme views when the reality is somewhere in the middle. One side will paint it black and one side will paint it white, and invariably it is a shade of grey, either a dark grey or a light grey. Once again, in this issue, that is where I see the middle ground and where I believe the truth may lie. From the level of indignation and the level of self-righteousness that have been shown by both sides, a person listening to the debate in the past two days would think, gee-whiz, whichever side one stood on, that is the only way to go and the other side is totally wrong. Both sides have come up with some good points, and both sides have overstated their cases at varying times in this debate.

Am I going to support this legislation? Yes, I will support it, but with some reservations. Until last night when I spoke to the Minister for Police I was not going to support it. Like the member for Girrawheen, who introduced similar legislation in this chamber with differences, in that she wanted greater checks on the way the legislation would be administered, I also agree there should be checks. I raised those concerns last night with the Minister for Police. Speaking to the Minister for Police, I suggested to him that he would report to Parliament or include in an annual report a list of the number of times the declarations were invoked, and against those statistics would be a figure that showed the number of arrests and charges that resulted from those declarations. The member for Victoria Park has suggested that this legislation is so bad that we will be back in this chamber to repeal it—we may well be! But I do know that if at the end of the first full year the report to the Minister for Police shows that there were an inordinate number of declarations, let us say 100, but only one arrest or one charge, it will indicate that the power has been abused by the commissioner and the minister, and it will come back on the minister politically from the opposition and from the media. That is where the real level of our democracy lies, does it not, in the opportunity for the opposition to raise matters and for the media to report on that?

Ms M.M. Quirk: Would you support a formal review of the legislation after a year? As it stands, there is no statutory requirement for the minister to table details of the operation of the act after a year; in fact, we have to wait five years for a statutory review.

Mr J.J.M. BOWLER: I will take a further interjection from the Minister for Police, who has assured me —

Ms M.M. Quirk: He has not said anything in this house.

Mr J.J.M. BOWLER: I know, but he will state in this house for the *Hansard*, once again, that ultimate control always lies within this chamber and with the people of Western Australia. If the minister makes that statement in this chamber and he does not live up to his word, I am sure it will come back to haunt him.

Mr R.F. Johnson: I am very happy to put it on the record that I give the member for Kalgoorlie and this house an assurance that I will ensure that the sort of data you are requesting can be and will be dealt with. I want to know myself and I know he wants to know. He is the first person to bring up the number of times a declaration will be invoked and where it will be invoked. It is important information.

Ms M.M. Quirk: Why is it not in the legislation?

Mr R.F. Johnson: Just a moment. It is quite reasonable to suggest that that become public knowledge every time an area becomes a declared area. That will happen automatically. I give you an assurance that included in some way in the annual report will be the times and locations and, importantly, the number of offences that have been committed whereby the search powers have been invoked.

Mr J.J.M. BOWLER: I think that should go a fair way towards getting what the member for Girrawheen is seeking. As I say, nothing is ever black or white, yet both sides in this house will try to paint it as such. There are shades of grey here. I have faith in the police and trust that they will not abuse it. If they start abusing it, once again the opposition and the media will be all over it and that, in turn, will embarrass the government, and the Minister for Police and for Emergency Services will be forced to do something. I have faith in the police and I am sure this legislation will not only lead to perhaps some arrests and some charges, but also, I hope, prevent charges being laid and prevent people carrying weapons in the first place.

MS A.S. CARLES (Fremantle) [9.02 pm]: I rise to discuss this bill and put on the record that the Greens do not support the bill—that is hardly surprising, I am sure, to the members in this chamber—nor do we support the amendments to be moved by the opposition.

Mr R.F. Johnson: That's good. You'll vote with us when we vote against them.

Ms A.S. CARLES: We do not support legislation that removes safeguards for civil liberties, that marginalises disadvantaged groups even further and that ultimately may cause more problems than it seeks to solve. An unintended consequence of this bill is that it may lead to more offences being committed. We can easily imagine the scenario of innocent people resisting being searched and the episode escalating into a mandatory detention issue if a scuffle or fight ensues. I quote from WA ethics expert, Stephan Millett, who said this to the media on 31 October —

It only takes an inexperienced officer or a good cop having a bad night for the new laws to be abused.

A criminal conviction and a gaol term is possible for people who, until the point at which a search is forced on them, had done nothing wrong and did not look as if they were about to do anything wrong.

This bill is unprecedented in Australia. No statistics or research has been provided to justify these changes. I fear that, once this becomes law, it will be impossible to wind it back because of the bidding wars we see on which government can be the toughest. It will take a very courageous government to wind it back once it is in place.

The bill also raises issues about our new auxiliary police. Remember; they are the ones without the pay and training of the police force, but they have all the powers of police. Will our auxiliaries be exercising these new powers?

Mr R.F. Johnson: No.

Ms A.S. CARLES: That is a definite no.

Earlier the Australian Institute of Criminology published a study called “What Australians Think About Crime and Justice: Results from the 2007 Survey on Social Attitudes”. It is interesting to put some of these on the record. A key finding was that a large majority of the public have inaccurate views about the occurrence of crime and the severity of sentencing. Consistent with previous Australian and international research, the Australian public perceives crime to be increasing when it is not; it overestimates the proportion of crime that involves violence and underestimates the proportion of charged persons who go on to be convicted and imprisoned. Another key finding was that fear of crime is associated with decreased confidence in the criminal justice system and more punitive attitudes. The bottom line is that we should be passing laws based on evidence, not misconceptions. The report also found that, in responding to a scenario in which the government suspected a terrorist act was about to happen, 54 per cent of surveyed respondents supported the government having the right to stop and search people at random. I wonder what the respondents would think about this random right to search—without the threat of a terrorist act—that we are debating here today. I think many people would be very alarmed by it.

I will talk briefly on proposed new section 70A(4) because it is at the heart of the bill and provides the additional powers to search. This provision permits a police officer to do a basic search of a person and his or her vehicle. It lacks any of the usual limitations on this type of search power that are built in to legislation to safeguard the citizens of Australia. There is no search warrant requirement. The reasonable suspicion test has been abandoned, and there is no requirement for consent of the person to be searched or, alternatively, to give the person the opportunity to leave the place rather than undergo a search. In essence, therefore, police are permitted to search anyone they like for whatever reason they like, regardless of any biases or prejudices they may have in reaching that decision. There is no opportunity for the person to refuse this. Further, because the declaration is published only in the *Government Gazette* and it is not invalid if the commissioner fails to publish it, people will not realistically be able to avoid areas where these powers are to be exercised, unless, of course, there are big signs warning them that they are entering a random search zone.

There are major issues that go with this bill, such as how it affects minors. There is nothing in the legislation requiring a parent or guardian to be present when children are to be searched. There are major issues for Indigenous people, but that is another topic. We all know they will bear the brunt of this search power. There are major issues also for people from different ethnic backgrounds, mentally ill people and women out at night.

A government member interjected.

Ms A.S. CARLES: Yes, women. I will tell members about them in a minute. Without the test of reasonable suspicion, the police risk searching people on a discriminatory basis. This is an erosion of our fundamental right to go about our own business at night without being harassed. In the early hours of the morning, there will be nothing to stop a group of policemen deciding that they will search a group of young women who are out binge drinking or getting drunk—nothing at all to stop them doing that. There is nothing to stop them searching a group of Aboriginal people because they are Aboriginal people, a group of Chinese students because they are Chinese students, or a group of gay men because they are gay men. We have one word for this. It is called discrimination.

Mr P.T. Miles interjected.

Ms A.S. CARLES: The member for Wanneroo may well ask that.

Ms M.M. Quirk: If the member for Wanneroo thinks it is so funny, he may want to contribute to the debate.

Ms A.S. CARLES: I briefly turn to the opposition’s amendments to the bill. As I said, the Greens cannot support them. It has been really interesting to hear what opposition members have been saying about this over the past 48 hours. The tone of the debate is reminiscent of the mandatory sentencing debate. Most members opposite have been very passionate in their opposition to this legislation. The member for Armadale said it is the most troubling piece of legislation she has seen in her 16 years as a member. The member for Forrestfield said it is the most fundamental single attack on civil liberties and the member for Maylands said she was pretty horrified.

Point of Order

Mr A.P. O’GORMAN: The member for Fremantle appears to be reading from the blues—the uncorrected *Hansard* proof.

The ACTING SPEAKER: I know that the member is new to the place but she cannot quote from the uncorrected *Hansard*.

Debate Resumed

Ms A.S. CARLES: That is fine. I think I have made my point. Members opposite were very passionate about what they were saying and I could not agree more with most of their comments. It is therefore surprising that the opposition's amendments are weak and do not go to the heart of the problem that we are looking at. They merely tinker at the edges of this fundamentally flawed legislation, which is why I cannot support them. For instance, the first amendment relates to section 10 and suggests that an interpreter should be at hand and, if an interpreter is not at hand, that the police officers will carry around translations for people who do not understand English so that the police can explain their rights to them. The whole problem is that people do not have rights under this situation. Will the translation say, "Dear sir or madam, we are going to search you whether or not you like it, with or without your consent"? It is absolutely ridiculous.

Ms M.M. Quirk: It is better for someone who does not understand English to know what the hell is going on. At least it will give them an inkling of what is going on.

Ms A.S. CARLES: I think this legislation should not be supported in any way.

Ms M.M. Quirk: We may well come to that position but we are giving the government a chance to do the right thing.

Ms A.S. CARLES: Okay. I say that the legislation is beyond being fixed and that we should not condone it. It is draconian and unprecedented and should not be supported.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [9.12 pm]: It is with great pleasure but also a certain sense of obligation and responsibility that I stand to make a contribution to this debate tonight. I have watched the debate on the Criminal Investigation Amendment Bill 2009 over the past 24 hours and believe that it is fair to say that the debate has been, as the member for Kalgoorlie portrayed it, a debate of extremes. I will look at some of the arguments and evidence that might sit within this legislation. Firstly, I will address the contribution made by the Premier earlier this evening. It was an important and valuable contribution. It was important because it laid bare the absurdity of the nature of this debate at times and it was invaluable because, in itself, it was a beautiful demonstration of the hollowness of the Liberal Party's policies on these and other matters. The Liberal Party mantra goes "soft on crime, soft on boat people". A Liberal Party state politician says that the Labor Party is soft on crime and a federal Liberal politician says that the Labor Party is soft on boat people and border control. It is a lazy, disingenuous contribution to the debate. The only difference in the Premier's contribution is that he is not sure which theatre he wants to play in—whether it is the national stage or whether he should be concentrating on where his priorities should be, which are the issues that confront his community in Western Australia.

The Liberal Party is lazy on crime. We remember, of course, the policy it took to the last election, which was mandatory sentencing for anyone who comes within cooee of a public officer. Even the Liberal Party understood the absurdity of that gesture and of having mandatory sentencing laws that relate to every public officer in Western Australia. The centrepiece of the Liberal Party's policy on crime is slogans and rhetoric and pushing fear buttons. Its gestures are somewhat symbolic. It has come in with a raft of legislation that is fairly light on detail while at the same time we are seeing damaging cuts to the police budget. The poor old Commissioner of Police is on the one hand trying to defend the actions and policies of the government but on the other hand he is seeing the damage that is being brought about by the government's budget mismanagement.

One of the most alarming admissions in this debate is the emptiness of the legislation. It is not backed by any evidence or evidentiary policy process that the Minister for Police has brought forward. There is nothing of that nature in this legislation. On several occasions during the debate the Minister for Police has been invited to show the evidence that justifies this legislation in the form that it is in. All he has managed to produce is a half-empty cardboard box with some evidence from the police department. A cardboard box is not evidence of policy. It is not evidence of a considered and comprehensive policy response to a problem.

Last night we heard a number of absurd notions about the greatest threat to democracy. Everything from the world wars to the Vietnam War was evoked in its name. We heard that the greatest threat to democracy was anarchy and that it was also totalitarianism. There have been more threats to democracy in the past 24 hours than in the whole period of western civilisation! My version of the greatest threat to democracy is corruption of power. The corruption of power comes through the unfettered power of the state. These are the anxieties that fuel a lot of the passion from members on this side of the chamber. These are the reasons that the debate has raised so much passion and excitement. It is the reason why this debate has reached some low points in the extreme language that has been used.

I will make an observation about some of the legislation that has been introduced of late. It all has a fairly familiar ring to it. When the Cannabis Law Reform Bill is introduced, I predict that it will have a similar ring. The theme that runs through all this legislation is “trust the police force”. We saw that in the mandatory sentencing legislation. Legitimate concerns were raised about the powers of the police to decide who would and who would not go to jail. The response to that was that we should trust the police force to lay charges in a responsible way. I can understand why that produces some anxieties. This bill has a similar theme. We are being told to trust that the police force will use these extraordinary powers in a responsible and socially acceptable and balanced way. The cannabis legislation, when it is introduced into this place shortly, will have a similar theme to it. We will be asked to trust the police to judge when someone should be issued with a cannabis infringement notice and when someone should go through the court process. Frankly, that is not the basis of our democracy. The basis of western democracy is about having a series of checks and balances that provide the people with confidence that their civil liberties will be properly balanced against their obligations as members of society. This highlights some of the greatest threats and some of the weakest aspects of the legislation. People have raised these concerns on a number of occasions during this debate. From what I can gather from what has been foreshadowed by the government, those concerns will be rejected outright.

Some members have raised concerns about this legislation and have declared, as the member for Fremantle did, that they will reject the legislation outright. That is not the Labor way. Labor’s approach to these issues is to take a balanced approach. We understand that there are anxieties in the community about the level of violence, particularly the violence that is portrayed in Northbridge, and I will come to that portrayal in a moment. We understand that there is some anxiety in society that there has been an increase in violence and that that violence is fuelled by alcohol and other drugs. The government, therefore, is in some respects looking to respond to that. Why not? From a political point of view, it is like shooting fish in a barrel; it is an absolute winner. The government can push the fear button and the hate button and bring forward legislation like this to its political advantage. But it is not balanced, and that is why Labor has anxieties about these proposed laws.

Earlier in the debate, some members evoked memories of the police of the 1970s. I have some memory of the 54B legislation—a symbolic act of Parliament that caused people a lot of anxiety. When Labor came to power in 1983, it repealed that legislation. I remember images on TV of police roughing up protestors and being particularly physical in the way they managed crowds and so forth. That is not a problem for today. If people are suggesting that this legislation will place too much power in the hands of thugs, they are wrong. Instead, we are placing extraordinary powers in the hands of one of the most sophisticated public relations machines in Western Australia. The Commissioner of Police is an extraordinarily clever man; he has a great deal of trust within the community and he communicates very effectively to the community. It is not surprising that the community has a level of trust and faith in the police force, because he has provided extraordinary leadership to the police force in Western Australia and is very clever at allaying concerns about excessive police powers. He is also very clever at portraying a police force that balances its social responsibilities with its law enforcement responsibilities.

But this may not always be the case, and this is not the basis upon which we make laws in this state. It may be that there are no anxieties at this stage about placing power in the hands of particular people and particular instrumentalities of government as they stand at this time, but we must put in place checks and balances that make the abuse of those powers impossible, or almost impossible by virtue of the fact that there is oversight by Parliament or agents of Parliament to ensure that the rights of people going about their lives in law-abiding ways are not unnecessarily interfered with. We also heard some extraordinary claims that families will be pushed up against walls and searched. I want to put on record that I do not think that will be the case. I do not have any fear that my white, middle-class family will be in any way unnecessarily interfered with as a result of these laws. I do, however, hold fears for other members of the community; I have fears that Aboriginal people, people who do not have a strong command of the English language and people from a range of minority groups will be unnecessarily targeted. I am not for a moment saying that the police force is racist and I am not for a moment saying that the police force targets particular social groups in our community. I am simply saying that that is the nature of the way these laws fall unevenly upon the people in the community.

I noted with some interest an article which appeared recently in *The West Australian* and which pointed to some research undertaken by the Australian Institute of Criminology. It was national research that sought to look at the ways in which police force activity impacts upon Aboriginal people as opposed to non-Aboriginal people. The take-home message of that research is that police across Australia are far more likely to arrest young Aboriginal people and see that they go to court than is the case with non-Indigenous juveniles, who are considerably more likely to be let off with a warning or caution. The research found that in Western Australia, young Aboriginal people are more than twice as likely as non-Aboriginal juveniles to be given a jail term after being found guilty of an offence. It also found that in Western Australia, half of all juveniles who are arrested are Aboriginal and that although 71 per cent of the cautions issued in 2005 were issued to non-Indigenous youths, only 29 per cent were issued to Aboriginal juveniles. This research reveals the pattern of the ways in which these laws impact

upon people within the community. It is a sad fact that in our community, these laws fall more heavily on Aboriginal people than they do on people such as my family.

The Labor opposition has proposed some very sensible amendments to this legislation. They are amendments that are designed to safeguard the exercise of these laws to ensure that there is oversight, that the laws are not overly prescribed, that they are not overly exercised, and that the laws are not used as a means of harassment. The amendments are designed to prevent people who are going about their lives in a law-abiding way from being unnecessarily interfered with. As I said, the Labor Party understands that there are anxieties within the community; it also understands that the government wishes to respond to those anxieties in some way, but we must do so in a way that is supported by strong policy evidence, and we must do so in a way that preserves the checks and balances that this Parliament is empowered to provide. We must also respond to those anxieties in a way that does not undermine the confidence of Western Australians that we are not placing too much power in the hands of the police force. At the moment, the police force enjoys a great level of trust within the community by virtue of the strength of its leadership, but that may not always be so. The Labor Party is coming forward with these amendments in good faith; they are not based on a reckless examination of the legislation with the intent to simply go about rendering the legislation impotent. We are bringing these amendments forward to render this legislation fairer. There may be some misgivings on both sides of the chamber that our amendments will not go far enough to create fair legislation. We are bringing forward these amendments in good faith to ensure that we strike a balance, and that is the Labor way—to strike a balance between what is required to safeguard the rights and interests of people in the community to go to places like Northbridge and enjoy a night out without necessarily being exposed to an unnecessary level of violence or antisocial behaviour, and what is required to safeguard the rights of people who go to Northbridge and find themselves the subject of overly zealous law enforcement activity.

The police are not perfect; neither is the average Western Australian who goes out for a night in Northbridge or any other entertainment district. But there are laws in place to rectify the behaviour of people who go out, get a head of steam, and take a swipe at someone. Laws should be put in place to ensure that police officers who are having a bad night, or who are, frankly, not very good, are also able to have their behaviour rectified. That is the nature of the democracy in which we live, and that is the nature of the democracy that Labor wishes to preserve.

Labor has never walked away from the issue of crime. In the past, as a young member of the Labor Party, I sometimes found myself at odds with legislation that a Labor government had brought into this Parliament. I am not sure whether it was a piece of legislation or a government decision, but I remember when the Gallop Labor government imposed a curfew on young Aboriginal people walking the streets of Northbridge after a certain time of night. I thought at the time that that was overly draconian. I understand that it has had some really good outcomes, by the way, but at the time I had difficulties with that as well. But Labor did not shirk from its responsibility to address that issue, and it is not doing that now.

I sometimes wonder how much trouble there is in Northbridge. It has been some time since I have been to the entertainment areas of Northbridge, particularly late at night. But there is no doubt that there is a perception within the community that something needs to be done about the problems in Northbridge.

[Member's time extended.]

Mr R.H. COOK: I hope that that perception of what is taking place in Northbridge is backed by some solid evidence. I hope that that perception has not been formed just because the government has been able to whip up a storm of anxiety and concern within the community. I hope that that perception has been formed on the basis of a body of evidence that the government and the police have examined and have decided needs to be responded to. I hope that the basis for this legislation is not just a desire by the Minister for Police to be pictured with a box full of knives in a good photo opportunity. I hope that the government is not simply using the usual Liberal Party tactic of ramping up anxiety and fear in the community about crime. I look forward to the Minister for Police providing that evidence to this chamber. I look forward also to the Minister for Police actively considering the amendments that will be moved by Labor, because they are very good amendments. I believe the shadow Minister for Police has done a very good job in examining this legislation and proposing these amendments.

Mr R.F. Johnson: Did you support the member for Girrawheen's private member's bill?

Mr R.H. COOK: I always support the member for Girrawheen, minister.

Mr R.F. Johnson: Do you know the difference between this bill and that bill? Have you had a good look at that bill? I will be pointing out that there is virtually no difference between this bill and that bill.

Mr R.H. COOK: I hope the Minister for Police understands the anxieties of the member for Kalgoorlie and responds not only within the letter of what the member for Kalgoorlie was looking for, but also within the spirit. We want to see how this law will work.

Mr R.F. Johnson: I will. I have already put it in *Hansard* that I will.

Mr R.H. COOK: I want to know—also for the sake of putting it in *Hansard*—how many areas have been prescribed each year. I want to know how many inspections have taken place. I want to know how many of these inspections have resulted in arrests, and ultimately in charges. I want to know the impact of those arrests on people in the community. I want to know how many juveniles have been searched, how many young Aboriginal people have been searched, how many women have been searched, and how many drivers have had their cars stopped and searched. This is very important. We need evidence that demonstrates how these laws are working, so that as members of Parliament we can continue to monitor the impact of this legislation.

If this legislation passes unamended, and without what we believe are the appropriate checks and balances that this legislation not only deserves, but requires, we will put some extraordinary laws in place. At the consideration in detail stage, the Labor opposition will provide a rigorous, active and extensive examination of this legislation. We will put up our amendments. We look forward to the Minister for Police giving those amendments appropriate and active consideration, in good faith.

It is true that this debate raises a lot of passions. It is true that we in the Labor Party are very anxious about the nature of the powers that these laws will bestow upon the state. It is true that we believe that these powers should not be unfettered, and that appropriate checks and balances should be put in place, under the close scrutiny of the people's chamber. This legislation in its current form goes too far. But we believe it is not without redemption. We believe that it can be amended so that it will be given the appropriate level of scrutiny, and the appropriate checks and balances. We look forward to the government giving active consideration to the amendments that we will be proposing, and accepting them as a sincere and fair response to the legislation.

MR M.J. COWPER (Murray-Wellington — Parliamentary Secretary) [9.36 pm]: I would like to make some comments on the Criminal Investigation Amendment Bill. The debate on this bill in this place has been going on forever, or at least that is how it seems. I am hoping to bring some sense to this debate. I understand that the individual members of this place are reasonable persons who outside this place are quite amicable people and easy to talk to and debate with. I understand also that the nature of this place is adversarial. However, in recent days I have had heard some comments made in this place that demonstrate very extreme views.

I would like to draw to the attention of members that we are debating a bill that the Commissioner of Police himself has requested that we enact. The commissioner is the person who is responsible for putting police officers on the streets to quell the problems that are faced by society. That is no more evident than from what is occurring in Northbridge. Contemporary policing is very difficult. It does not matter whether it is in an urban environment, a rural environment or a place like Northbridge. However, not just any ordinary police officer is put on duty in Northbridge. That is because being put on duty in Northbridge is very much a fast learning curve for individual officers. One of the problems that the police service is facing today is that because of the recent changeovers of staff, a great deal of experience has been lost. The police service has therefore had to rely on relatively inexperienced police officers, particularly young officers; it has had to thrust them into the foreground, and inevitably thrust them into these situations in Northbridge. I must say that these officers are doing an exceptional job given the circumstances that present to them. On any given night there could be 30 000 people in Northbridge, and on a busy night there could be up to 50 000 people. There may well be only 20 or 30 police officers on duty in Northbridge to try to keep the peace and prevent crimes from occurring. It is interesting to note that these police officers are trying to patrol the streets and to learn their beat and familiarise themselves with the nightclubs and the various locations where problems are likely to occur. They are trying to familiarise themselves with where the drug deals are being done in the back streets, and with the areas that are frequented by gangs such as the Spider Boys and the M'Bros and the other gangs that have materialised over recent years and frequent Northbridge. The police officers who are sent to Northbridge are a select group of people who are thrust into very difficult circumstances. These people are monitored and mentored so that they can do the best job that they possibly can. As has been said in this place, legislation is in place that permits police officers to carry out searches of people, particularly under the provisions of the Firearms Act, the Misuse of Drugs Act and, if they are in a car, the Road Traffic Act.

We have a new generation of police officers—the X and Y generations—who are very much literal; they want things to be in black and white. In order for their searches to be conducted lawfully, they want legislation that fully protects them. They are more aware of their legal responsibilities and are even better trained than I was when I went through the police academy.

It is worth noting that recently my 18-year-old daughter went to an event in Perth with a group of friends. She went to an event at Burswood Dome and then they went to Burswood Casino. She rang at about midnight to say that they were going to Northbridge. This would have been her first experience of Northbridge at the age of 18 with a group of friends, and I had some reservations. It is not the sort of place I would recommend for anyone's daughter, but she is a young adult and was in good company. I have faith that our police officers can keep the peace in Northbridge, notwithstanding that I have seen some pretty ordinary things occur on the streets of Northbridge. She rang again at about two o'clock saying that all was well and that she was coming home, and

she asked whether we could pick her up from Mandurah train station. My wife travelled to the train station at three o'clock in the morning, picked her up and drove her home. The next day I was very keen to know what she thought of the whole ordeal. She said that she felt quite safe in Northbridge. I give a big tick to our serving police officers for providing that safe environment. But that is not always the case. I acknowledge the great work that they do. Interestingly, she told me that when she got on the last train at Perth station to travel to Mandurah at three o'clock in the morning, it was chock-a-block full of people. When they got on the train, the transit guards, who are employed by the Public Transport Authority—they are referred to by police officers as Alannah's private police force—had metal detectors. As people walk onto the train, they are scanned by metal detectors. I suspect that it has something to do with the fact that it is a condition of entry onto public transport that people can be scanned.

Ms A.J.G. MacTiernan: Can you just clarify that it is your understanding of this legislation that it is only that the police will walk around with metal detectors; it is not that they will stop individual people? Is that your understanding of it? If that is the case, that changes it.

Mr M.J. COWPER: My understanding is that police officers want the tools to be able to do their job. They will not be frisking people and doing body cavity searches in the main street. That is far from the truth. They will ask people to empty their pockets, and they will give them a quick pat down and scan them, and then those people will be allowed to go on their way.

Ms A.J.G. MacTiernan: So people will be stopped individually and they will have to empty their pockets and take off their jacket. Is that what will happen?

Mr M.J. COWPER: Going by experience, the police will ask people what they have in their pockets and whether they are concealing anything, such as a knife, and then give them a quick pat down. I have experienced this situation. I inadvertently found a concealed weapon. I placed my hand on the back of a person as I was going through a crowd and I felt something strapped to the back of this person. He had a dirty great big machete down the back of his shirt. I found that weapon by accident. I will return to the notion of reasonable suspicion in a moment. The fact remains that police officers want to be able to do their job as quickly as they can, because there are 40 000 or 50 000 people in Northbridge on a Thursday night. The police want to ensure that the area is safe. Police officers will not be aggressive or intentionally try to provoke some sort of reaction, because they would be on a hiding to nothing; they are hugely outnumbered. At the end of the day, the police commissioner has a role and police officers have a sworn duty to keep the peace and look after people, and that is primarily what they do. Ninety-nine per cent of the time that is what they achieve. The police commissioner has a real concern. People need only pick up a newspaper or listen to radio reports to know that the police have real concerns about what is happening on our streets. They feel that they are losing this particular battle. It is symptomatic of what we are faced with these days. I agree that this legislation is perhaps pushing the boundaries a bit, but we have to trust somebody; and, if we cannot trust our police officers, who can we trust?

Ms A.J.G. MacTiernan: Is it your view, as has been said, that we need this legislation because when cases are taken to court, lawyers are using the defence that the weapon was found not —

Mr M.J. COWPER: It is interesting that the member should mention that. When I first heard that this legislation was mooted, I was in a hotel lobby somewhere. I cannot remember where it was; it might have been at a state conference in Perth and the announcement was made by the Premier. I recall that there were two officers there from the state protection unit whom I happen to know, and when I heard this announcement, I asked them whether they knew of any cases that had been lost because the justice or the magistrate threw out the case because the matter was not accepted —

Ms A.J.G. MacTiernan: The appropriateness of the search.

Mr M.J. COWPER: Exactly. They said that they were not aware of any cases, and I am certainly not aware of any cases in my time. However, police officers are reliant on peripheral legislation to achieve what they need to achieve. They rely on the Firearms Act, the Misuse of Drugs Act or the Road Traffic Act —

Ms A.J.G. MacTiernan: Or powers under the Criminal Investigation Act that are already there.

Mr M.J. COWPER: But it gives rise to the fact that there is reason for suspicion. If these centralised areas are being frequented by the M'Bros, the Spider Boys and various other gangs, I have no problem with giving these powers to the police commissioner, whom we trust. Hopefully, from here to eternity we will have a sequence of very good police commissioners who can control the police officers in that situation and they will be able to do the job that they are employed to do. It is interesting to note that police officers are already doing this.

Ms A.J.G. MacTiernan: They are obviously finding weapons, aren't they, because they are finding all the weapons that you have displayed? It just seems that if you're going to impede civil liberties, there has to be something that's not working.

Mr M.J. COWPER: The member heard my comment about the train guards who have metal detectors. Danny Green has a certain following; a number of rough and ready people from opposing gangs or factions like to go to his fights. A large group of people converged on Challenge Stadium to watch an adrenaline-pumping sport, and as they entered Challenge Stadium, they all had to walk through a metal detector.

Ms A.J.G. MacTiernan: No-one has a problem with that.

Mr M.J. COWPER: No-one has a problem with that; the member is dead right.

Ms A.J.G. MacTiernan: If you set one of those up on a street in Northbridge and everyone who went down that street had to go through it, no-one would have a problem with it. That's not what we're talking about.

Mr M.J. COWPER: The fact remains that we are losing the battle of trying to deal with these matters on the streets.

I return to the requirement for reasonable suspicion. Let us say that there is a big line of people waiting to enter a nightclub and a drug sniffer dog walks along the line and stops, props and sits down next to a person. That is deemed to be reasonable suspicion. How preposterous! It is reasonable suspicion if a dog sits down next to a person because it suspects that the person is carrying drugs, but a police officer cannot make the same interpretation. We have to trust somebody; and, if we do not trust our police officers, who will we have left to trust? I have heard comments in this place that we are going to have some sort of totalitarian state and we will be marching up and down the street in uniforms and people will be frisked and slung up against a wall.

Ms A.J.G. MacTiernan: And you don't think that that's going to happen?

Mr M.J. COWPER: I do not believe that that will happen.

Ms A.J.G. MacTiernan: Do you acknowledge that that's permitted under the legislation?

Mr M.J. COWPER: There is the potential for it, but I trust that police officers will use such force as is reasonable in the circumstances. I would not expect them to slam a person whom they know has a drug conviction against the wall and frisk him. But if a problem presents itself in certain circumstances, police officers are trained and experienced. They do not go into Northbridge looking for problems, because at the end of the day they are the ones who are going to cop it flat bang on the end of the nose. They are at the pointy end. They are the ones we are relying on to keep the peace. As a collective group in this place, we need to put aside all these issues. We are here because we all care about the people of Western Australia.

Ms A.J.G. MacTiernan: Do you believe that the police should have unfettered powers? An important part of our society is actually having some checks and balances.

Mr M.J. COWPER: The member is dead right. The balance is moving away in the job.

Ms A.J.G. MacTiernan: You have not been able to produce any evidence.

Mr M.J. COWPER: Some members of the community are now fuelled by not only alcohol, but also drugs. The job is therefore becoming exponentially more difficult. I suppose this is a bit of a shift in operations and in the way that police operate in these circumstances. I have seen the Commissioner of Police walk down the main street with just about every minister, I have seen the Premier walk down the main street and I have seen previous ministers walk down the main street, and they have all been faced with the same problem. I do not think for one second that members on this side have got together in a huddle and thought that they would come up with, as I have heard some people say, some sort of idea that will result in a fascist regime. I think that is nonsense. We are better than that. We are all good people individually, and we can sit down and have reasonable discussions.

Ms A.J.G. MacTiernan: I think there is a degree of naivety about that. You, as a former policeman, have recognised that the sorts of scenarios that we are talking about are actually possible under this legislation, which your police minister denies.

Mr M.J. COWPER: The member is right: I am not a theorist; I have actually done the job.

Ms A.J.G. MacTiernan: I know, and so you are talking about the practical side, which is what we are talking about. If people go through a metal detector, no-one on this side would have a problem with that.

Mr M.J. COWPER: It could be a metal detector, a quick pat down, a turnout of the pockets, a question of what is there and a response of no worries. If there are drugs, the person is off the streets. If a person has nothing on him, he is thanked very much, told that his cooperation is appreciated and wished a good night. If a police officer can operate in that fashion, it not only augurs well for keeping the peace, but also makes people feel safe, as was the case with my daughter.

Mr M.P. Murray: Safe from whom?

Mr M.J. COWPER: From whom? The member should do himself a favour and go to Northbridge on a Friday night to have a look. It is very interesting. I am just hoping that commonsense will prevail. The Commissioner of

Police has asked us to equip him for the situation. I do not believe that police will abuse the power. I know it is the opposition's job to raise these fears in this place, but I am asking for some commonsense to prevail. Let us trust our police officers and give them what they need to do their job in the current environment. Then let us review the situation to see how things have gone. I believe that we must do that and that we must be sensible about these matters.

Everyone has talked about rights. People have the right to walk down a street and not be confronted by drug pushers, drunken fools and belligerent drug addicts. They must be weeded out and got rid of. The gang mentality that is now developing in our society is alarming. It is almost as though people are trying to imitate what happens in the United States. We are not in the United States; we are in Australia. We should be dealing with this in an Australian way. Northbridge is a problem. The police have come up with an option that they want to explore. I say that we must have trust in the Commissioner of Police.

Mr A.P. O’Gorman: Will you accept our one-year review?

Mr M.J. COWPER: I do not think that one year is enough, to be honest, because I do not think it will have run for enough time.

Mr R.F. Johnson: Why don't members opposite check it out? News polls show that 80 per cent of people support this legislation.

Mr M.P. Murray: Wait until they have all been frisked and run through the mill.

Mr M.J. COWPER: The fact is that a member says that he or she is a friend of the police. There has been argy-bargy today. Members have said how they are best friends with the police and then have given their experiences of a bad encounter. I believe that there are always two sides to a story. I cannot comment on those people who have said that they have had a bad experience, because I was not there, but I do know that there are always two sides to a story. I believe that 99.9 per cent of our police officers are doing the job because they want to serve the people of this state. They do a good job and they want to protect us. It is not because they are getting some sort of jolly because they have a power craze and can have some dominion over a group of people. If they wanted to do that, they certainly would not do it in a Northbridge environment, because they would find themselves unstuck very quickly.

Mr T.G. Stephens: Do police officers ever do anything bad?

Mr M.J. COWPER: Of course they do. I am trying to make a reasonable and balanced contribution to the debate. I am asking for all members to just stop and think about the situation. The police are asking for this legislation and we have got to trust our policemen. If we do not trust them, we are out the door and we will have a problem.

MR M.P. MURRAY (Collie-Preston) [9.58 pm]: I certainly wish to say a few words. I have great concern about where this legislation is heading. Although it is only a small step, I believe it is a step in the wrong direction. To start with the end of a problem instead of the beginning is always the wrong place to start. According to a newspaper report this week, 101 drug factories have been found in Western Australia. That is tremendous, and hats off to the police who have done that. However, the problem is searching people on the streets after they have first taken drugs at home or have tanked up at home. It is a nonsense, because it is not only a violation of their civil liberties, but also a waste of time. If sniffer dogs were taken along a line of people, most of the people would be found to be clean. Why? It is because some would have taken drugs earlier. Most violence comes from amphetamines. People have no control, and once they flip, they are away. I think people would have seen that at one time or another in many of the places they have been to. They might wonder why some young bloke or some young lady has gone off. It is because of the chemicals they have taken before they went out. The point of pulling people up in the street is therefore lost.

Let us expend our energy and spend our money on the source of the problem. Alcohol education is high on the list. Not only do children and young adults need alcohol education, but so do their parents. We need only look at schoolies week. Police pull up car after car on the way to the coast with piles and piles of grog in them for kids who are 16 or 17. Their parents are condoning it. Yet we say that we will put a rope around Northbridge. Northbridge seems to be bearing the brunt of the problems, but over the past couple of weeks I have seen problems in Hillarys, Subiaco and places like that. When we talk about expanding an area and moving it further out, where are we going to stop? Will we look at the entertainment precincts and the V8 motor car event that is coming up shortly? Will we frisk everyone who goes to that event? Why not? Why are we looking at only one area? I do not believe that if we give these powers, they will be confined to one area. Why not at an AFL football match if there is a blue there one week? One of the major reasons that we have half these problems is the lack of police resources. What does the government do? It must find an easier way. This is just a short cut. I would hate to think that I could not walk down a street in Subiaco with my granddaughter, who may have spiky hair, purple jeans and 40 rings hanging out of her eyebrows and ears, without her being pulled up and searched because of

her appearance. That is what will happen. The decision will be based on people's colour, their race and their appearance.

Mr R.F. Johnson: Rubbish.

Mr M.P. MURRAY: Do not say rubbish to me. We have heard the statistics and we know it will happen. It happens already and it has happened for years. I am glad to say that it has eased off a bit. The saying was that if an Aboriginal had a new car, he should be pulled up and checked because he had probably stolen it. Things have not changed that much in recent years. The same thing still applies. What I see is a slow but sure movement towards oppression. Do we want to see in the future people disappearing off the streets as Eastern European countries once had?

Mr R.F. Johnson: For goodness sake!

Mr M.P. MURRAY: Do not laugh about it, minister, because this legislation will allow that to happen. Already tonight's newspaper refers to new laws for metal detectors. I do not oppose that, but it is another step—one step, two steps, all the way down. The Minister for Police is getting his way. Does the minister remember when in opposition saying, "Hang 'em"?

Mr R.F. Johnson: I never said that.

Mr M.P. MURRAY: The minister did so! He said that the best place they would be was hanging up! The minister was the person who said that it was all right for people to have sex with animals! You were the one!

Mr R.F. Johnson: Put up or shut up!

The ACTING SPEAKER (Mr J.M. Francis): Order!

Mr M.P. MURRAY: I am just reminding the minister of that.

Mr R.F. Johnson: Don't mislead this house; you're better than that.

Mr M.P. MURRAY: I am not withdrawing that because that is true.

Mr R.F. Johnson: I said that you were better than that.

Mr M.P. MURRAY: What I can say is that the minister said it. Whether or not he meant it is another issue. I do not want to see that type of thing happening whereby we are moving inch by inch until there will have to be a major push.

I saw a gentleman in the dining room tonight—Mr Kierath. He tried the same line with industrial relations issues. Where did he end up? Where did that government end up? Out! I believe this will be the same. At first it will be popular, because it is a populist view, but watch what will happen as one person after another is put through the mill and thrown up against the wall and frisked because of his or her appearance. Watch the students who are 16 now and who will be 18 or 19 at the next election. Watch the response that is coming—hello; old red face is back! Watch what will happen.

Mr R.F. Johnson: You're really getting in the gutter tonight.

Mr M.P. MURRAY: Because I am passionate about this. The last thing I want to do in my time in Parliament is let these laws be passed. I do not have any problem about this if there are reasonable grounds. At the moment, there are not. As I said to the minister just a moment ago, the issue is about freedom. Are we going to go back to the Kierath laws or section 54B of the Police Act, under which only three people were allowed to stand on a street corner? We have been through that and we have seen the reaction from the public. It was not great at the start, but it built up over time. That is what will happen here; we will have the same problem. It will bounce back on these guys opposite; do not worry about that.

Sure, there are differences of opinion all through this chamber, and I respect those opinions. This is my opinion, and I will make that very clear. I tell the minister that he has gone one step too far. I really, really mean that. As time goes on, where do we stop this? There is no end to a length of string. Where is it going to stop—at the south west football final, at the Billabong pro surfing carnival or the Margaret River masters? That would be a good opportunity to knock a few off with a bit of pot on them, or something like that. Where is it going to stop—at a concert? It could be anywhere. It could be that the police put up a precinct on the highway and anyone who comes into that area can be searched because there are no laws —

Mr R.F. Johnson: Oh, for goodness' sake!

Mr M.P. MURRAY: No, minister; there are no laws to say that the police cannot do that. That is the point I am trying to make.

Mr R.F. Johnson: Yes, there are.

Mr M.P. MURRAY: No, there are not.

Mr R.F. Johnson: There has to be a declared area, either by regulation or application from the commissioner and approved by me.

Mr M.P. MURRAY: I declare Subiaco; is that okay?

Mr R.F. Johnson: I would not approve that.

Mr M.P. MURRAY: The minister will not be here much longer, so it will not matter; it could be someone else doing the approvals. We have to have more checks and balances along the way. If we do not have that, it will suit the elements of the extreme right—as we heard from members opposite when we heard that people should be laid naked out on the street and searched upside down and inside out. Those views come from the extreme right, and those in the background tell us that. That is who will get their way! They will get their way because it is popular at the time. We have to look at the course of history to see where we have come from. We do not want to go backwards. I do see this as a backward step, as I am sure would most others if they think it through. We have to have checks and balances and some reason for pulling people up. We cannot have a situation in which people are prevented from walking down any street. As I said, the next step is to put them in jail for a couple of months just because of their appearance! We heard a tirade from the Premier tonight about the boat people. Members heard the way he went off.

Mr C.J. Barnett: Do you have a view on that?

Mr M.P. MURRAY: I certainly do, but it is not for here and now. The Premier spoke about that for one purpose—to deflect people on another angle and to take them away from the real issue, which is this legislation. That is what I am concerned about. When the Premier would not talk about the regulations that could be written, I was concerned, because I know what will happen when going down this road fails: the Premier will say “I never said anything. I talked about boat people.” The Premier had 10 minutes and he talked about something other than this legislation. That worries me immensely, because it gives the Premier a way to wriggle out. I am calling on the minister and the Attorney General to take another look at the legislation; I really am, because I think it has to contain a lot more checks and balances.

Can the Premier imagine walking down the street, and the first day he gets pulled up and searched, it is a bit of a joke; the second day he is walking to work and is searched; but on the third day that he has been searched, it will start to get under the Premier’s skin. Knowing the Premier, it will get under his skin. It takes only a couple of interjections to get under the Premier’s skin, so imagine somebody patting him down three times in a week! That could be the case. They will have to have long arms to get around that waist. That is really the issue. When people start to react, mandatory sentencing will come into play. The same cop, through harassment—I hope it never happens—goads someone into taking a swing, and that person will be jailed under the mandatory sentencing law because he was goaded! How many times is enough if the same person is going up and down the same street and he gets pulled up two and three times in a week?

Mr R.F. Johnson: They would have a case against the police, my friend, for harassment.

Mr M.P. MURRAY: I just cannot take that. The minister can go up and down his street in his suit and he will not be picked on, but the metal head who walks past with his underpants up around his waist and his jeans down around his ankles will get pulled up. The minister’s reaction shows he has not been out lately to see some of the new styles. The Premier went to Northbridge under a big banner of lights and walked up and down the main street, and stepped over a lady who was passed out on the street! The Premier cannot tell me he had a good look over town. He should get out by himself and have a look. It is about time he did. It is unfortunate that he will probably be recognised and somebody might bump him on the head! The whole point is this is one step, two steps, three steps, and then where are we? I do not see this stopping. I see it progressing. If I do not speak strongly against this legislation, I would be leaving a legacy for my grandchildren and their grandchildren. Their grandmother moved away from an oppressed country to have a better life in Australia. It is coming full circle and it is going back.

I was talking tonight with a gentleman who had been back to Poland. He said that things had changed over there. He was very pleased and he said that it is similar to living in Australia. These laws will be stronger than those in an Eastern European country today! Where are we stepping to? I spoke to that person less than an hour ago. We are stepping back to those oppressive days. In Romania if someone was on the street without reason, he got a bang on the head. It might sound extreme, but the laws that this legislation will change will allow this trend to progress into the future. I am concerned to hear some people say, “Let us try it.” I do not think we should even go that far. I think we need some tougher laws to deal with the existing problems, but they can be addressed in many different ways, as I said, through education and that sort of thing, and with more police, not half-baked coppers without a full licence who will be replacing the police that the government promised. We need proper policing. I was in Victoria last week and what did I see on the street there walking the beat? There were four coppers together checking all the clubs, looking at the licences of the bouncers. I do not think anyone would deny that bouncers sometimes contribute to violence. Those police were checking licences and were visible as

they were marching the block. Police cars were also driving around at the same time in support. We are not doing enough of that sort of work here; we are taking the cheap and nasty way out. We need to work with those groups and with the communities. The government should not seek to come out with a big hammer. There is a licensing regime in place. Gloucester Park will not run its event on New Year's Eve this year because of police pressure to stop people going there. I do not know where the 35 000 people will go—probably to Northbridge, so the minister should jack up the number of coppers there because this government, through the Department of Racing, Gaming and Liquor, is making sure there will be no venues like that around.

I am asking for commonsense to prevail here. The government must agree to the opposition's amendments to this bill. I am pleading for the government to look during consideration in detail at what we can do better, because this is a very ill-thought-out bill, which will take us step by step towards being a laughing stock. If this policy is so good, why have the other states, which have far greater populations and similar problems, not adopted it? We are the most over-policed, harassed place, with the fun police, that I know of. There is no doubt about that; it can be seen at any event. At Yalgoo races, for example, there had to be 14 security guards for 400 people, under the Liquor Licensing Act. Members cannot tell me that is not oppression.

Mr J.M. Francis: You're talking to your mates in the gallery; you are being silly.

Mr M.P. MURRAY: I am not being silly, because I went to those races and that complaint was made. I just received a card saying, "Thank you for listening to the problems out there". Those races will not run next year because 14 security guards cost \$40 an hour.

Mr C.C. Porter interjected.

Mr M.P. MURRAY: That is the thing. The Attorney General has missed most of the debate today. He has come in tonight only because he wants to sit in his seat and have a bit of a snooze. I want to see whether he is man enough to do the same thing as I asked him to do concerning the mandatory sentencing law—that is, to stand up and amend the legislation himself rather than let amendments come from this side. I looked at him during that debate as I am doing now, and he should remember that. That legislation came very close to failing when unfortunate people with mental problems were the first two people arrested. But the police used their discretion, which I am pleased about. I am not arguing about that. But by gee, it went very close. I bet the Attorney General was running down the street saying, "Please, stop, whoa don't do that." That is not what the legislation was about.

I am pleading with the Attorney General, with the Minister for Police—"Mr I'll hang 'em"—to do two things if the legislation fails: firstly, to look carefully at the amendments and work with them; and, secondly, if the legislation fails after a very short period, will he bring it back to Parliament and amend it so that it works properly? I do not think I need to say more; I have put my point firmly, although others may not agree with it.

Mr C.J. Barnett interjected.

Mr M.P. MURRAY: Again, the Premier will talk about boat people or something else—anything other than the real issue, as he did before, which is a disgrace when the issue is as serious as this. What will we read in *The West Australian* next week—that the commissioner will get whatever he wants next? The Premier is going to kowtow to him. It is about time he showed some leadership himself.

MR T.G. STEPHENS (Pilbara) [10.15 pm]: I oppose this legislation in the form it is presented in this house. I do that against this background —

Mr C.J. Barnett: The leader said that you all supported it.

Mr T.G. STEPHENS: The leader made it quite clear that unless the legislation is amended with the significant number of amendments on the notice paper, it will not receive the support of a single Labor member of this Parliament.

Several members interjected.

The DEPUTY SPEAKER: Order!

Mr T.G. STEPHENS: If you feel inclined to chuck out the Premier, Mr Deputy Speaker, I would be happy about that.

The DEPUTY SPEAKER: Order! He is coming close!

Mr T.G. STEPHENS: When faced with a government that has over the past 12 months been, if we like, a reasonably moderate government, it creates a problem for an opposition. When the government comes into office and starts to adopt policies and strategies that have moved very much to the centre ground, it makes it extremely difficult for an opposition to find ways to land punches on the government, which is the task of any opposition. I have been around this Parliament and in politics across this nation for a long time. When a government that has within its ranks people whom we can recognise as people who, at times—I do not want to make a great habit of

singing the praises of my political opponents, but for the purpose of this discussion I will make these points—display compassion, intelligence and vision and seek opportunities for the Western Australian community to have hope, and when we see our political opponents, if we like, move to the middle ground, the task on this side of politics is to think, “What has gone on here?” In fact, it should be celebrated as a victory for the politics of people like me and people associated with my party, and for the sorts of causes and hopes for our community that we have always held out.

Then I look back and ask: what motivated me when I went to great efforts to try to run for Parliament because I had suddenly developed a complete revulsion with the opposite side of politics from my politics so that I was prepared to take all the steps necessary and experience all the discomfort necessary to make sure that the then Court government—the Daddy Court Government; the Sir Charles Court government—no longer held the government benches? It was because, from 1974 through to 1982, when I arrived in the Parliament, it had become increasingly extremist in the way it responded to the challenges facing a modern community that Western Australia was moving to become. As it adopted strategy after strategy, it caused ordinary people in the community, of which I consider myself to be one, to become highly motivated to take all the steps necessary to point out to the Western Australian community that this was a party in government that no longer deserved the right to be in government. Tonight our political opponents have taken one of the first steps that is taking a step too far. It is a step upon which, I fear, other steps will be taken if members opposite, such as the Minister for Police and others who seem to be in strong support of this step, get their way. They will be sowing the seeds of their own eventual destruction. By introducing legislation in this way, without the amendments that are being urged by members on this side of the house, they run the risk of bringing about the destruction of their own government sooner rather than later.

From the comments made earlier in this debate, particularly those made by the Minister for Police and the member for Murray-Wellington, it is clear to me that members opposite have highlighted some of the problems with their own bill. I will go into detail about the problems they highlighted in their contributions. They say that this bill allows for only a modified type of pat down of a person, yet there is no such restriction in this bill. If members opposite were trying to put in front of the house legislation that enabled the police to operate only in the way that members opposite have described to the house, they would have found ways to articulate that in the words in the bill, but they have not done that. For instance, the Minister for Police said that he would never allow the Commissioner of Police to make Subiaco a prescribed area. However, this bill allows the Commissioner of Police and the Minister for Police to do exactly that. Nothing in this bill would allow Parliament to prohibit either the Commissioner of Police or the Minister for Police from utilising the amended act to declare an area such as Subiaco subject to random searches of people, not on the basis of suspicion, but because the Commissioner of Police, with the permission of the Minister for Police, had taken such a step. If the Minister for Police says that he will never allow that, why should he expect the Parliament to allow for that in this bill? That is what the Minister for Police is doing. He is asking Parliament to say that an area like Subiaco can be declared open for —

Mr R.F. Johnson: Let me put it in this way. If there is a history of serious violent crimes in Subiaco and we saw that it was getting out of control and the request was intelligence led, there might be a case for invoking that as a declared area for a specific amount of time. Unless there is intelligence and some evidence to show that that is needed—we can see it in Northbridge and in the CBD; I cannot see it in Subiaco, unless the member for Pilbara knows more about Subiaco than I do —

Mr T.G. STEPHENS: The Minister for Police made the point again. The Minister for Police articulated why he might allow Subiaco to be caught up by a blanket prescription in this way whereby any search could be conducted in that area. However, as he did that, he also articulated the reasons why that would govern the declaration of that area for the purposes of the amended act. Why is the Minister for Police so lazy that he chooses to introduce a bill that is stripped of the arguments that he has delivered to the house? He has some arguments to justify allowing an area such as Subiaco to suddenly be prescribed under the provisions of this act but he has not put within this legislation the sort of rationale that he can quickly throw across the chamber. It is ill-thought-out legislation. It is a step too far. It is a blunt instrument to respond to the modern challenges of the complex community that Western Australia increasingly is.

A member said earlier in the debate that it is possible to play successfully upon the fears and upon the base motives of the community. Sometimes hate can be unleashed within the community. I am of the view that fear and hate are powerful forces, but I have noticed in my lifetime that they are not the most powerful forces that can be tapped into or unleashed. Much more powerful forces in the community are the prospects of hope and vision, and the prospects of a community motivated by compassion and love. They are much more powerful forces that can be unleashed in our community and it is far better to rely upon them than it is to rely upon fear and hate. This bill is about tapping into people’s fears. It does what is called “dog whistling” to the community. We know what this bill is about. We know the sorts of people it can be utilised for. We will not say it but this is what we had in mind when we passed this legislation. Increasingly, the Western Australian community is alert to this type of

response that this government seems to be on about with this bill. The clearest thing that has been identified in discussions around this place is that the government has been looking for a way to play wedge politics in Western Australia to try to find a way to make it look as though members of the Labor Party are soft on crime. That is what the government hopes to do with the debate on this bill at this time, and it will try it again and again. We can hear from the discussions around the house that members on the government benches are excited about the prospect that they might be able to construct, from the way in which this bill is being handled in this place, an argument that the Labor Party is soft on crime. Nothing could be further from the truth. The mantra will come. It is a mantra that the Minister for Police does not believe, but that does not stop either him or the Premier from saying it. They will continue to say something that they know is untrue for the primary purpose of trying to deliver to themselves a harvest of fear within the community about their political opponents. They should eventually be exposed for exactly what they are endeavouring to do. My prediction is that they will be exposed for what they are endeavouring to do with this strategy of wedge politics and for constructing an argument that their political opponent is something that it is not.

Members on this side of the house represent areas where there is a fundamental belief in the community about the importance of respect for the law. People fundamentally want to be protected by the laws and they want that protection to be uniform and for the government to provide the police with good resources and good community support. I have been around long enough to know that a request from a Commissioner of Police by itself is not sufficient grounds for me to think that I should go along with that request. I have been around long enough to remember the sorts of requests that came from police commissioner Owen Leach. When one looks back over the history of the police force in this community, one realises that we have not always been blessed by sensible decisions being made by the Commissioner of Police or by good decisions being made by the Minister for Police. There are times when Parliament—I think it is all the time—should respond to requests from the Commissioner of Police and subject those requests to scrutiny to determine what is in the best interests of the community of Western Australia and what will best serve the wellbeing of the community. That is the responsibility for which we are elected. Every day that we sit in Parliament we pray that we will deliver good government to the community of Western Australia.

The fact that the police commissioner is of the view that a change is necessary is not cause enough for me, and, hopefully, the Parliament, to go along with it. In common with probably everyone in this house, I hold the current police commissioner in very high regard. He has great skills and clearly has had a good education. When he is well resourced, supported and well guided by government, he will come up with the necessary strategies to respond to the challenges facing the modern community of Western Australia. This legislation is not such a response. It runs the risk of breaking the relationship that the police need to have with the community of Western Australia. It runs the risk of delivering to the police a weapon that, far from engendering support from within the community, will instead create a lack of support for police. That is what happens from time to time in communities, and that is what Parliaments have to protect the police from—a lack of support from the wider community. It could happen if the Parliament delivers to the police force powers that go a step too far, such as the powers in this legislation in its unamended form. I make the point that on this side of the house, we do not consider it acceptable for the government to make the taunt that the Labor Party is soft on crime; nothing could be further from the truth. We are of the view, for example, that there should not be any crooks in the cabinet, but the government seems to be of the view that it is acceptable for someone who forges branch application forms to be a cabinet minister. I do not. I have seen people—Premiers—go to jail after claiming to have made a mistake on a travel application form, yet the government seems happy to keep such a person in its cabinet as Treasurer.

Point of Order

Mr C.J. BARNETT: The member for Pilbara is making a lot of wild accusations about crooks and forgers. Typically for him, he lacks the courage to make any such comment outside this chamber. It is clearly unparliamentary. If he has an accusation to make, let him make it.

Mr M. McGOWAN: Further to the point of order, there is no point of order; the member for Pilbara did not refer to any single member as a forger. He made a factual statement about the Treasurer that was not unparliamentary.

Mr R.F. JOHNSON: The member for Pilbara accused the Treasurer of signing a form that would give him something that was not due to him —

Mr M. McGOWAN: That is what happened; he paid it back!

The DEPUTY SPEAKER: This is not a time for debate!

Mr R.F. JOHNSON: — in the context of deliberately doing something that was fraudulent. He knows that that is not the truth. If the member for Pilbara wishes to attack the Treasurer or any other member of this house, it must be done by substantive motion, not by the throwaway lines he has used tonight. That is unparliamentary.

Mr M.P. WHITELY: The member for Pilbara was actually wrong. I think he intimated that the Treasurer was a forger. I thought he was referring to Hon Peter Collier as a forger; that is the forger that I am aware of.

Mr T.G. STEPHENS: No, there are two crooks.

The DEPUTY SPEAKER: Member for Pilbara, the Leader of the House has pointed out that if you want to make these accusations, you have to do so by way of substantive motion.

Mr C.J. BARNETT: I do not want to labour the point, but the member for Pilbara just made the comment that there are two crooks in the cabinet. If he wants to make an accusation like that, as you have just ruled, Mr Deputy Speaker, he should make it by substantive motion or apologise. He has demonstrated a lack of character.

Mr M. McGOWAN: I do not want to labour the point either, but again there is no point of order. The Premier himself has referred to the member for Kalgoorlie as a “crook”, and never withdrew that allegation. The member for Pilbara did not refer to any particular member of this house.

Mr M.P. WHITELY: Further to the point of order, I referred to Hon Peter Collier as a forger, and no-one has called a point of order on me! I think that is outrageous!

The DEPUTY SPEAKER: I am going to make a ruling that any aspersions cast against members must be done by way of substantive motion. I ask members to now desist and carry on with the debate.

Debate Resumed

Mr T.G. STEPHENS: I think it is important that no-one should be soft on crime. Certainly, a Premier should not tolerate crime, even amongst his own cabinet. When he has evidence of that, he should not be soft on crime. If he wants to throw taunts across to this side of the house that the Labor Party is somehow soft on crime, let him in the first instance turn to those closest to him and do exactly what the member for Bassendean has suggested—clean out his cabinet.

Ms M.M. Quirk: Get his own house in order.

Mr T.G. STEPHENS: Indeed; the Premier should get his own house in order. There are people on this side of the house who hold that the principles of being tough on crime and tough on the causes of crime are fundamental to our role as legislators.

Mr C.J. Barnett: You’ve been in this place 20 years too long.

Mr T.G. STEPHENS: The Premier had the good sense to know that he should have gone earlier when he announced his retirement. He used to sit on this side of the house and slander the opposite side of the house about alleged crooks and criminals. He used to use the most extravagant and ill-considered language in reference to the member for Kalgoorlie and other members of the Labor Party. All I am saying is that we now have evidence about the Premier’s lot. I would have thought that if the Premier was serious about being tough on crime, he would get his own house in order. I also make the point that on this side of the house there are people who have the capacity —

Several members interjected.

The DEPUTY SPEAKER: Members!

Mr T.G. STEPHENS: I resigned to contest the federal seat of Kalgoorlie when a candidate died; I was not sacked.

Several members interjected.

Mr T.G. STEPHENS: Is the Premier going to lie to the house? I resigned from Parliament. I asked a question; it may have been a rhetorical question, but I asked the Premier whether he was going to lie to the house.

[Member’s time extended.]

Mr T.G. STEPHENS: The Premier is wrong; I was not sacked from cabinet, so he should get his facts straight. I was not sacked from cabinet. I resigned from cabinet to contest the federal seat of Kalgoorlie. The Premier should not try to reconstruct or falsify history.

Mr R.F. Johnson interjected.

Mr T.G. STEPHENS: That is another matter; I might have a grievance about that, but that is another matter altogether!

Mr E.S. Ripper: Might? You do!

Mr T.G. STEPHENS: This legislation is a step too far for Parliament. It should be considered by those opposite as a step too far for the Liberal Party also. I suspect that it will be an influential factor when the people of Western Australia eventually decide that they have had enough of this government. These changes will be put on

the statute book because someone in cabinet had a rush of blood to the head and thought that by advancing legislation like this, the government would produce a short series of headlines in an attempt to try to con the community of Western Australia that there is a basis for justifying this type of legislation, even with all its imperfections. The community in Western Australia is smarter than that. Ultimately it judges governments for what they do. It did so with the Sir Charles Court and Ray O'Connor governments in 1982-83, in the wake of legislative steps such as the section 54B legislation and other responses that were made available to police officers.

Mr M.J. Cowper: Do you know about 54B?

Mr T.G. STEPHENS: I do. In fact, when a statue of Sir Charles Court is eventually built, hopefully statues of Hon Norman Moore and the Minister for Police will also be put beside it. If that does happen, the police will then be able to use section 54B to arrest all three statues together for having assembled there on St Georges Terrace!

Mr R.F. Johnson: So this is the level of debate that we getting on this particular bill! This is great!

Mr T.G. STEPHENS: No. I am saying that section 54B is an example of the excesses of previous Liberal governments. This legislation is one of the first steps along the way of introducing excessive legislation into this Parliament, without any justification. This legislation is a blunt instrument that will not protect the community of Western Australia in the way it deserves to be protected. The community of Western Australia deserves legislation that is refined by wisdom and by a sense of looking at the challenge and bringing into Parliament a response to that challenge.

Mr M.J. Cowper interjected.

Mr T.G. STEPHENS: Member, I support police officers. I am just saying to the member that he is doing his colleagues a disservice —

Mr M.J. Cowper: How do you account for the prolific amount of drugs and weapons in Northbridge? How do you account for that?

Mr T.G. STEPHENS: It is because we have an incompetent Minister for Police. We have a do-nothing Minister for Police. We have a Minister for Police who is more interested in headlines and stunts than in getting on with the job and supporting the good men and women in the police service—who deserve better than him, and better than this bill. It is for those reasons that I oppose this legislation, and I urge other members to oppose it as well.

MR F.M. LOGAN (Cockburn) [10.41 pm]: I also want to put my views on the Criminal Investigation Amendment Bill and to express my opposition to the bill in the way it is framed at this time. I support the amendments that will be put on behalf of the Labor Party by the shadow Minister for Police.

I want to pick up on the point that was made by the member for Murray-Wellington about how this debate is all about balance. What is the government trying to achieve with this legislation? The government is trying to protect the right of individuals to go about their normal course of affairs in places such as Northbridge, Fremantle and Rockingham without being hassled, intimidated or threatened by people who may well be under the influence of drugs or who may well be carrying weapons. That is the intent of this bill. The government wants to give the police the power to declare an area a prescribed area and to stop and search people for the purpose of finding drugs or finding weapons. But that needs to be balanced against the right of individuals to go about their normal course of affairs without being interfered with or being stopped by an instrument —

Mr R.F. Johnson: Then why did you support the member for Girrawheen's bill?

Mr F.M. LOGAN: Members, I am trying to ascertain the balance between the two sides of this argument. One side of the argument is the need to protect the right of individuals to go about their normal course of affairs without being threatened by people who are under the influence of drugs or who are carrying weapons. The other side of the argument is the protection of the right of individuals to go about their affairs without being interfered with by an instrument of the state—the police. That is what it is.

Mr M.J. Cowper: At a designated time and place, member.

Mr F.M. LOGAN: Whatever way we look at it, the police are an instrument of the state. Therefore, the way in which the powers of the police must be legislated for and used must always be very carefully thought through. I think that if anyone in this chamber has the ability to talk about how those powers can be abused, and about how the rights of the individual can be eroded, it is the member for Mount Lawley, who is currently in the chair as Deputy Speaker. The member for Mount Lawley can probably speak about that better than anybody else in this chamber. In the country that he came from, and as a lawyer, he saw the rights of the individual eroded bit by bit, from the introduction of the apartheid laws all the way through until the apartheid government was overthrown. Those powers gradually built up and they were targeted at one section of that community—the black people and the coloured people of South Africa. I am sorry, Mr Deputy Speaker, to actually —

Mr R.F. Johnson: How long were you in Jo'burg?

Mr F.M. LOGAN: I have been there.

Mr R.F. Johnson: I have a relative who lives there.

Mr F.M. LOGAN: I was there under the apartheid regime and also in Cape Town, mate, and it was not very good at all. The minister should have gone to Soweto during that period of government and felt what it was like to have the laws used against him. I am sorry to raise this while you are in the chair, Mr Deputy Speaker, because obviously you do not have the ability to respond to it. I am sure that you are probably not going to speak on this matter. It is a pity that you have not spoken on it, because I think your experience could add to the comment that our side made about the rights of the individual being eroded.

I will just take members—the Minister for Police will be interested in this —

Mr R.F. Johnson: You're going to talk about Croydon, aren't you?

Mr F.M. LOGAN: I am going to talk about Croydon! It is funny that the minister just raised that. I will talk about the United Kingdom, because there are no other stop-and-search powers being used in this way in Australia, but we can go to another place in the world where they are being used—namely, the UK. Under section 44 of the terrorism laws in the UK, stop-and-search powers are used. What were they introduced for? They were introduced not because there was violence in the West End of London or violence and drug deals in Manchester, Birmingham, Southampton—because it is far more extensive over there—or Croydon. I gave the Minister for Police an article about the level of violence in the town that we came from and the stabbings in the head undertaken by teenagers on one another. Northbridge seriously pales into insignificance compared with those towns in the UK. That is not to say that we should drift into that state of affairs. But what was introduced? The stop-and-search powers under section 44 of the terrorism laws were not introduced initially for the purpose of searching for weapons or drugs in places of entertainment. They were introduced, and quite rightly so, as anti-terrorism measures. Of any place in Europe, the UK, unfortunately, and particularly London, has suffered terribly as a result of terrorism attacks. Those powers were then extended, and they were extended in the same way that is being proposed in this place today; that is, they are now to be used for the purpose of stopping people and searching for drugs and weapons, particularly —

Mr R.F. Johnson: Predominantly weapons.

Mr F.M. LOGAN: No, drugs as well. The powers are used particularly in areas of entertainment. According to Andy Hayman, who is the Commissioner of Police in the UK, they are useless. Those powers are futile—they are his own words—and they are not delivering results in searching for people in areas of entertainment who may be carrying not only weapons or parts that may lead to acts of terrorism, but also drugs. He also indicated that these powers are futile because all they do is irritate people. Being stopped and searched drives people mad, and the powers are used indiscriminately. Figures referred to in the UK show that the number of those searches under section 44 of the counterterrorism legislation soared from 37 197 in 2006-07 to 117 278 in 2007-08. That is a massive increase in the number of people who were stopped and searched with no real result. What types of people were stopped? The number of black people stopped under these powers rose by 322 per cent, compared with an increase of 277 per cent for Asian people and 185 per cent for white people. The government's counterpart in the United Kingdom, the Conservative Party, does not agree with the powers. Chris Grayling, the shadow Home Secretary in the UK, says that if his party gets elected, it will amend those powers, because they are being abused by the police. Even the UK commissioner of police, Andy Hayman, said that they do not work; they tie up police resources and do not deliver the results that the police thought they would. The police in Hampshire have now dropped the stop-and-search powers, because they are a waste of money. These powers do not deliver the results that people think they will. That is a real example, Minister for Police. The minister is introducing these powers in Western Australia. He may, down the track, drop them simply because the police commissioner says, "We've put them in place, they cost a fortune and they just don't work."

I draw the minister's attention to the differences between this legislation and the Terrorism Act, because there are strong similarities between the provisions of this legislation and section 44 of the Terrorism Act. I will also ask the minister some questions about the bill. In particular, I refer to proposed section 70B(3), which states —

The Commissioner must not declare an area larger than is reasonably necessary, having regard to the reasons for making the declaration referred to in subsection (4)(d).

What does "reasonably necessary" mean? What does "an area larger than is reasonably necessary" mean? This is very broadly worded legislation. I put it to the minister that it has been deliberately worded in that way to give the police the ability to maximise their utilisation of this bill.

Mr M.J. Cowper: How would you define it?

Mr F.M. LOGAN: It is not up to me to define it, member for Murray-Wellington. The member's government has introduced the legislation. Whatever I say about my interpretation of "reasonably necessary" has no

relevance in this debate. This is a question to the minister; it is not to the member for Murray-Wellington. If the member for Murray-Wellington were the minister, I would be asking him the question. I am putting this question to the minister because he is the person who has to explain to Parliament the answers to these quite sensible and correct questions about this very broadly drafted piece of legislation. I am not asking the minister to respond now; he can do so in his reply to the second reading debate.

I also refer the minister to proposed section 70B(4)(d), which states that the commissioner must make a written record of such a declaration and the reasons for making it. Will there be regulatory control over those reasons? For example, the reasons for making such a declaration could include that there have been numerous knife stabbings in Northbridge, that there has been a proliferation of drug dealing in a particular area, or that there have been numerous gang fights. There will be a number of reasons for making a declaration over the period that this bill will be applied, but there are no specific reasons in the legislation. Will there be regulatory control over the reasons? Otherwise, the minister could have the Commissioner of Police or his deputy come along and ask him to declare an area and give any reasons. There is no limit on what those reasons are to be; it could be any reasons. The minister would be placed in a very difficult situation to argue with police as to why he should sign off if he feels uncomfortable with the proposition put before him. That is a difficult position for a minister; that is, when the minister is confronted by the Commissioner of Police he may not agree with those reasons. It will be very difficult for the minister to say no unless he has some regulatory control over the reason that he can say, "What you're putting forward to me does not fit with the way in which we would expect this bill to apply." As the minister, he does not have that control here.

Mr R.F. Johnson: It gives me a huge responsibility.

Mr F.M. LOGAN: It does give the minister a huge responsibility.

Mr R.F. Johnson: I am prepared to take that on my shoulders. I think ministers are supposed to make decisions.

Mr F.M. LOGAN: In order to protect himself, the minister should actually define what those reasons are.

I would like to raise another issue with the minister about the application of the bill. In practice, if an area of Northbridge is declared, for example, and people are stopped as part of the declaration of that area, are individuals expected to provide names and addresses?

Mr R.F. Johnson: If an officer asks a member of the public for their name and address, they are already expected to give that information.

Mr F.M. LOGAN: But in this case they are being asked to give their name and address as part of the —

Mr R.F. Johnson: Let me put it this way: a police officer will not go up to somebody and say, "I want your name and address because I want to conduct a search over you." What the officer would say is, "Excuse me, sir, excuse me, madam, we are conducting random searches tonight. They are not intrusive. I want to run this metal detector around the frame of your body to make sure you are not carrying any weapons."

Ms M.M. Quirk: That's not what was told to us in committee.

Mr F.M. LOGAN: Hang on; can I just finish? Let me put this to the minister: an area is declared, there are a significant number of people in that area, and police are going to implement the stop-and-search powers. The area would not be declared if police were only looking for one or two people. The area is declared a stop-and-search area as a significant number of people are in the area. Police officers will be polite, as the minister said, and ask, "Excuse me, sir. I am going to carry out a search of you. Could you also give me your name and address, please?" If that name and address is then recorded from a person who has been stopped and searched in the area, what happens to that information? Remember, it is a campaign that the police have undertaken in that area under these powers and there may well be a record of all people they have stopped and searched.

Ms M.M. Quirk: We were told at a briefing that it is likely standard practice that police would request the name and address of the people they were searching. That was for probity reasons, so if there was any complaint or issue afterwards, police had a record of who it was they searched. We were certainly given that advice by police.

Mr F.M. LOGAN: These are the concerns that I am raising with the minister; it is not set out in the bill. There are some very, very strong concerns that go to the balance between the rights of the individual, as I started off speaking about, to not be threatened by drunken lunatics, and the rights of the individual to go about his or her business without being interfered with by an instrument of the state, being the police—particularly when taking information from that individual for no reason whatsoever other than that they just happen to be in that area. What happens to that information, how long is it recorded for and what will the police do with that information? I am not asking the member for Murray-Wellington. I am pointing this out as an issue that I would like the minister to address. The reason I say that is the way the Home Office in the United Kingdom interprets its stop-and-search powers and the information it provides to the general public about their rights. I have not seen this government proposing any information about the rights of the citizen under stop-and-search powers. In the UK

information on those rights is provided to the citizen. By the way, those stop-and-search powers under section 44 of the Terrorism Act have to be renewed every 28 days; they are not in place for the same period of time that they would be here. Remember, those powers were introduced for the purposes of terrorism, not for drunken louts in Northbridge. They are significantly different.

Mr R.F. Johnson: People carrying weapons. It is the weapons we are interested in, not the fact that they are drunk.

Mr F.M. LOGAN: I know. I am just saying that there is a big difference between what is regarded in the United Kingdom as a significant infringement of the liberties of an individual by stop-and-search powers, which are used in only extreme circumstances for the purposes of combating terrorism, and the same use of powers here in Western Australia because of a number of drunken lunatics and stoned idiots in Northbridge. That is why this legislation is being introduced. However, may I just come back to the point of the information that is gathered and what I would like the minister to address.

Mr R.F. Johnson: I will give you all those answers.

Mr F.M. LOGAN: Please, if the minister could.

[Member's time extended.]

Mr F.M. LOGAN: Under the UK legislation people do not have to provide their name and address if the police stop them and search them, unless of course they are being reported for an offence. Even under the anti-terrorism legislation in the UK, the police must have a firm belief and suspicion that people are in breach of an act. For them to stop people they must have that belief. The debate that has occurred today and the quite emotional statements made by those on this side of the house go to that very point, and the fact that in this bill provides no requirement that police must have at least a level of suspicion before stopping people. That is what the emotion has been all about. Police usually only have this right when there is a suspicion that people have broken the law, committed an offence or are likely to commit an offence. That is when these quite extensive powers would be used. In the UK the rights of the individual are protected even under anti-terrorism laws.

Mr M.J. Cowper: Why won't you take an interjection from me? You started so well.

Mr F.M. LOGAN: The member can stand and put his point of view again if he wants to have another go. The rights of the individual in the UK are protected because the police must first have a suspicion that people are about to commit an offence or have committed an offence. The legislation contains protections under which people do not have to provide their name and address if they do not want to. Even when they have been required to provide their name and address, the police must not keep that information on record. Simply because people have been stopped in a particular area and searched, the information about them cannot be kept on file, and it should not be kept on file.

Mr M.J. Cowper: Beautiful!

Mr F.M. LOGAN: The member for Murray-Wellington is making an embarrassment of himself.

Mr R.F. Johnson: I will give you those answers in consideration in detail.

Mr F.M. LOGAN: Yes, but does the minister get the point I am making? We should be able to compare this legislation with similar legislation used elsewhere in the world. This legislation has very strong similarities to that used in the UK, except that in the UK legislation there are protections, even though that legislation was brought in for a completely different purpose from the one for which this legislation is being brought in. As I said in opening my contribution to this debate, if in very similar legislation in the UK that balance has been struck of the rights of individuals to go about their daily lives without being intimidated or threatened by an instrument of state—that instrument being the police—then it should apply here.

Mr R.F. Johnson: I think you have made that point.

Mr F.M. LOGAN: I know I have made the point. However, I am taking the minister to those points in the bill that should have those protections, but unfortunately it does not have them.

Mr R.F. Johnson: Let us deal with those points in consideration in detail.

Mr F.M. LOGAN: I wanted to avoid the hyperbole and emotion that has occurred in this debate so far and to go to the key issues.

Mr R.F. Johnson: Can I say that your speech has been very well delivered and has not been emotional and hysterical. I do not necessarily agree with everything the member has said —

Mr F.M. LOGAN: I understand that.

Mr R.F. Johnson: — but I think you have delivered it in a very tempered manner and I applaud you for that.

Mr F.M. LOGAN: I thank the minister for those comments, but I do wish he would take them on board and I ask that he consider them very carefully. That is because legislation with greater protections for individuals is now being tossed out in the UK for a number of reasons, primarily economic ones, because at the end of day it does not work.

MR C.C. PORTER (Bateman — Attorney General) [11.06 pm]: It is somewhat unusual to have another minister speaking on a fellow minister's bill, although I have given some assistance to the Minister for Police in his drafting of this bill. Many of the members opposite issued something of a challenge that I come and speak to the bill. I am not necessarily responding to a challenge, but there are some comments I feel should be raised on some of the matters raised during the course of this debate. I want to be brief and make three very quick points. One is about the emotion and what was just described by the member for Cockburn as the hyperbole that has been engaged in in this debate; the second is about the position of the members opposite; and the third is to give an explanation from my perspective of precisely what this legislation is seeking to do.

First of all, the emotion in this debate, having watched some of it and listened to the rest of it from my office as I worked away, has been absolutely extraordinary. I cannot recall hearing anything quite like it: the depth of the passion, the statements that were made, and the descriptions of the legislation as having totalitarian origins. At various points we heard about apartheid, the National Socialists, the Stasi, the Community Party of the Union of Soviet Socialist Republics, Hungary and Czechoslovakia; they have all got a run.

Mr Speaker, for your benefit, I am not now, nor have I ever been, a member of a Communist Party between the years 1952 and 1956—or any other time! The only time in my memory that I can recall anything like the heat of the emotion in this debate occurred at a Liberal Party conference. It must have been when I was maybe 17 or 18 and becoming interested in matters of debate and public policy, and because of my family connections with the party I would be dragged along to conferences and I would sit at the back. I was not a member or anything of that like, but I would listen and watch. There was debate in very similar terms, and it involved another law enforcement measure in the jurisdiction of Western Australia. The debate went down this hyperbolic path that if the Liberal Party endorsed a policy motion to bring about this law enforcement measure it would be the start of a totalitarian state and we would go down the slippery slope towards fascism.

Ms M.M. Quirk: Random breath testing.

Mr C.C. PORTER: The member for Girrawheen has got it in one: it was precisely random breath testing. All of these points that were raised—almost every single one—were raised by elements of my own party around 1987-88 about random breath testing. Now we think of random breath testing as so run of the mill, so average and an ordinary part of Australian life. It is intrusive with respect to what the law calls body privacy. When I heard some of the statements opposite about people being thrown up against walls and frisked, I thought they have been watching way too much TV!

Mr E.S. Ripper: That is opposition for you.

Mr C.C. PORTER: Very good, Leader of the Opposition! I do not know if anyone has had a random breath test recently, but something is done that many people consider to be one of the most intrusive things that a person can do: forcing something in one's mouth. I can see Mr Speaker giving a wry smile, and I will not inquire as to why. When I think back to the debate that occurred at a Liberal Party conference, it was pointed out that one of the most intrusive things that can happen to someone is to have something poked in an orifice, which is precisely what random breath testing requires people to do on a routine basis and for a reason. Random breath testing is not confined to declared areas; it can occur anywhere. It can happen in a person's driveway in Subiaco, in the Kimberley or anywhere else. Random breath testing is undertaken for a reason. It is intrusive and people have come to accept it. People will either come to accept or reject the measures in this bill. However, the opposition continues to run these slippery slope arguments that it is the thin edge of the wedge and that we are moving towards something.

Mr W.J. Johnston interjected.

Mr C.C. PORTER: I have listened to everything that has been said, and the member for Cannington's contribution was the least worthy of all.

Several members interjected.

Mr W.J. Johnston interjected.

The SPEAKER: Member for Cannington!

Mr C.C. PORTER: I know that the slippery slope argument towards totalitarianism is raised often and it cannot always be right, because we are not wearing SS uniforms. It is raised all the time and it has not happened yet. That is not to say we should not be vigilant; it has just not happened in recent memory. Will it happen with respect to this bill? I proffer not. The reason why—this is the second point I make about the position of members opposite—goes to the private member's bill that the member for Girrawheen brought into this place. I do not

know how it works on the other side, but I presume that if a private member's bill reaches the Assembly, it must go through caucus and people must vote for it and it is approved and supported. We had lavish hypocrisy from several members, although not all, when they must have, as a matter of logic, supported the Weapons (Supply to Minors and Enhanced Police Powers) Amendment Bill 2008. On 2 December 2008, in this very place, the member for Girrawheen's bill was second read. I thought the bill, albeit its drafting had some problems, was a bill with merit. It was a bill that tried to solve a problem.

Ms M.M. Quirk: That is not what the Minister for Police said. You were not convinced by his arguments.

Mr C.C. PORTER: I must admit that I read the *Hansard* and I did not see that particular exchange. Maybe I missed it. The member for Girrawheen said —

The other feature of the legislation, which was inserted after some public discussion in recent weeks, addresses the inadequacy of current police powers. As the law exists, under section 13 of the Weapons Act police must have a "reasonable belief" that a person is in possession of a weapon before they can exercise the power to search. "Reasonable belief" is a term that carries its normal legal meaning. The problem is how police can have that belief if weapons such as a machete, "The Scorpion" or "The Defender" are secreted. This legislation removes the need for police to have that level of suspicion and enables them to search for weapons by way of frisk or metal detector.

To which I say, "Bingo!", the member got it absolutely in one.

The member went on to say —

The bill will allow police to search without warrant in certain areas, such as night entertainment areas, gazetted by regulation at specified times, to ascertain whether persons are carrying weapons. We envisage that the areas to be gazetted would be chosen on the basis of crime statistics and would be evidence based. Similarly, the times these powers would be exercised would be based on advice from police about when these weapons offences are most prevalent. We are supporting police by giving them additional targeted powers that will not impact on law abiding members of the community.

I am left to assume that the operative part of the bill—that is, allowing police in certain regulated areas to search not on the basis of reasonable suspicions, but at random, like a random breath test—is basically supported. What we are arguing about, with a few hyperbolic exceptions from members opposite, is how we structure and go about regulating those areas.

I understand the points made by the member for Girrawheen. When I looked at the bill she brought to this place and at the way in which it would determine the areas—how large and for how long—I could see that it was perhaps considerably more expansive than the bill that is before the Parliament, and I can show that. When we look at the size of the area that the member's bill would have allowed to be gazetted —

Mr E.S. Ripper: There was no 70B in that bill.

Mr C.C. PORTER: In many salient respects it goes further than what is in this legislation. The size of the area could have been any size. Under the bill the member for Girrawheen brought to Parliament, there would have been no limit on the time that an area could be made a declared area. There was no limit to size and no limit to time, which means, at least potentially, that under her bill the entire state of Western Australia could have been gazetted forever. Of course, the government could not have done that because it would have required the government to be ultimately responsible, just as under our legislation the Minister for Police will be ultimately responsible. Any politician or member of the executive who did such a thing as gazette the entire state of Western Australia forever would be insane; there is no question about that. Maybe that should concern us at certain times, but I have not met anyone in this place who would go that far. The point was made by the Leader of the Opposition that if it is done by regulation, which would require gazetting, at certain periods there could be a parliamentary recess and therefore the ability to amend or repeal the regulation or to move a disallowance motion would be lost or could take some time. Again, that was precisely the methodology and operative provisions of the bill the opposition introduced into this house and that they all must have agreed on. I think it is a procedure with merit, but it makes me feel outraged at the outrage of the members for Mindarie and Warnbro, who stood in here invoking the Anzac spirit against provisions in a bill they supported from their own side of the house. Did they say those things in caucus? Were they as loud and proud for the Anzac spirit when the Weapons (Supply to Minors and Enhanced Police Powers) Amendment Bill 2008 was being put to Labor Party members in caucus? I do not know; I was not there. I did not hear the shouting that day, but I did today. We must be consistent about these things.

I want to finish by talking about what this bill seeks to do. We heard from some bush lawyers, and that is fine, but let me put it in simple terms. The system that exists under the Criminal Investigation Act is this: there must be a reasonable suspicion. When there is a reasonable suspicion, either a basic search or a strip search can be conducted. A basic search is defined, and it is fairly simply put. I will explain what a basic search is because the

member for Armadale raised a whole range of questions through interjection, which any sensible person could have the answer to had they read the bill. A basic search is described as follows —

A person who is authorised by this Act to do a basic search of a person may do any or all of the following —

- (a) scan the person with an electronic or mechanical device, whether hand held or not, to detect any thing;
- (b) remove the person's headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not his or her inner clothing or underwear, in order to facilitate a frisk search;
- (c) frisk search the person;
- (d) search any article removed under paragraph (b).

There is no mention of throwing people up against walls—nothing of that nature. Of course, if a police officer did that, that action would be unlawful, which would taint the evidence and be counterproductive. The point exists that to have reasonable suspicion we have to have what the law talks about as a concrete, personally held view as an investigating officer that attaches to another individual. The problem with the circumstances that arise at the moment is that if we wanted to search the 70 people who went into this or that bar in Northbridge merely because we know that bar has recently had a history of violent behaviour and of people carrying drugs and weapons such as knives and guns into the bar, we could not search all the patrons going in, pursuant to a basic search, and argue that we had a reasonable suspicion that attached to each of them. The search would be almost certainly unlawful. Whether that would mean it would be thrown out in the court would depend on all the circumstances because of another principle called the Bunning and Cross principle, which says that even illegally obtained evidence might be admissible, but consideration must be given to the ways in which it is obtained illegally. If it was an inadvertent and non-malicious mistake, it would not necessarily be ruled inadmissible. But if a police officer knew that it was unlawful to randomly search 70 people going into a nightclub and did it anyway—which police officers tell this government they want to be able to do—I can guarantee that that would almost certainly be seen by a court to be not merely unlawful gathering of evidence, but the gathering of evidence so unlawful and so contrary to the known state of the law that it could not be held to be admissible. If we want police officers to be able to search 60 or 70 people before they go into a nightclub where there is good evidence and good data to suggest that that is a worthwhile policing activity, we must have legislation of some type or another to allow us to do the things in this bill. That is why the opposition introduced its own bill and it is why this government has presented this bill. Will it lead us into a slide towards totalitarianism? I do not know. Watching that Liberal Party conference, they said they would be searching the cars of everyone—the gypsies and their caravans, presumably—but that never happened and we have a system that people naturally accept, because it makes sense.

MR R.F. JOHNSON (Hillarys — Leader of the House) [11.20 pm] — in reply: I initially thank the members who have made some good contributions to the second reading stage of this bill. There are many members that I cannot say that about, but some members have made some constructive and useful comments about the bill.

I make one thing clear before I seek leave to do something else. Members opposite seem to think that the Commissioner of Police came to me and asked me to introduce this bill. The reverse happened. I assure members that it was a policy decision of mine, in discussion with cabinet, to bring this bill to Parliament. When I put it to the commissioner, he was very helpful. He believed it was a good bill and a very useful tool in the fight against crime and the fight against unlawful weapons that are being carried around, particularly in Northbridge. We were predominantly talking about Northbridge and the central business district to start with. We have looked at other areas where there may well be a need to invoke the designated area for very limited times. That will be based on intelligence.

I do not want to say any more because the house has sat late for two nights because of the filibustering and hypocrisy that we have heard from most members on the other side of the house. I seek leave to continue my remarks at a later stage of this day's sitting.

The SPEAKER: Members, is leave granted?

Mr M. McGowan: No. What was that?

Mr R.F. JOHNSON: I am going to adjourn the debate until tomorrow.

Mr M. McGowan: Aren't you concluding the debate now?

Mr R.F. JOHNSON: No.

Mr M. McGowan: Why not?

Mr R.F. JOHNSON: Because I have a lot more to say than there is time for now. I am conscious of the hours that we are sitting.

Mr M. McGowan: This is an absolute disgrace.

Mr R.F. JOHNSON: The member should not talk such rubbish.

Mr M. McGowan: It is an absolute disgrace. You've left us here until 11.30 at night. You had the opportunity to speak and we are ready to listen to you and you are not even going to speak.

Mr R.F. JOHNSON: If the member comes in early tomorrow, he will hear me speak tomorrow. What absolute arrant nonsense.

The SPEAKER: Members, I put the question to you again: is leave granted?

Mr M. McGowan: No.

The SPEAKER: Leave is not granted.

Mr R.F. JOHNSON: I thought the opposition wanted to hear some considered response from me, particularly as my advisers have been taking notes of some of the nonsense opposition members have been spouting over the past two days. We did it for the former government regularly when those sitting on the front bench were ministers—terrible ministers at that; we gave them the opportunity to deliver their response in a considered way.

Mr C.J. Barnett: It happened often.

Mr R.F. JOHNSON: It happened many, many times.

Mr M. McGowan: You can make your speech now.

Mr R.F. JOHNSON: Has the Leader of the Opposition no control over his junior people?

Mr C.J. Barnett: He's a humpy from Rockingham.

Mr R.F. JOHNSON: No, he is not; he is a junior person. He is trying to do a man's job. It is very dangerous to refuse to grant leave when leave is sought in this house.

Mr M. McGowan: Why is it dangerous?

Mr R.F. JOHNSON: When the member for Rockingham or any opposition member wants to seek leave —

Mr C.J. Barnett: When you ask for favours.

Mr R.F. JOHNSON: When opposition members ask for favours —

Mr M. McGowan: You never give us any favours.

Mr R.F. JOHNSON: I have always agreed when the member has sought leave to give a late notice of motion and all sorts of things. The Leader of the Opposition should not forget that we had a deal today. He is not a man of his word. We agreed last night when he wanted to go home and all his backbenchers wanted to go home because it was very late that we would deal with the weapons bill, at his request, after question time today—I am saying this so he knows the truth—on the basis that his members would speak for no longer than 30 minutes and that they would support the bill going all the way through.

Mr M. McGowan: You went 20 minutes over the agreed time.

Mr R.F. JOHNSON: Did that break the agreement? I can tell the member for Rockingham that I am happy to stay here until just before 12 o'clock if I have to. I will do it. I do not want to keep the staff in this chamber here because they have to be here well before nine o'clock tomorrow morning. Usually we would try to adjourn the house by about 11 o'clock or 11.30 pm at the latest, but because of the intransigence of the manager of opposition business —

Mr M. McGowan: You didn't last night.

Mr R.F. JOHNSON: We did not start at nine o'clock, you very silly person!

Mr M. McGowan: You have anger management issues.

Mr R.F. JOHNSON: No, I do not. There is a dopey management issue on your side of the house because you cannot manage your house properly! You cannot even get your own members to keep their word or your word! You are not a man of your word anymore!

Mr M. McGowan: Just get on with it.

Mr R.F. JOHNSON: If I give an agreement to something, I stick to it.

Mr M. McGowan: Just get on with it.

Mr R.F. JOHNSON: Do not tell me what to do, sunshine! Do not tell me what to do. I will get my mate from Croydon on to you! I can babble on for an hour, my friend; no problem at all.

Mr M. McGowan: Go for it.

Mr R.F. JOHNSON: What a stupid, irresponsible response from the manager of opposition business. If he wants me to carry on, I will carry on.

Mr M.P. Murray: You would have to take some of the blame for the weapons bill because of that crossbow issue that we didn't get an answer for. The main issue was in that area. We were told to give a hurry-up. I'll take the blame for that because you didn't give an answer to the letter that we gave you. That was the issue.

Mr R.F. JOHNSON: I did not have an agreement with my friend the member for Collie-Preston; I had an agreement with the person who I thought was responsible for members on the opposition's side of the house.

Mr M.P. Murray: If you had honoured your bit, we would have been done.

Mr R.F. JOHNSON: I will keep members opposite here; they need not worry.

Mr M. McGowan: Don't make threats.

Several members interjected.

The SPEAKER: Thank you, members!

Mr R.F. JOHNSON: The number of times that we used to agree to leave being granted for the opposition's former ministers, Jim McGinty and John Kobelke being clear cases, so that we could get a measured response to give them —

Mr M. McGowan: I don't see the relevance to the bill.

Mr R.F. JOHNSON: You do not see anything, sunshine, because you have not been here long enough! You are just a boy doing a man's job, but you are not doing a very good job! We did it all the time.

Mr M. McGowan: I will take a point of order on you in a minute.

Mr R.F. JOHNSON: Take a point of order; go on then. You are a pathetic person! If the Leader of the Opposition had any gumption and any stamina, he would put you in your place, sunshine, I can tell you!

Mr Speaker, I will remember that leave was not granted and when the manager of opposition business comes to me wanting to seek leave for any matter on his side of the house, he should not expect to get an automatic, positive response.

Mr C.J. Barnett: Next time an opposition member has a special problem, that member will have to come over and speak directly to the Leader of the House. He will not be able to rely on the manager of opposition business.

Mr R.F. JOHNSON: Absolutely; not through him at all. As far as I am concerned I will ignore the manager of opposition business in future because he is not a man of his word and he is not trustworthy. We have to have a certain amount of trust in this place; something he has not shown.

Withdrawal of Remark

Mr W.J. JOHNSTON: The Leader of the House has just called the leader of opposition business untrustworthy and lacking in his word. That is clearly unparliamentary and the Leader of the House should withdraw.

Mr R.F. Johnson: No, it is not.

The SPEAKER: There is no point of order.

Debate Resumed

Mr R.F. JOHNSON: I apologise to the house, not for my actions but for the actions of the manager of opposition business. That person is forcing this house to stay later than it should do. I know that every member of this house, including him if he was honest, wants to go home now, as we have had two very long days and two very long nights. The manager of opposition business is obviously going to try to accuse me of not being able to run the house properly; and, of course, we have heard that from other members opposite. That is fine, but at the end of the day I am the Leader of the House and I promise the manager of opposition business that I can do certain things that will make life not particularly comfortable for him. I will not agree to him being given leave for anything he asks for—okay? That will cost him dearly in time to come.

Mr M. McGowan: Fine.

Mr R.F. JOHNSON: Good; okay.

Mr M. McGowan: Do whatever you want.

Mr R.F. JOHNSON: I will do that, my friend.

Mr C.J. Barnett: Your members will not thank you for this.

Mr R.F. JOHNSON: They will not thank him.

Mr Speaker, I am being forced now by the manager of opposition business, and obviously the Leader of the Opposition, to go through my dissertation in response. I want to apologise to the members of the house, and indeed to the staff members in this house, who are being forced to stay here at what I think is an unreasonable time, being the second late night on the run, and having to come in here well before nine o'clock tomorrow morning. I am sure they know who is responsible for that.

I would like to be able to say that I appreciate the comments made by members opposite; but, with the exception of one or two speeches, I cannot. The speech made by the shadow Minister for Police was a reasonable one; I obviously do not agree with it all, but it was reasonable. I have to say that virtually all the other speeches were the biggest load of hypocrisy I have ever heard in my life. The Attorney General put it beautifully—far better than I could put it—when he referred to the hypocrisy of the opposition. When one has listened to what the opposition said until the early hours of this morning about the bill before the house, one can only assume that this legislation is the end of the world for the opposition. However, it supported to a man and woman an almost identical bill brought to Parliament by the member for Girrawheen. That was quite clear.

I apologise for a slight delay in my speech, because I packed all my papers thinking that we would be going home. I refer to comments made by the Leader of the Opposition. He was talking about areas not being declared without the prior approval of Parliament. The member for Girrawheen's private member's bill had no provisions whatsoever for parliamentary approval.

Ms M.M. Quirk interjected.

Mr R.F. JOHNSON: Not prior approval, I can assure the member. Her bill would have declared areas by way of regulations, not prior approval, in the same way that we would make regulations under proposed section 70A.

Ms M.M. Quirk: I think you mean 70B.

Mr R.F. JOHNSON: No, regulations under proposed section 70A; I trust my notes to be more accurate than what the member is saying. Under the member for Girrawheen's bill—it must have been a marvellous bill for all the members of the Labor caucus to have voted for it—reasonable suspicion and consent would not have applied to proposed search provisions, yet we are here after 11.30 pm. What a damnation the government's bill is because we have taken away the areas of reasonable suspicion and consent! The member for Girrawheen is the person with primary responsibility for responding to this bill. How can she possibly look any of her colleagues in the face and say that this bill is draconian, when hers is very similar?

Ms M.M. Quirk: It's different in a material respect that you have glossed over.

Mr R.F. JOHNSON: Which is that?

Ms M.M. Quirk: Proposed section 70B is completely new, and that is probably the thing that we object to most.

Mr R.F. JOHNSON: Why does the opposition object to it?

Mr E.S. Ripper: There is no parliamentary accountability.

Ms M.M. Quirk: We do not understand what justification there is for it.

Mr R.F. JOHNSON: That is slightly different; I accept that, but we believe that it could be necessary in an emergency.

The member for Maylands raised the issue of the removal of headwear such as hijabs and burqas. A draft policy is being prepared about people in police custody. This could be expanded to cover situations regarding the removal of headwear during searches carried out on a person who is not in custody. We could do that, and it is something we would be prepared to look at. Another concern she had was complaints about police and the use of their powers. I would suggest that the member visit the police website about making a complaint about the police. It would be exactly the same. The person who has a complaint about a search being carried out can make a complaint in exactly the same way. I could not quite understand what other areas the member for Maylands wanted to cover there.

The member for Alfred Cove has now gone home. In one particular case that has been given to me, police had to appeal against the decision of a magistrate that there were reasonable grounds, and that the magistrate did not admit the evidence because of that. I have the paperwork here somewhere, which I would be very happy to give to the member, showing that that particular appeal case had happened.

What the government is trying to do, and what I think the people of Western Australia want, is to send a very clear message to those people who carry weapons in our society; that is, that we will not tolerate them. I know that the police will welcome the fact that we are passing this bill through this Parliament. There may not be too many cases that have been lost because of challenges about a police officer having to prove reasonable grounds to carry out a search, but very often slick defence lawyers will use that sort of argument, rather than argue the fact that the person was found to be carrying a machete or a knife, to move the focus away from the real crux of

the matter, which is somebody carrying a dangerous weapon. Lawyers will very often try to discredit the police officer.

I had many other things that I was going to say, but I will not keep members in this chamber any longer tonight. The people who will miss out will be opposition members, because tomorrow I will not be able to continue responding to members who had genuine queries and comments. We will be going straight into consideration in detail.

Ms M.M. Quirk: That's fine; we can ask them then.

Mr R.F. JOHNSON: Yes, and I can tell the member that she had better make the most of it, because I will not have the time of this house wasted like I have seen over the past two days with the constant filibustering and hypocrisy from members opposite.

Ms M.M. Quirk: I hope you are not calling me a hypocrite.

Mr R.F. JOHNSON: I am sorry, but I am referring to the hypocrisy of every member, because a year ago they all voted for the member for Girrawheen's bill, which is very little different from the one that is before the house today. In fact, it was more draconian in some areas because it could have covered anywhere in Western Australia. The opposition was quite happy for people to be stopped and searched without warrant, and without reasonable suspicion that they were carrying anything. That bill did not provide for designated areas such as the ones that we are proposing.

I will not keep members of this house here for any longer. We will continue the debate on this bill tomorrow, and we will go through it rapidly, I can tell members.

Question put and passed.

Bill read a second time.

BILLS

Returned

1. Criminal Code Amendment (Graffiti) Bill 2009.
2. Bush Fires Amendment Bill 2009.

Bills returned from the Council without amendment.

House adjourned at 11.40 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

GOVERNMENT DEPARTMENTS AND AGENCIES — STAFF GENDER STATISTICS

1592. Mr E.S. Ripper to the Treasurer; Minister for Commerce; Science and Innovation; Housing and Works

- (1) How many female staff members within each department and agency within the Treasurer's portfolio are currently ranked at Class 1 and above (for each class please specify)?
- (2) What is the percentage of female staff members within each department and agency within the Treasurer's portfolios at Class 1 and above (for each class please specify)?
- (3) How many male staff members within each department and agency within the Treasurer's portfolios are currently ranked at Class 1 and above (for each class please specify)?
- (4) For each person currently employed within the Treasurer's office please advise:
 - (a) the number of female staff employed, including those on placement, secondment and attachment; and
 - (b) the name, position, and contract type of each female staff member?

Mr T.R. BUSWELL replied:

Ministerial Office

(1)-(3) N/A

- (4) (a) 11 female staff employed within the Treasurer's office
- (b) Principal Policy Adviser, s68 contract
Senior Media Adviser, s68 contract
Senior Policy Adviser, s68 contract
A/Executive Officer, Permanent PSC
A/Appointments Secretary, Permanent PSC
Receipt/Administrative Assistant, Permanent PSC
Receipt/Administrative Assistant, s68 contract
Principal Policy Adviser — Treasury, Placement (DTF)
Principal Policy Adviser — Treasury, Placement (DTF)
Principal Policy Adviser — Employment Protection, Placement (Commerce)
Policy Adviser — Housing, Placement (Housing)

Department of Treasury and Finance

- (1) Class 1: 5, Class 2: 0, Class 3: 0, Class 4: 0
- (2) Class 1: 21%, Class 2: 0%, Class 3: 0%, Class 4: 0%
- (3) Class 1: 19, Class 2: 0, Class 3: 2, Class 4: 0

Department of Commerce

- (1) Group 1 x 2
Class 1 x 2
- (2) Class 1- 40%
Class 2 to 4 — 0%
Group 1 to Group 4 — 66%
- (3) Group 3 x 1
Class 3 x 1
Class 2 x 2
Class 1 x 4

Department of Housing

- (1) 2
- (2) Class 1 — 66.66%

- (3) Class 1 — 1
Class 2 — 2
Group 4 — 1
- (4) Not applicable

Government Employee Superannuation Board

GESB employs Senior Officers under the State Superannuation Act 2000. These employees are not subject to the Public Service General Agreement and salaries do not readily align to PSGA structures.

Small Business Development Corporation

- (1) There are no Class 1 or above female staff members within the Small Business Development Corporation.
- (2)-(4) Not applicable

OFFICE OF CRIME PREVENTION — PROGRAMS AND SERVICES

1625. Mr J.C. Kobelke to the Minister for Police

- (1) What is the Office of Crime Prevention budget in 2009–2010 for delivering each of the following programs and services:
 - (a) policy strategy and performance;
 - (b) business services;
 - (c) grants management;
 - (d) Burglar Beware;
 - (e) Eyes on the Street;
 - (f) strategic projects;
 - (g) graffiti;
 - (h) Leavers Week;
 - (i) local government partnerships;
 - (j) Neighbourhood Watch;
 - (k) Designing Out Crime;
 - (l) the State CCTV implementation plan; and
 - (m) any new designations for programs or services?
- (2) If the budget targets for the 2009–2010 year have not yet been finalised, when will they be finalised, and what are the reasons for the delay in determining the Office of Crime Prevention’s budget?

Mr R.F. JOHNSON replied:

- (1) The total Office of Crime Prevention budget for 2009-10 is \$8,485,000 comprising:
 - (a) Policy and Evaluation: \$986,000
 - (b) Business services: \$1,335,405.

Note: Some of this budget will be reallocated to the Business Services Unit within the Strategy and Performance Directorate.

 - (c) Total Grants funding is \$3,045,595. This includes salaries costs of \$175,595 and a total community grants fund allocation of \$2,870,000. Associated operational costs (postage, advertising etc) are captured within b) above.
 - (d)-(e) See (f) below
 - (f) The total Strategic Projects budget (including d, e and h) is \$963,000
 - (g) Graffiti strategy: \$1,068,000. This figure does not include community graffiti grants, which are captured in c) above.
 - (h) See f) above
 - (i) Community engagement team: \$618,000. This figure does not include Local Government Partnership grants which are captured in c) above.

Note: The Community Engagement Team will be relocated from the Office of Crime Prevention to the proposed Community Engagement Office, also within the Strategy and Performance Directorate. Funding above includes an additional Indigenous Community Engagement Officer, to be located in the Indigenous and Cultural Diversity Unit (also located in the Strategy and Performance Directorate).

- (j) Neighbourhood Watch : \$55,000 (internal) plus \$140,000 revenue (external sponsorship). The Neighbourhood Watch program is now part of the Strategic Projects Team. (Figures indicated here are separate from those provided in f above.)
 - (k) The Designing Out Crime (DOC) program has a current allocation of \$266,500. The DOC program has been replaced by a new Urban Crime and Disorder Initiative in delivery of election commitments. The OCP review supported the mainstreaming of broader Designing out Crime functions elsewhere within the machinery of Government, and this will be progressed alongside the new Urban Crime and Disorder Initiative. Unspent DOC allocations have been/ are being reallocated to the Urban Crime and Disorder Initiative or returned to the efficiency dividend. See l) below for further information.
 - (l) The State CCTV Implementation Plan will be delivered through the Urban Crime and Disorder Initiative, with a currently loaded operating budget of \$147,500. This is subject to variation, with relevant DOC operating expenses yet to be fully migrated.
This figure does not include CCTV and Community Safety Grants, which are captured in c) above
 - (m) Nil response.
- (2) The OCP budget is subject to continuing changes, reflecting adjustments to cost centre and internal order arrangements. Some of these anticipated variations have been described above and should be noted in subsequent budget analysis.

It is important to note that savings of between \$1.1 million and \$1.5 million are anticipated through the integration of OCP to WA Police. These savings are through staff reductions, rent and associated operational savings. As savings are realized, the OCP budget will be adjusted.

BUTLER HIGH SCHOOL — CONSTRUCTION

1632. Mr J.R. Quigley to the Minister for Education

- (1) When does the Government propose to commence construction of the Butler High School?
- (2) Is it still proposed that the Government will open the Butler High School for the academic year commencing 2012; and
 - (a) if not, why not?
- (3) If the Government does not propose to open the Butler High School for the academic year commencing 2012, when does the Government intend to commence construction of the Butler High School?
- (4) Which academic year is it expected the proposed Butler High School will open?

Dr E. CONSTABLE replied:

- (1) The construction of Butler High School is scheduled to commence in 2011.
- (2) No. The new school will open for commencement of the 2013 school year.
 - (a) The extent of the building program will not allow completion within 12 months.
- (3) Please refer to answer (1) above.
- (4) Please refer to answer (2) above.

GOSNELLS POLICE AND COMMUNITY YOUTH CENTRE — GRANT ACCESS

1640. Mr C.J. Tallentire to the Minister for Police

What Government grants will the Gosnells Police and Community Youth Centre be able to access under this portfolio, despite the \$65m cuts this financial year and \$200m cuts over 4 years?

Mr R.F. JOHNSON replied:

The ability of the Gosnells Police and Community Youth Centre to access grants has not been affected.

TAILGATING OFFENCE — STATISTICS

1654. Ms M.M. Quirk to the Minister for Police

I seek statistics on the number of motorists charged for the offence of tailgating (the practice of following too close behind another motorist) and ask will the Minister advise:

- (a) how many motorists were charged with the offence of tailgating in the 2008-2009 financial year;
- (b) of these motorists, how many were charged following a motor vehicle accident, and how many were charged when police officers observed the event in the course of their duties; and
- (c) are investigations currently being undertaken to examine the utility of using cameras or other technologies to detect tailgating?

Mr R.F. JOHNSON replied:

- (a) In the 2008-09 Financial Year, the total number of motorists charged with breaching Section 109 of the Road Traffic Code (2000) (Fail to keep a safe distance behind a vehicle) was 41.

In the 2008-09 Financial Year, the total number of motorists issued with Traffic Infringement Notices for breaching Section 109 of the Road Traffic Code (2000) (Fail to keep a safe distance behind a vehicle) was 619.

- (b) There is no business system which identifies a difference between a traffic crash and a normal infringement for the offence of following too close (tailgating).
- (c) There are currently no plans to implement or conduct research in this area.

BALLAJURA POLICE STATION — CRIME STATISTICS

1700. Ms R. Saffioti to the Minister for Police

What are the monthly reported crime statistics for the period July 2009 to September 2009 for the Ballajura Police Station for the following offences:

- (a) murder;
- (b) attempted murder;
- (c) manslaughter;
- (d) aggravated sexual assault;
- (e) non-aggravated sexual assault;
- (f) aggravated assault;
- (g) non-aggravated assault;
- (h) threatening behaviour;
- (i) deprivation/liberty;
- (j) aggravated robbery (firearm);
- (k) aggravated robbery (other);
- (l) non-aggravated robbery;
- (m) burglary (dwelling);
- (n) burglary (non-dwelling);
- (o) steal motor vehicle;
- (p) theft;
- (q) receiving/illegal use;
- (r) fraud;
- (s) arson;
- (t) property damage;
- (u) breach of restraint;
- (v) drugs (traffic); and
- (w) drugs (possess)?

Mr R.F. JOHNSON replied:

- (a)-(w) [See paper 1610.]
-