# *LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE*

**Members present:**

Mr PS Russo MP (Chair)
Mr JP Lister MP
Mr SSJ Andrew MP
Mr JJ McDonald MP
Mrs MF McMahon MP
Ms CP McMillan MP

**Staff present:**

Ms R Easten (Committee Secretary)
Ms K Longworth (Assistant Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

## PUBLIC HEARING—INQUIRY INTO THE POLICE AND OTHER LEGISLATION (IDENTITY AND BIOMETRIC CAPABILITY) AMENDMENT BILL 2018

### TRANSCRIPT OF PROCEEDINGS

**MONDAY, 26 FEBRUARY 2018**

**Brisbane**

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**The committee met at 10.16 am.**

**CHAIR:** I declare open the public hearing of the committee's inquiry into the Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018. I am Peter Russo, the member for Toohey and chair of the committee. With me today via teleconference are: James Lister MP, the deputy chair and member for Southern Downs; Stephen Andrew MP, the member for Mirani; and Jim McDonald MP, the member for Lockyer. Melissa McMahon MP, the member for Macalister and Corrine McMillan MP, the member for Mansfield, are also present.

On 15 February 2018 the Minister for Police and Minister for Corrective Services, the Hon. Mark Ryan, introduced the Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018 to parliament. The parliament referred the bill to the Legal Affairs and Community Safety Committee for examination with a reporting date of 2 March 2018. The bill's primary objectives are to amend various laws flowing from Queensland's participation in the Intergovernmental Agreement on Identity Matching Services; to amend the Criminal Code to strengthen the penalties relating to the unlawful possession and manufacturing of explosives; and to provide for extended liquor trading arrangements for the 2018 Commonwealth Games. The purpose of the hearing today is to gather further evidence to assist the committee in its inquiry into the bill.

Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you may be filmed or photographed during the proceedings. I ask everyone present to turn their mobile phones off or to silent mode. I now welcome representatives from the Queensland Law Society.

## DE SARAM, Ms Binny, Acting Advocacy Manager, Queensland Law Society

## TAYLOR, Mr Ken, President, Queensland Law Society

## WHITE, Ms Brittany, Criminal Law Committee, Queensland Law Society

**CHAIR:** I invite you to make an opening statement. As usual, we have tight time frames so obviously the more time you spend making your opening statement the less time we will have for questions. Sometimes the opening statement covers it so you do not end up having many questions.

**Mr Taylor:** Thank you for the opportunity to appear before this committee to speak to the bill. As the committee will be aware, the Law Society is the peak professional body for the state's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The Law Society advocates for good law and good lawyers and does so by being independent and apolitical and by providing good evidence based law and policy.

We acknowledge that the committee may also be under a compressed time frame. It would be aware that the Law Society has had limited time to review and analyse the amendment bill and prepare these submissions. They therefore come with the caveat that these submissions are not exhaustive. I will hand over to Ms Brittany White, a member of our Criminal Law Committee, to speak further to these issues.

**Ms White:** The Queensland Law Society has written their response in their submissions dated 26 February 2018. I do not propose to go into everything in detail. The principal issues that we have commented on, however, are the privacy and treatment of personal information concerns that are

highlighted in the drafting of clause 2 of the bill, which is the amendment of part 4 of the Police Powers and Responsibilities Act. That provision, as you are aware, goes to accessing information stored electronically or on smart card transport authorities.

Our concerns obviously, as you have already anticipated in your explanatory notes, go to potential breaches of the legislative provision and whether or not the legislation has sufficient regard to the rights and liberties of individuals. The explanatory notes state that a breach of these principles is considered justified given the rationality of the interests of national security, law enforcement and community safety. However, we do have concerns that the explanatory notes do not identify how the mechanisms under the PPRA are insufficient to accommodate these interests, particularly with respect to a police officer needing to have reasonable cause that an offence has been committed or will be committed in accessing information otherwise. We are of the view that these concerns do not override an individual's right to privacy. We are not necessarily opposed to biometric checking or the like. However, we are of the strong view that these processes should be followed particularly presently, as there are a number of cases of prosecutors being charged for misuse of information.

The second issue we have is with regard to clause 5, which is a replacement of section 470A, the unlawful depositing of explosive and noxious substances. This provision omits section 470A and essentially amends the offence to change the offence of depositing explosives to include possession of explosives. This potentially could make possession of an expired marine safety flare, a firework or a shotgun cartridge punishable by up to seven years imprisonment. Again, whilst the concerns in the explanatory notes are noted, this also would increase the maximum penalty for the offence. It would change from one being heard summarily to one being heard on indictment. Since the offence could apply to circumstances which are trivial to very serious, we are of the view there should be a mechanism for less serious instances of this sort of conduct to be determined summarily.

We have similar concerns with respect to clause 6, which increases the maximum penalty for preparation to commit crimes with dangerous things from three to seven years imprisonment. This section of the Criminal Code has been an issue in that the legislation does not actually define 'dangerous things'. This is something that existed prior to these amendments. We are concerned that there may be unintended consequences with the new amendments. These consequences could be that, because 'dangerous things' are not defined in any way, less serious examples of this sort of offending are required to be heard on indictment whereas there should be a mechanism for them to be dealt with summarily in certain circumstances.

Another concern we have is that some of this conduct could be dealt with under section 69 of the Criminal Code, 'Going armed so as to cause fear'. Having another example of this sort of conduct in the legislation could lead to prosecutors prosecuting an offender under legislation with more serious maximum penalties in an attempt to otherwise negotiate with the defendant to enter a plea or something of that nature.

In short, that is a summary of the main points of our submission. We are happy to take the committee's questions.

**Mrs McMAHON:** Noting concerns about the use or access of photographic material held by the Department of Transport and Main Roads and the lack of the requirement for a warrant to access that information, are any of the prescribed purposes outlined in the legislation of more concern than others?

**Ms White:** The concern that the committee has is that there appears to be nowhere in the legislation where an officer is required to have a reasonable suspicion that an offence has either occurred or is likely to occur in accessing this information. That goes far beyond the scope that is currently in place for accessing this type of information. Although certainly the concerns are noted where there appear to be discrepancies with accessing this information in the investigation of different types of offences, in my view these restrictions should be more strict in investigating more serious types of offences. Having regard to the explanatory notes, which say there already exists a mechanism whereby the QPS can directly access these images for the investigation of traffic offences, obviously as the offence becomes more serious these protections become more important.

**Mrs McMAHON:** Issues or concerns around terminology like 'reasonable suspicion' and the fact that they do not appear in the prescribed purposes: is that pretty much the crux of it?

**Ms White:** That is our primary concern. The PPRA obviously goes into other ways this information can be accessed. We do have some concerns that the PPRA in general does not apply to the accessing of this information in the new provision—I am happy to be corrected—however, that is our main concern. We are not necessarily opposed to the accessing of biometrics data; we are concerned that it is accessed through the application of due process.

**Mrs McMAHON:** I have no further questions.

**CHAIR:** I do not have many questions either. I understand your submission. I also understand your concern about the shortness of time and I thank you for responding in the manner that you did; it is appreciated. The committee cannot do its work without the input of peak bodies like the Law Society. From my experience, I completely accept what you are saying about the tendency for a higher charge to be placed so that after negotiations you land where you should have landed. I am fully aware of the complications of that. There is something I have been trying to get my head around and I have not been able to. Perhaps you could point us to a way—and we could, for example, make a suggestion in our report—whereby matters could be referred for summary hearing rather than having to be dealt with by indictment.

**Ms White:** Again, we are happy to take this on notice, but I would suggest that it would probably involve an amendment of section 552B of the Criminal Code which deals with the treatment of summary offences and indictable offences.

**CHAIR:** It is coming back to me slowly. So there should be an amendment made to the Criminal Code under that section as to what offences can be dealt with summarily.

**Ms White:** That would be our suggestion.

**CHAIR:** That makes perfect sense. That would apply to both of these sections, would it not? There is one where there is the danger of a person charged with disposing of a flare—

**Ms White:** Yes, section 470A.

**CHAIR:**—being charged with an offence that carries seven years.

**Mr ANDREW:** With the disposing of flares there was also some information about shotgun shells and other items. I did not hear it very well, but could you explain that submission to me again, please?

**Ms White:** Sure. Our concern with respect to that statement that I made was that noxious and explosive substances could mean anything that falls into that category but the lower category of those substances could include things such as an expired marine safety flare, a firework or a shotgun cartridge.

**Mr ANDREW:** I understand.

**Ms White:** My statement is simply that there appears to be no way that those substances could be differentiated from the types of more dangerous substances that this bill seeks to cover.

**Mr ANDREW:** Fair enough.

**CHAIR:** That could be addressed simply by amending the Criminal Code as to what matters can be dealt with in a summary manner.

In relation to the QCAT review on liquor licensing, from our understanding—and, again, I appreciate the shortness of time that people have had to get their heads around this—the reason those decisions are not reviewable is that that is specific to the Commonwealth Games over a nine-day period and the practicalities of bringing a review in nine days.

**Ms White:** That was a more minor issue which was raised in our submissions. It was not something that I intended to cover today. I still think those decisions should be subject to review. I certainly accept where you are coming from, that it is over a short period. Potentially there could be a circumstance where these decisions are made improperly and they should still be subject to review, notwithstanding the short period.

**CHAIR:** That is very true. Basically your concern is to always leave the review mechanism in there. There are practicalities involved in doing that but it could also highlight where there has been an incorrect decision made. It could then form the basis for precedent in the future which is important.

**Ms White:** Exactly.

**CHAIR:** I understand your concern about the omnibus bill, but in this instance I felt there was a definite distinction able to be drawn between the two pieces of legislation that we were looking at. I do take on board your concerns about lumping a lot of amendments to legislation in one bill. If you do not have anything further, I will bring this part of the hearing to a close. Thank you for attending and thank you for your hard work in turning this around so quickly.

## STEELE, Mr Damian, Industry Engagement Manager, Queensland Hotels Association (via teleconference)

**CHAIR:** Welcome, Damian. I invite you to make a short opening statement, after which we will open it up for questions.

**Mr Steele:** Thank you, Chair. The QHA would like to thank the committee for allowing comment on the bill before the Queensland parliament. The QHA is the peak industry body representing the hotel and tourism industry in Queensland. We currently comprise over 800 members covering the state from beyond the tip of Cape York, including country hotels throughout the coastal strip, down to Coolangatta.

We are the employers of over 80,000 Queenslanders and we provide entertainment every week to thousands of patrons and entice our tourists to stay a little longer. Our goal is to promote a business environment that encourages these companies to invest or reinvest in Queensland and that members of the hotel and hospitality industry can operate within regulations that allow them a prosperous future.

The QHA has the following recommendations based on real experiences of our members of licensed venues regarding the bill. To clarify, the QHA will confine its comments to the aspects of the bill's objective to provide for extended liquor trading arrangements for the 2018 Commonwealth Games.

The QHA supports the bill's policy objectives to appropriately enhance tourism and hospitality experiences in Gold Coast SNPs by automatically allowing licensees of licensed premises to serve liquor for an additional hour beyond their permanently approved trading hours for each day of the 2018 Commonwealth Games period.

Considering that the Commonwealth Games event venues and increased visitor accommodations span the length of the Gold Coast, including locations such as Coolangatta, Currumbin, Robina, Nerang, Southport, Carrara, Runaway Bay and Coomera, the extended trading hours should be applied more broadly than just the two safe night precincts of Surfers Paradise and Broadbeach.

Considering that the Commonwealth Games events are expected to attract 1.5 million spectators, 672,000 visitors as well as 6,600 athletes from 70 member nations and territories, this will be the largest sporting event Australia has seen this decade and the biggest sporting spectacular on the Gold Coast. This leads to massive tourism benefits and opportunities for the state and for our industry.

The government has stated that the games provide a significant opportunity to strengthen Queensland as Australia's premier tourism destination and grow tourism jobs and businesses by targeting four priority areas. These include growing quality products, events and experiences; building a skilled workforce and business capabilities; investing in infrastructure and access; and seeking the opportunity of markets in Australia. This will be delivered through activities that drive and increase standard of service and guest experience on offer from the tourism industry.

To expect the Surfers Paradise and Broadbeach SNPs alone to accommodate these numbers is unrealistic and exacerbates safety and transport concerns. The extended trading hours should therefore apply to all licensed venues in the Gold Coast local government area, which is clearly defined and offers ease of enforcement. The QHA recommends that the automatic extended liquor trading arrangements be expanded to include all licensed venues in the Gold Coast LGA in order to appropriately enhance tourism and hospitality experiences in these locations.

On a slightly different note, in relation to the temporary late night extended trading hours permits, the QHA certainly supports the waiving of any fees associated with that. Further, we support that any applications for one-off extended trading should be excluded from counting as part of the six opportunities available to licensees per year. The QHA recommends that any applications for one-off extended trading hours during the Commonwealth Games period are excluded from counting towards any of the six applications that licensees are entitled to each year. Thank you for the opportunity to comment on the bill and I would welcome any questions from the committee.

**Mrs McMAHON:** The focus of your submission is licensed venues for the Gold Coast LGA. I note that we also have events in Townsville and Brisbane and that a significant number of people will also be staying in Brisbane for the games. Is there no attempt to have this extended to safe night precincts in other towns? It is just the Gold Coast you are focusing on?

**Mr Steele:** Thank you for the question, Melissa. The QHA would absolutely support any further expansion that was deemed appropriate—and you correctly identify that it is much broader than just the Gold Coast. There would certainly be no objection but, rather, unfettered support for any other expansion of trading hours or opportunities to see those tourism opportunities in those other areas you mentioned.

**Mrs McMAHON:** Two have been selected—Surfers Paradise and Broadbeach—because of the existing framework for the safe night precinct.

**Mr Steele:** Yes.

**Mrs McMAHON:** Has there been any discussion in relation to what frameworks or security are required to extend those to some of the other larger precincts such as Coolangatta?

**Mr Steele:** Obviously there are a range of venue trading hours outside SNPs. They have the opportunity to trade up to a maximum of 2 am. Many venues would already be trading past midnight. Each venue would have, and does have, specific liquor licence conditions on their liquor licence. Those conditions have been determined based on risk and they are conditions which a venue would continue to comply with. They have a general and ongoing obligation under the Liquor Act to provide a safe environment. Venues certainly outside SNPs can do that and do do that and could simply continue on with their existing trading conditions, which often have no ratios for crowd controllers or CCTV or what have you.

**Mrs McMAHON:** Do you have any numbers on how many venues outside the safe night precincts on the Gold Coast are currently trading past midnight?

**Mr Steele:** I would be able to get them quite easily—and the Office of Liquor and Gaming Regulation would be able to get them more readily than us—by purely referring to our own membership database. I do know that the total number of licensed venues in the Gold Coast local government area is 162. I do recall the joint statement from the Hon. Kate Jones and the Attorney-General and Minister for Justice, the Hon. Yvette D'Ath, which initially said that this opportunity would apply to all of those venues. That is where the bill has contradicted that in terms of applying to two SNPs.

**Ms McMILLAN:** I just wanted to check the extent to which the hotels or pubs use their six. What percentage of hotels would currently use their six per 12 months?

**Mr Steele:** That is a good question. I would not have that figure at my fingertips. As you probably know, though, initially we had the opportunity to have 12 per year. You would know yourself that in a normal trading calendar there are times, such as at Christmas and other times, when I hazard a guess those who are in areas where demand dictates would certainly be wanting to use more than their six per year. It is fair to say that those venues that might like to exercise this opportunity are venues that like to make the most of their location and customer demand. I do not have the specifics. Certainly this would erode other opportunities to service locals and domestic and international tourists alike during the rest of the year. Six is way too few as a starting point, irrespective of how many use them.

**CHAIR:** Damian, I do not have any questions for you. I understand your submission and the merit of extending this to other areas and not including any late-night applications in the current six. Is there anything else?

**Mr Steele:** No, certainly not. I think it is a very straightforward proposition that has been suggested in our very simple submission. This is a once-in-a-lifetime opportunity. It is an opportunity to showcase the Gold Coast. We can do it well. Our venues and our members have demonstrated over the years that we trade compliantly and responsibly. There should not be a barrier to having that opportunity. Many are impacted in many other ways, with traffic congestion et cetera. Some have captive markets of their own locals who cannot seem to get out. There would be demand. It could be done well and it could showcase the Gold Coast and Queensland as a premier tourism destination to the world.

**CHAIR:** Members joining us via teleconference, do you have any questions for Mr Steele?

**Mr LISTER:** No. Thanks for your appearance, Damian. There are no questions from me.

**Mr ANDREW:** There are no questions from me either, Damian. Thank you for your submission.

**Mr Steele:** That is my pleasure, thank you.

**Mr McDONALD:** Thanks for your submission. I have no further questions.

**CHAIR:** Thank you, Damian. That brings this part of the hearing to a close.

**Mr Steele:** Thank you, committee. Thank you for the opportunity.

**DOWNEY, Ms Skye, Acting Principal Policy Officer, Office of the Information Commissioner**

**GREEN, Mr Philip, Privacy Commissioner, Office of the Information Commissioner**

**CHAIR:** Welcome, Mr Philip Green and Ms Skye Downey. We have your written submission. Would you like to make an opening statement, which may lessen the number of questions we have?

**Mr Green:** Certainly, Chair. May I take this opportunity to congratulate the new members of the committee. I look forward to serving you this year. It is great to be here. I did not actually expect to appear this morning. I appreciate that the committee has made some extra time available for us. I know that you have not had the benefit of reading our submission because it was only received this morning. I do appreciate the opportunity. I do not have the most polished opening statement, but I am certainly prepared to make an opening statement. I hope I can assist the committee. I would be happy to continue if you want to call us back for further clarification if you think of additional questions.

**CHAIR:** Mr Green, you do not need to make an opening statement. Can I suggest that you take us through the parts—

**Mr Green:** Yes. I will take you quickly through the submission.

**CHAIR:** There were a couple of things when I read it this morning that—if I ask a few questions, that may help you.

**Mr Green:** It is quite okay. I can start and provide some broader context. Fortunately and to their credit, my colleague, Queensland police colleagues and Transport and Main Roads colleagues have been working on this system and the concept for a couple of years. My office has been involved in that time. It has certainly evolved. The legislation is obviously very fresh and urgent. I appreciate that the committee is under very tight time frames, and the parliament will be no doubt as well.

It is unfortunate that we are trying to get it in place because the risks, I believe, are increased when you try to do things urgently. The Commonwealth is under the same pressure and the Commonwealth has a bill before it as well. This system is a particularly complex beast. I have a pile of papers here which are constituting documents. The bill is one of the simplest elements of it in the Queensland context.

The bill signs us up to a system that is quite uncertain at this stage. The federal bill to enable it has not been put in place and could face some considerable amendments going through committees and through the Senate. The key participating agreements and access for any entities at the Commonwealth, state or local government level are yet to be inked. Critical privacy impact assessments for things like the law enforcement component—which is all law enforcement in Australia—are yet to be completed, so we do not fully understand the risks and I do not think the participants necessarily do yet. The transport privacy impact analysis is being worked on as we speak, and we are invited to make submissions to that process in March.

The private sector access, which is of gravest concern to me, is yet to be done and even conceptualised. The assessment of functionality that is not currently allowed under the agreements or under the legislation necessarily—Queensland would be able to participate with fairly little effort and no legislative intervention necessarily; no scrutiny of parliament or of committees—we could be signing up to and which could basically be signed off by the current Minister for Home Affairs by an instrument which is disallowable in the federal parliament but does not necessarily get parliamentary scrutiny.

That is the broad picture of the machine. The technology side of it is quite complicated as well and has evolved during the process. Originally it was going to be a hub which never held an independent database. It is now going to take a mirror image of data but the full set of data will not be available. For instance, if the pipeline broke from a transport authority to the federal system, they would still have access to the matching capability. That was a key change along the way in the last two years. They were not ever going to hold the data; now they will hold it but not in full. That is what we are dealing with in terms of the context of our submission.

We are about to sign up to something we do not fully understand and is yet to be inked. Our ability to control it into the future is limited. We do have an intergovernmental agreement. The chair, as a lawyer, will understand that an intergovernmental agreement is not necessarily legally enforceable. There is an argument coming right now, particularly from New South Wales, that the participation agreement should not be legally enforceable across governments. If we do not have legal enforceability, the sanctions we could take are for inappropriate access to Queensland citizens' driver's licence data—and that is all we will control. We will get access to others but the purse strings that we have at the moment is access to our citizens' data.

My suggestion is that before we do that we seriously take a breather. I certainly think there are some considerable privacy-enhancing benefits to this system and to our participation in it, but there is potential for us to put in a couple of extra controls and safeguards and then maybe reconsider some of that in the less heady days of right before the Commonwealth Games. I understand that the other two pieces certainly have to be in place, and there would be considerable possible benefit in having access to some functionality for law enforcement and for public safety. We certainly do not want to stand in the way of that but rather raise concerns in a rational way and perhaps give a few suggestions to the committee for potentially mitigating those risks.

**CHAIR:** We were having a discussion earlier—and I am pinching Melissa's question. I refer to during the Commonwealth Games and the access to the data. For example, legislation gets passed and the Queensland police force gets access to the department of transport licence recognition. The Commonwealth Games is unique in the sense that the concern would come from visa holders and passport holders coming from overseas. They will not have a Queensland driver's licence; they will have another form of document identification. This is where I stumbled. If the Commonwealth legislation is not in place, will the Queensland police force still be able to access the passport or visa or whatever form of identification—I would think that a passport would most likely be a starting point?

**Mr Green:** Certainly, and you are quite correct in identifying that. This is a many pieced beast, if you like. The access currently is available to those sorts of databases but not through a system such as this, so it is not automatic and instantaneous for facial identification. I understand—and you may be able to call, say, the CEO of Goldoc—that there will be some substantial security and law enforcement around the games. One that I have seen reported is the Criminal Intelligence Commission, which is exempt from privacy laws at the federal level and has had no scrutiny, but apparently that is where the most insidious use of this data and capability could come from and it has not received any public scrutiny. However, there is capability currently available commercially for many-to-many matching, which is not envisaged in here but is reportedly going to be active at the Commonwealth Games. In terms of those, if you like, potential suspects that they are trying to identify, it would depend on what access they have, but the federal law enforcement already has access to the visa and to the immigration data. The system, I believe, is operable to that extent, so Border Force and other Commonwealth agencies already have access to that through this system. They have not had to pass the federal legislation to enable that because it is their data.

The federal legislation, as I am advised—and I think this is not totally tongue in cheek—gives no new powers of access to data because the criminal investigation commission already has access to that, as do the Federal Police and as do immigration and border forces, so it is actually no new powers. What it has done is given the federal government power to operate the system and collect the state driver's licence data into the system and then provide the services to states. If Victoria enact their legislation and they participate, they then get access to our Queensland driver's licences. Where that concerns me is that there are two states without privacy legislation, so in terms of that problem we have of unauthorised access—and that is a live one; I am sure the Police Commissioner could answer more on that—it is quite widely reported there has been unauthorised access. It concerns me more in states without any privacy protections, and there have been attempts to mitigate that again in the agreements and participation agreements, and the Commonwealth bill has substantial offences for inappropriate access, but those are sort of like an after-the-event thing.

**CHAIR:** Say hypothetically this legislation does not get through the House, so there is no legislation and the Commonwealth Games comes along and the Queensland police force have to deal with an emergency situation where public safety is paramount. Are they able to use facial recognition to, for example, identify either victims or perpetrators?

**Mr Green:** I believe they will have access to federal government capability.

**CHAIR:** Without warrant?

**Mr Green:** If this bill were not passed, particularly, say, if they are trying to identify victims, they can already seek to get that access at the federal level to identify victims. It is just slow and it is not automated. This system automates it. The federal government already has access to that, so if they are doing joint operations—and I do not have full visibility of that, but the Police Commissioner and his people would—I am quite certain they could get access to the federal capability without the federal legislation being in place and without the state legislation being in place. They already have it on a slowmo sort of basis, but this will make that instantaneous and it depends which service they are using.

I understand as reported, but also reported to me by the Home Affairs Commonwealth government, that seven police officers have gone through training for access to the system. If they have been trained and accredited and were embedded in joint operations, they may even be allowed

to operate it, because the system does already exist to some levels. It is just a question of what extra functionality is added and then whether QPS gets access, and this bill allows them direct access to the transport data. I understand the Law Society raised a concern that there is no warrant now for that direct access and there is no reporting to parliament, so that is being repealed. If the system is not built and access is not given at the federal level then obviously they need to retain that access, or if the system fails or malfunctions they need to get that access. I am a little bit concerned that no scrutiny is over that, because in the federal system they will be building very serious audit and reporting about types of access purposes and people and the access will actually be quite tightly restricted, so it will not be given to everyone, particularly that one-to-many.

**CHAIR:** Just going back to that audit, you are saying if this bill is passed it takes away the scrutiny of, for example, whatever has been going on in the system?

**Mr Green:** Yes, and the argument for that is other law enforcement, once they get the power, will be under the scrutiny of the federal system, so why should our law enforcement be under scrutiny for that which other law enforcement gets? I understand that they will have very good controls on that access and reporting, but the trouble is that we are retaining, for the short term anyway, direct access but then with no scrutiny. That could easily be done with some sort of temporary arrangement or reporting to say, 'In the meantime, if you're accessing directly the transport system, keep a record of it and put some scrutiny over it,' or, say, even the Public Interest Monitor just so we get an idea. At the moment I understand there are something like 2,000 a year (approximate) access for non-transport related criminal offences. If that were to blow out to 7,000 before the system is built and we do not get an idea where that is coming from then there is a small risk. Ultimately in the federal system they are trying to build good controls into it, but again those are somewhat unknown yet. They are not locked in in dry ink.

**CHAIR:** Which states do not have privacy legislation? I know I probably should know, but I do not.

**Mr Green:** It is even hard for me to remember sometimes. They are South Australia and Western Australia, and Tasmania has a fairly weak regime. It is supervised by an ombudsman and of course fit for purpose perhaps. New South Wales has less scrutiny over law enforcement than Queensland. Queensland has legitimate exemptions for law enforcement particularly and so do most other states, so it is not generally privacy is going to get in way of the hard-core law enforcement or public safety. There are plenty of exemptions there, but it is just that the controls right now are going to be in intergovernmental agreements.

I might give you a quick example, if you like, if there was a data leak from the federal system run by Home Affairs. Say a foreign hacker hacked the database images that they have, and they have much more data because they have all foreigners. I understand they have more people in their database than citizens, and you would expect that because of immigration and citizenship. If that was hacked the federal commissioner would have jurisdiction, so the Federal Privacy Commissioner under the Commonwealth Privacy Act would have jurisdiction over that aspect of it. In Queensland if the police access or incidents or the transport database of our driver's licences were hacked, I would have jurisdiction. If South Australia or Victoria transport officers or police officers had unauthorised access to Queensland driver's licences, I have no reach there. The Commonwealth has no reach there. The only thing that is standing in the way is the intergovernmental agreement or the participation agreements. Theoretically, the Home Affairs people could cut their access to the system for driver's licences if there was an outrageous breach. Once they become fully dependent on it, that remedy is slightly illusory in some respects because they will just become so dependent on it at transport level that they will not be able to function.

There are some wider risks with interstate. We do not have to sort them before the Commonwealth Games because I do not think any other state will be participating before the Commonwealth Games. To get our law enforcement people access to the Commonwealth's data, they already have it at one level. We do not have to put this in place, but I think it might be beneficial obviously and law enforcement is calling for it and there is a public perception issue. It is getting that balance right in the public perception to say, 'Are you unlawfully surveilling me or mass surveilling me?,' like China is documented on and Singapore is documented on. We do have 60,000 cameras in this state run by state agencies, and we have reported to the committee previously on the expansion of those CCTV cameras for legitimate reasons and there are particularly well demonstrated benefits in them.

In terms of the accuracy rate, the error rate in one-to-many where you are trained on it is still prevalent. If you are actually using an algorithm to trace people through a system or identify that 10 suspects might be at Suncorp Stadium and we want to access the 800 cameras around that vicinity to

find them, the error rate creeps up. The consequences of that are that, whilst right now we are claiming there is no evidentiary benefit, ultimately the courts will start accepting the facial biometric data more as evidence. That has not happened yet—it is the same as DNA in that fingerprints were not accepted to begin with and DNA was not—but no doubt at some point they will.

With regard to the systems that are actually used for mass surveillance in China and reportedly at the Commonwealth Games by the Crime Commission, they will have those flaws so what happens if they wrongly identify someone and run off and execute a warrant at their home? The worst-case scenario is to take them out and find out they were carrying an umbrella. I am not trying to be alarmist there, but that is where the error rate really hits the rubber, not, 'Oh look, we've narrowed it down to three suspects and we do some more investigation.'

**CHAIR:** On that, you talk about China—and I do not want to be disrespectful of the completely different regimes—but what about the UK? Would we not be better looking at what has happened in the UK or what is going on in the UK, because my understanding is that if there is a democracy that is ahead of the curve on facial technology we should be looking perhaps to the UK in terms of what is going on there?

**Mr Green:** Yes, Mr Chair, I totally agree—and the US. This sort of thing has been—

**CHAIR:** I tried to leave them out of the equation under the current regime, but anyhow.

**Mr Green:** There are well-documented trials in Wales for major events where this sort of system has been in place. I do not know that our law enforcement has the power, but certainly the Commonwealth government could have the power to do that and run those trials. Certainly on a trial basis they are less insidious than the Chinese or Singapore mass surveillance. Their success rate has been patchy, particularly in Wales, on the evidence and research, and we have academics in this state who are well versed on that and have actually visited from QUT—Dr Monique Mann, Dr Angela Daly and Dr Matthew Rimmer. They are on top of it from a law enforcement and justice research perspective.

The worst sort of cases of abuse have been in the US, as one might understand, but my thing is that this is not actually going to facilitate—this legislation, our act and the Commonwealth act even—that. That is already in existence. Our data could be used in it and we will not be able to stop that beyond this point, but we could put in some adequate controls. One useful suggestion we are putting forward is to let us have a year review. Let us not stand in the way of the Commonwealth Games necessarily, but let us have a review. Let us have some decent scrutiny and evidence about this. That would not be that difficult to do and it is not going to stop it before the Commonwealth Games. With regard to the existing access regime to the transport data, I think we just need to not let a total leash off that because they are well documented and it is not necessarily law enforcement; it could be transport access.

**CHAIR:** This is where I struggle. The Queensland police force has overarching—if you can call it that—enforcement for offences under the Criminal Code and offences under every other piece of legislation that parliament passes, including the Transport Operations (Road Use Management) Act. Where I struggled is that, for the life of me, I could not understand why the police need to get a warrant to go and get information about someone who perhaps has perpetrated an offence or is about to perpetrate an offence, whereas if he committed a driving offence such as unlicensed driving they would get immediate access to it. I do not want to be disrespectful to the Queensland police, but if you rate offences on a scale of one to 10, unlicensed driving is not as serious, for example, as trying to do harm to someone. That is where I find it difficult. I was surprised to hear that the Queensland police force could not access the department of transport's information and that there had been this caveat put on it. They could get it for lesser offences but could not get it for that.

**Mr Green:** I believe it is somewhat of an historical anomaly and resistance to the driver's licence document becoming an identity document or an Australia Card type thing. The transport policy and legislation people can probably give you more evidence on that, but I understand it was to retain it for the purposes of driving and authorising driving, so that is why that access is always restricted. In a privacy or public safety thing, that is a slight anomaly. Nowhere am I saying that we should have a warrant for that. I think it was to be signed off by a justice, and I am sure there would have been hundreds of justices in the police force or elsewhere who would not have slowed it down so much. I do believe in keeping an eye on what the access is, because we have a matter—

**CHAIR:** But couldn't that be done between departments?

**Mr Green:** Absolutely.

**CHAIR:** Say you have a senior sergeant and his officer comes to him and says, 'I need this,' so he sends the request and the request is acknowledged. Wouldn't that be enough, rather than having to find a JP? Then it would be documented. You have your request, you have your acceptance and you have the information being transferred or access to whatever.

**Mr Green:** Absolutely. That is what the federal access system depends on. At the lower level, they do not get access to the image; they get a yes or a no. That is all that is being envisaged in the private sector. The thing is, the home affairs minister can add new agencies in the private sector, so we do not necessarily have a control on that if they sign up or in. However, for example, what if as a totally crazy and outrageous thing, Home Affairs said, 'The Australian Electoral Commission should get access for identification purposes for voting'? I think they would need more legislation for the Commonwealth Electoral Act.

**Mrs McMAHON:** I do note from the submission that we had from the Queensland police that each participating agency must enter a legally binding participation agreement that will detail the terms and conditions that will apply to the use of the IMS. That is probably yet to be nutted out, but it would significantly involve the input of the Privacy Commission, across all states?

**Mr Green:** Unfortunately, possibly not. I was not consulted on this bill prior to it being introduced. The Privacy Commissioner has to be consulted on any bill at Commonwealth level. Here that is not the case. We get summonsed as is seen fit or brought in by agencies as they see fit. However, I have seen a tendency for things to go by without us being consulted, which I think is unfortunate because I do believe we try to work constructively.

In particular, data security is one of my biggest concerns. In an intergovernmental agreement between police forces, if we get hacked through Tasmania or one of the lowest fruit, which is what the hackers do, an intergovernmental agreement is not going to save our database. Therefore, to me, those things should see some level of scrutiny of parliament. The Commonwealth one at least allows a disallowable instrument at Commonwealth level where someone can say, 'Hey, we don't think Australia Post should get access to the one-to-one,' which is just yes/no: is it that person or not?

By passing this legislation we have enabled our driver's licence to go there. We do not actually have a yes or no, unless we tear up the intergovernmental agreement. The trouble is that the consequences will then be that our law enforcement does not get access to the stuff they need to do their job. I think there should be a review mechanism and we are saying potentially some oversight in the interim and then the more extreme uses of our drivers' licences—for example, giving them to the private sector, to banks, for identification. Those are all envisaged and possible but they have not really gone through a rigorous process. They could be possible without any further scrutiny of parliament. If you had concerns that a bank or Australia Post should not get them or that they should not be used for that many-to-many, as mass sweeping surveillance, there are some things that could be done, I think.

**Mrs McMAHON:** Certainly we are of the understanding that with the FIS, which is the one-to-many, it is restricted only to law enforcement agencies and those that have been selected under the Ministerial Council for Police and Emergency Management. I acknowledge that, within the private sector and with security agencies, the many-to-many is probably happening when people enter venues. I note that when most people enter a venue there is probably a big sign that says, 'You are under surveillance,' and so on and that it is a condition of entry. However, from what I have seen so far from the FIS, I cannot see any leeway that allows access outside the law enforcement purposes.

**Mr Green:** That is correct at present. Again, additional access could possibly be signed off by the federal government and our ability to stop that is not entrenched in black-letter law, I do not believe.

**CHAIR:** I am conscious of time. Gentlemen on the telephone, do you have any questions for the Privacy Commissioner?

**Mr LISTER:** There are no questions from me, thank you. I have noted your appearance and your submission with interest, thank you.

**Mr McDONALD:** I was listening with a great deal of interest to the conversations and some points well made.

**Mr ANDREW:** Thank you for that submission. There is a lot of information there. I have no further questions to ask.

**CHAIR:** That being the case, the time has expired. We thank you for your contribution and for attending. It has been very informative. I thank the Hansard reporters. The transcript of the proceedings will be available on the committee's parliamentary web page in due course. I declare the public hearing of the committee's inquiry into the Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018 closed.

**The committee adjourned at 11.23 am.**