



**SUBMISSION TO THE LEGISLATION
COMMITTEE OF THE LEGISLATIVE COUNCIL**

INQUIRY INTO THE *CRIMINAL INVESTIGATION
AMENDMENT BILL 2009 (WA)*

Submitted by Street Law Centre WA Inc

This submission by the Street Law Centre WA Inc (**Street Law**) addresses the concerns that Street Law has about the proposed 'Stop and Search' amendments to the *Criminal Investigation Amendment Bill 2009 (WA)* (**Stop and Search Bill**). This submission is made on the basis that it is anticipated that the Stop and Search Bill will have a disproportionate effect on Street Law's client base.

1. Street Law Centre WA Inc

Street Law is a not-for-profit incorporated association under the *Associations Incorporation Act 1987 (WA)*. Its objects are the relief of poverty, suffering, distress or misfortune of people in Western Australia who are homeless or at risk of homelessness, including, in particular:

- a. to investigate the establishment of a legal service for people in Western Australia who are homeless or at risk of homelessness;
- b. if established, to manage a legal service for people in Western Australia who are homeless or at risk of homelessness; and
- c. to provide information, advice and advocacy support to persons in Western Australia who are homeless or at risk of homelessness.

The majority of Street Law clients are homeless, and are thus one of the most vulnerable groups in society. 'Homeless' is defined here as a person having no access or inadequate access to safe, secure, affordable and adequate housing that affords the right to live in security, peace and dignity. Street Law also assists clients who are at risk of homelessness, which can be due to factors such as mental illness or disability.

Street Law asserts that the Stop and Search Bill will have a disproportionate effect on the Street Law client base as opposed to other people in Western Australia, and that for these reasons, the *Criminal Investigation Act 2006 (WA)* (**the Act**) should not be amended to reflect these provisions.

2. Objections to the Stop and Search Bill

Street Law opposes the introduction of the Stop and Search Bill in Western Australia on the grounds that the laws impinge upon basic human rights, such as the right to freedom from discrimination, freedom of movement and the right to privacy. Furthermore, these laws have the potential to have a greater discriminatory impact on Street Law's client base, namely homeless people in Western Australia.

Street Law also asserts that an equivalent of the Stop and Search Bill in another country has been deemed unsuccessful and Western Australia should examine the failure of these laws in other jurisdictions before introducing them into Western Australia.

2.1. Freedom from discrimination¹

Under the Act, a police officer must act on 'reasonable suspicion' in order to conduct a basic search on a person in a public place as prescribed in the Regulations. A basic search can only be conducted with the person's consent, but a police officer has the right to refuse entry or the right to remove the person from that public place if the person refuses to be searched.

Under the proposed Stop and Search Bill, the requirement of 'reasonable suspicion' is removed from the legislation, meaning that police officers are able to conduct searches on a person in an area prescribed by the regulations even if they do not harbour suspicion that the person may be carrying concealed weapons. While Street Law acknowledges that most police officers are competent and conduct themselves professionally, this opens up the possibility of some police officers conducting searches on the basis of personal prejudice, whether consciously or not.

In the interest of public safety, members of the public would expect police officers to be able to search individuals or groups behaving in a suspicious or threatening way,

¹ Article 7 Universal Declaration of Human Rights.

However, these provisions arguably go beyond that which is necessary to prevent violence, by enabling police officers to arbitrarily search individuals merely on the ground that they happen to be situated in a prescribed area. Hence, while the 'reasonable suspicion' test balances the competing needs of freedom from arbitrary discrimination and public safety, the proposed changes do not safeguard minority groups (or any person for that matter) against the risk of discrimination by police officers, operating in a prescribed area.

The most obviously disadvantaged groups are racial minorities,² including Aboriginal people, and identifiable religious minorities, such as Muslim people. In many cases, these personal prejudices may extend to homeless people, particularly because homeless people represent a disproportionate number of individuals inhabiting the areas over which the proposed changes are likely to apply.

The Stop and Search Bill will adversely impact on homeless people (as well as racial minorities) in Western Australia and their right to freedom from discrimination.

2.2. Freedom of movement

The Stop and Search Bill have specifically been proposed in relation to the powers of police to search people in Northbridge and other highly-populated areas where street violence has occurred.³ Consequently, people who wish to visit these areas should be aware of the possibility of being searched without consent, and will merely avoid the area on this basis.

² When equivalent 'stop and search' provisions were introduced in the UK as 'anti-terrorism' legislation, the UK Ministry of Justice reported that the number of black people who were stopped and searched rose by 322%, compared to a 277% increase in Asian people who were stopped and searched, and a 185% increase in the number of white people searched. Increases were measured over a period of 12 months: Ministry of Justice *Statistics on Race and the Criminal Justice System* (2009) <<http://www.justice.gov.uk/publications/docs/stats-race-criminal-justice-system-07-08-revised.pdf>> at 29]. See also Lord Carlisle QC *Report on the Operation in 2008 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006* Home Office (2009) <<http://security.homeoffice.gov.uk/news-publications/publication-search/general/Lord-Carlisle-report-2009/Lord-Carlisle-report2835.pdf?view=Binary>>, which notes that unnecessary searches have been undertaken in order to achieve racial balance in search statistics.

³ Second Reading, Hansard Report of the Western Australian Legislative Assembly, p8661b-8687a, dated 10 November 2009: M. Quirk member for Girrawheen.

In addition, the proposed changes confer a wide discretion on the Police Minister in declaring which particular areas are prescribed.⁴ Further, a failure to declare the prescribed area in the Government Gazette does not render the declaration invalid.⁵ Accordingly, an individual may be subject to a compulsory search merely because they have frequented an area which, unknown to that individual or the wider public, has been declared a prescribed area.

The area comprising Northbridge and potentially the Perth CBD (which are areas likely to be targeted by the Stop and Search Bill) have a higher density of homeless people, as those areas have the benefit of public amenities and higher population than residential areas. It is probable that Street Law clients who spend their time in these areas will be subject to police searches more so than other Perth residents, and will be forced to avoid these locations to avoid potential searches. The proposed Stop and Search Bill may have an indirectly discriminatory effect on Street Law clients in that their freedom of movement and freedom of association will be hindered.⁶

2.3. Right to privacy

The Stop and Search Bill poses a serious barrier to the basic right not to be subject to arbitrary interference to privacy.⁷ Australia is also a signatory to, and has ratified, the International Covenant on Civil and Political Rights.⁸ Pursuant to Article 17, individuals are protected from arbitrary and unlawful interference to their privacy. It follows that the practice of forcibly subjecting individuals to police searches without reasonable suspicion, could conceivably give rise to a breach by Australia of its obligations under international law. By undertaking an arbitrary search, the police are infringing upon a person's right to privacy and can cause that person great distress and/or humiliation.

⁴ Section 70B of the Stop and Search Bill.

⁵ Section 70B(5) of the Stop and Search Bill.

⁶ Articles 13 and 20 Universal Declaration of Human Rights.

⁷ Article 12 Universal Declaration of Human Rights.

⁸ Ratified 1980, Schedule 2 to Human Rights and Equal Opportunity Commission Act 1986 (Cth).

See: <http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.html>

3. International comparisons

In 2000, the United Kingdom enacted the *Terrorism Act 2000* (UK) which, in conjunction with s60 of the existing *Criminal Justice and Public Order Act 1994* (UK), created provisions similar to the Stop and Search Bill. The notable difference, however, is that the United Kingdom provisions applied only for the purpose of preventing terrorism in areas deemed to be prone to a terrorist attack.⁹ No such constraints are provided for in the proposed Stop and Search Bill. While it may be debateable whether the UK provisions were proportionate to the protection of the public from terrorism, the proposed Stop and Search Bill are designed to curb violence and anti-social behaviour in entertainment precincts.¹⁰ That is, they operate on an entirely different scale to those provisions implemented in the UK, which have been characterised as an exceptional 'departure' from the ordinary rule that a person should be free from police interference without reasonable suspicion.¹¹

In the UK context, Lord Carlisle, in his independent report on the operation of the *Terrorism Act 2000* (UK) for 2008, noted that the powers were abused in a number of cases with police officers searching individuals who were obviously far from any known terrorist profile.¹²

On 12 January 2010, the European Court of Human Rights decided in the case of *Gillan and Quinton v The United Kingdom*¹³ that the stop and search laws enacted as anti-terrorism legislation and all associated provisions were illegal under 'Article 8 – Right to respect for private and family life' of the Convention for the Protection of Human Rights and Fundamental Freedoms (**the Convention**). The Convention 'aims at securing the universal and effective recognition and observance of the

⁹ Terrorism Act 2000 (UK), section 45(1).

¹⁰ Second Reading, Hansard Report of the Legislative Assembly, p8024b-8025a, dated 14 October 2009: R.F Johnson Minister of Police and member for Hillarys.

¹¹ *Gillan, R (on the application of) v Commissioner of Police for the Metropolis* [2006] UKHL 12, per Lord Bingham.

¹² Lord Carlisle QC *Report on the Operation in 2008 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006* Home Office (2009) <<http://security.homeoffice.gov.uk/news-publications/publication-search/general/Lord-Carlisle-report-2009/Lord-Carlisle-report2835.pdf?view=Binary>>.

¹³ Application no. 4158/05, 12 January 2010.

[Universal Declaration of Human Rights] therein declared'. In the Court's view, there was a clear risk of arbitrariness in granting unconstrained search powers to police officers. In reaching this decision, the risks of the discriminatory use of the powers against minority groups was 'a very real consideration'.¹⁴

While Australia, as a non signatory, is not bound by the Convention, the Convention sets out basic standards to which Australia should adhere in maintaining its reputation in the international community. Australia is also a signatory to the Universal Declaration of Human Rights which, amongst other things, affords individuals protection from arbitrary and unlawful interference to their privacy. As at the date of this submission, we are not aware that any other Australian state has implemented an equivalent Stop and Search Bill.¹⁵

4. Conclusion

Street Law considers that the proposed Stop and Search Bill constitutes a breach of basic human rights such as freedom from discrimination, freedom of movement and the right to privacy, as well as potentially breaching Australia's international treaty obligations. Furthermore, it is Street Law's view that these laws, if introduced, will have a disproportionate and adverse effect on its client base, which comprises some of the most vulnerable people in Western Australia.

Street Law wishes to emphasise its support for law reform measures which reduce criminal behaviour and offer benefit and afford protection to its client base, however it reiterates that the proposed Stop and Search Bill will not achieve this outcome.

Street Law asks that the Legislation Committee make recommendations to the Government of Western Australia to the effect that these proposed amendments should not be enacted.

¹⁴ Ibid, paragraph 85.

¹⁵ Stateline report prepared by the ABC, dated 13 November 2009 available at <<http://www.abc.net.au/news/video/2009/11/13/2742738.htm>>.