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 JUSTICE LEGISLATION (LINKS TO TERRORIST ACTIVITY) AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

MONDAY, 11 FEBRUARY 2019

Brisbane

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The committee met at 10.20 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018. My name is Peter Russo. I am the member for Toohey and chair of the committee. With me here today are James Lister MP, the member for Southern Downs and deputy chair; Stephen Andrew MP, the member for Mirani; Jim McDonald MP, the member for Lockyer; Melissa McMahon MP, the member for Macalister; and Corrine McMillan MP, the member for Mansfield.

On 13 November 2018 the Attorney-General and Minister for Justice, Hon. Yvette D'Ath MP, introduced the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018 into parliament. The parliament referred the bill to the committee for examination, with a reporting date of 7 March 2019. The purpose of today's hearing is to hear evidence from stakeholders as part of the committee's inquiry.

Only the committee and invited witnesses may participate. 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 the committee staff if required. All of those present today should note that it is possible you might be filmed or photographed during the proceedings by media. The images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off to silent mode. The program for today has been published on the committee's web page and there are hard copies available from committee staff.

KIM, Ms Deborah, Policy Solicitor, Queensland Law Society

MACKENZIE, Mr Ken, Accredited Specialist in Criminal Law; Member, Criminal Law Committee, Queensland Law Society

POTTS, Mr Bill, President, Queensland Law Society

CHAIR: Good morning. I invite you to make a brief opening statement after which the committee members may ask some questions.

Mr Potts: Good morning. I thank you, Mr Chair and the entire committee, for inviting the Queensland Law Society to appear at this public hearing on the Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018. As you know, my name is Bill Potts and for this year I am the president of the Queensland Law Society. The society is an independent, apolitical representative body and it is the peak body for the state's legal practitioners. In carrying out its central ethos of advocating for good law and good lawyers, the society proffers views that are representative of its member practitioners. In particular, and in this case, I would like to thank the Queensland Law Society's children's law and criminal law committees, which helped compile our written study on the bill.

At the outset, I would like to express the society's concern that the proposed amendments may overturn well-established principles of law regarding both bail and parole. Legislation should not—not—reverse the onus of proof in criminal law proceedings and endanger the administration of justice without persuasive data or evidence to justify why current regimes are inadequate. The amendments proposed in the bill is not a proportionate response to the threat of terrorism in Queensland, nor is it supported by such data or evidence. We believe, putting it simply, in evidence based legislation. There is not an evidence base for this legislation.

As a longstanding advocate for fundamental legislative principles and preserving the rule of law, the society is not in a position to support reform that may impinge on the rights and liberties of Queenslanders and potentially lead to the adoption of extraordinary measures in other areas of criminal law and children's law. To quote Edward Murrow, we must not walk in fear of each other. To some

degree this legislation is a response to fear, but it is not a response based in evidence. To that end, we propose caution to this committee. Appearing with me today is Ken Mackenzie, a member of the Queensland Law Society's Criminal Law Committee and, as you know, an accredited specialist in criminal law. He will outline our key issues in relation to the bill.

Mr Mackenzie: Good morning. The society's position is that the existing law in the Bail Act and the Corrective Services Act contains sufficient protections to refuse bail to people who pose an unacceptable risk to our community or who are an unacceptable risk of committing further offences. Similarly, parole can be refused, revoked or suspended where the Parole Board has reasonable concerns that the person poses an unacceptable risk to the community.

Our starting position in relation to this bill is that the changes that it makes are unnecessary. That is not to say that we take a neutral position in relation to the changes, because our analysis of the proposals in the bill is that they are positively harmful to the administration of justice in this state. They are harmful because they fetter the discretion of the court and the Parole Board to do justice and to make an appropriate decision in the circumstances of each individual case.

The intent of this bill must be to keep people in custody who otherwise would have been released—that is, people who the Parole Board would have found were sufficiently rehabilitated to be released into the community or people who a court would have found, or would find under the existing law, to not be an unacceptable risk of committing further offences. Under these proposed conditions, even people under the Bail Act who now have the ability to show cause—that is, to satisfy the court—that their continued detention in custody is unjustified would be required by the court to be kept in custody unless they were able to show exceptional circumstances, which is a term that is undefined and of uncertain meaning. We should bear in mind, particularly when we are considering bail, that the people whom this will affect are people who have been suspected of doing something—and that is why they are before the court—but that suspicion may turn out to be unfounded. That is a fundamental reason we have in our Bail Act a presumption of bail.

The society also has concerns about the potential width of the changes that are made by the bill, particularly the potential for those changes to have unintended consequences and to apply to people who perhaps the drafters of the bill never realised they would be intended to apply to. For example, the reversal of the presumption of bail applies to a person who has ever been subject to a control order under the Commonwealth legislation. One has to follow the definitions through two Commonwealth acts to find out what that means. A control order is defined in the Commonwealth Criminal Code to include an interim control order. Even a person who might briefly have fallen under suspicion, who has been the subject of an interim control order made urgently by a minister and then perhaps found to have done nothing wrong at all, would have this legislation apply to them because they had at one time been subject to a control order as that term is defined by the act.

The act picks up the definitions of 'terrorism' and 'terrorist act' which are provided in our Police Powers and Responsibilities Act and which mirror the definition in the Commonwealth Criminal Code. That definition is extremely broad. It includes acts done for political reasons that might be simply attacks upon property rather than human life and attacks upon now information systems—computer systems and things of that nature.

At the time those definitions were brought in, the Queensland Law Society and the Law Council of Australia had concerns about their width because they are broad enough now to cover, for example, the activities of the armed wing of the African National Congress. Under our legislation, Nelson Mandela would be a terrorist. They are certainly broad enough to cover the activities of armed insurrections in various parts of the world, some of whom may be fighting despots and tyrants. For example, under Australian legislation the Free Syrian Army, which is fighting Bashar al-Assad in Syria, meets the definition of a terrorist organisation. The effect of that is that a person in Queensland who provides some encouragement—for example, who posts something on social media saying, 'I hope the Free Syrian Army defeats Bashar al-Assad's army at Idlib'—becomes a promoter of terrorism under the bill.

I take the committee to the new section 247A in the Corrective Services Act that would be introduced by this bill. It includes the definition of when a person promotes terrorism. This section states that a person promotes terrorism 'if the person carries out an activity to support the carrying out of a terrorist act or makes a statement in support of the carrying out of a terrorist act'. The example that I gave of the social media post would meet the definition of 'makes a statement'. While what people will have in mind, perhaps, when they first read this bill is people who are actively planning to explode bombs somewhere in Australia, the net that it casts is wide enough to catch people who are engaged in the politics of overseas countries and to catch, for example, a child who has been influenced by their parents to send money overseas to some foreign fighter organisation. It is people in those positions—

people on the fringes, people who are not the sort of person that first comes to mind when they think of terrorist activity—upon whom the injustice will fall when they are faced with a bail provision which says that they must not be released from custody unless there are exceptional circumstances. Presently, those people would be able to show that their continued detention is unjustified because of the nature of the particular facts of their case.

Mr Potts: Just to bring it back to a very pertinent matter—and I do not seek to embarrass him—Mr Peter Russo may well have had some experience with Dr Haneef many years ago, someone who is well known to everybody. Dr Haneef spent a considerable period of time in custody, was traduced nationally and internationally, and was found not to have committed any offence whatsoever. This legislation would, if he was charged with these types of matters, have the effect of keeping him in custody. There are real examples that cause real injustice.

Mr LISTER: Mr Potts, given that the impetus for this is a COAG agreement across the states to move towards a presumption against bail for those who are considered to have links to terrorism, if we have some states that adopt the necessary legislation and some that do not, could that not lead to a terrorist body saying, 'Let's do our dirty work in Queensland rather than South Australia, New South Wales or Tasmania'?

Mr Potts: One of the great joys of our Federation is that each state is responsible for its own laws and the good protection of its own citizens. You are charged under the Constitution of Queensland to do precisely that. You and your predecessors have carefully and properly considered various obligations under the Bail Act. Our argument is that the Bail Act and the parole act already give Queenslanders that protection. Pursuant to section 16(3) of the Bail Act, the Bail Act is more than empowered to prevent people, where there is an unacceptable risk, from being granted bail. In the back of this room today you have Mr Michael Byrne, the chair of the Parole Board. If you ask him whether they already have the capacity to deal with these issues within the laws available to them, I am sure the answer will be yes.

CHAIR: Part of your submission on page 3 states that the society also considers that the criteria listed in clause 8 of the bill are 'vague, overly broad and may capture conduct and associations that do not amount to terrorist activity'. Can you expand on that, please?

Mr Potts: There is a very apt description in the ALA's submission, where they talk about a person who may have been linked—however broad that term is—with terrorist activities, and 20 years later is found urinating in a public place and finds himself trapped by this legislation. The question we ask rhetorically is: is that really what the parliament of this state seriously intends to be the law? Ken, do you want to expand on that?

Mr Mackenzie: It comes back to the point that I was attempting to make before. It is so broad about any promotion, given the very broad definition of terrorism, that somebody who supported the African National Congress during the apartheid years would have fallen foul of that provision. Similarly, any association that a person has had with another person who has promoted terrorism begins to follow the path down to guilt by association. Are we going to refuse bail to people because of who their cousin is? Dr Haneef's cousin was thought to be involved in the Glasgow bombing. Dr Haneef was then facing a bail application in Queensland. He was granted bail. He was later found not to have done anything wrong, but under these changes perhaps he would not have because the court would have to take into account the association he had with another person. That is the vagueness and uncertainty that clause 8 in particular brings into consideration, which ought to be made upon a fair and objective basis by a court that is considering a person's liberty.

Mr Potts: To pick up Mr Lister's point, whilst I understand there are politics—God knows if I could ever say such a word in this building—in relation to COAG as a whole, where there is sufficient concern about it each state is charged with it. We do not blindly simply follow other states. We do what this committee does, which is look at each piece of legislation carefully, look at the terms of the legislation, see whether there are unintended consequences and vote with your conscience.

CHAIR: That brings this part of the program to a conclusion. I thank representatives from the Law Society for coming along and helping us with our deliberations.

ANANIAN-WELSH, Dr Rebecca, Senior Lecturer, TC Beirne School of Law, University of Queensland

Dr Ananian-Welsh: Thank you for the invitation to appear before the committee today. Dr Cherney was unfortunately unable to appear today. His expertise is in deradicalisation and countering violent extremism programs. If you have any questions for Dr Cherney, I am happy to take those on notice and he can respond to assist the committee.

We understand the serious threat of terrorism and the gravity of the government's responsibility to protect our national security. We also understand that this law is in furtherance of a COAG agreement in the interests of harmonising the national response. No state wants to have a gap in its security framework that might render it a safe haven for potential terrorists; nonetheless, it is important that counterterrorism laws are very carefully scrutinised. These laws tend to have an extreme and severe impact and the question becomes: do the security benefits of this bill outweigh its costs? On this we make a number of points in our submission, a few of which I will highlight now.

We echo the very detailed submissions of the Queensland Law Society and the Queensland Bar Association. We submit that existing rules and principles as to bail and parole already take into account a person's association with and support of terrorism and ensure that those who should be detained are detained. These highly developed principles have been relied upon in cases from murder to child sex offences to public urination—as we have heard—and ensure that all of the relevant circumstances, both for and against detention, are weighed on a case-by-case basis. Moreover, control orders, continuing detention orders and supervision orders all exist to further protect the community from terrorism.

We support proposed amendments that would require bail decision-makers to give specific consideration to a person's past and present associations with terrorism; however, essentially we submit there is no gap in Queensland's legal framework that this law would address. The bill would not, therefore, make Queensland any safer than it already is.

The bill undermines one of the most fundamental aspects of our legal system: the presumption of innocence. That is not to say it renders an accused person guilty until proven innocent, but it treats them in that way in substance. It places the heaviest onus on someone who may be charged with a relatively minor offence to show that exceptional circumstances exist to support their freedom.

We submit the bill should not extend to those who have been subject to control orders. I think the Queensland Law Society has dealt with that already in some detail.

One of the most concerning aspects of this bill is its special impact on children. The bill contravenes the Convention on the Rights of the Child. It contravenes youth justice principles. It limits the discretion of the court and therefore limits the capacity of the court to properly take into account all of the factors like blameworthiness, capacity, rehabilitation and the interests generally of the child. The need for a law of this nature to apply to all children, including children aged 10 to 14, has just not been established.

The reversal of the presumption in favour of parole may also have unintended consequences. One of those is that it could undermine counterterrorism efforts; namely, deradicalisation and reintegration programs. It would do that by removing the primary incentive for prisoners to engage in those programs, which is of course a real prospect for their release back into community on parole.

Finally, despite the best intentions of this government in enacting the bill, it carries the very real prospect of normalisation. Control orders are a key example of a scheme that was presented as an extreme measure targeted at an extreme threat with no intention of setting a new norm. Since 2005 control orders have now spread to the organised crime sphere and have been enacted in almost every state and territory. Over the last 20 years counterterrorism laws in Australia have been demonstrated to be particularly susceptible to normalisation and spread. What one government regards as an extreme measure a decade or two down the track another government may just see as 'business as usual'.

We suggest that if the bill is enacted it should include a sunset clause. That would emphasise that this is extreme and unusual legislation not intended to normalisation; it would allow for the periodic review of the necessity and effectiveness of this legislation, including its impact on children and deradicalisation programs; and it would allow for the findings of other bodies like the Independent Monitor of National Security Legislation to be taken into account, particularly as the independent monitor has a report to be released on the impact of similar legislation on children in the federal sphere. I am happy to take questions.

Mr McDONALD: Thank you very much for being here and for your presentation this morning. Obviously there is the COAG agreement and the four principles that have been put in place with that. Is the law proposed in Queensland different from other states, in your understanding?

Dr Ananian-Welsh: That is not something that is really in my expertise, but going from the briefing document it seems there is some variation between states. Tasmania has not implemented an aspect of the reversal of the presumption in favour of parole for children, I believe, and other states are yet to enact their versions of the law. It really does seem that the states are taking this seriously—at least some of them—and looking at it hard, but I do not know the ins and outs of all the state laws under this agreement.

Mr McDONALD: At page 5 of your submission the presumption against parole is reliant on expert advice as to whether a person is deradicalised or not. From your studies in this area, are you able to explain to the committee what factors or behavioural changes are typically taken into account in deciding whether or not a person is deradicalised?

Dr Ananian-Welsh: I know that Dr Cherney will be able to respond to that question in some detail so I will take that on notice.

Mr McDONALD: Thank you.

Ms McMILLAN: Your submission notes that the bill further removes the independent discretion of the sentencing court to set a release date any earlier than 70 per cent of the total sentence for a child who has demonstrated links to terrorism. Would you like to expand on your concerns about this?

Dr Ananian-Welsh: I think anything that limits the discretion of the court is worrying. It is a concern from a separation of powers perspective. I am not saying that it is unconstitutional, but the separation of powers is a prime concern. Something that limits the discretion of the court in the case of children is very troubling. Every case that is going to come up involving a child will be so variable—whether it is the age of the child or the amount they are influenced by others. The variation is not just the usual thing you have for adults but varies right from an individual having no capacity to commit criminal acts through to holding someone to account like an adult. That is something that only a judge can take into account, weighing all the various aspects. To tell the judge, 'No, you're not allowed to use the full ambit of your discretion,' and that we are going to limit that because of factors that are as vague as promoting terrorism—the Queensland Law Society has already indicated the very extreme breadth of the circumstances which could amount to that such as social media posts and comments on other people's social media posts—is very troubling. In this situation I think our best defence is the court being able to take everything into account and that we can trust judges and courts to be able to do that.

CHAIR: That brings to a conclusion this part of the hearing. Any questions taken on notice need to be to the secretariat by midday on Thursday, 14 February.

BYRNE, Mr Michael QC, President, Parole Board Queensland

CHAIR: Good morning. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Mr Byrne: Thank you for the invitation to attend this morning and speak on behalf of the Parole Board Queensland. I have listened with interest to the previous speakers. My opening statement will not be dealing with policy issues, given my position. I will be dealing with the mechanics of how it applies to the parole situation, subject to any questions the committee may wish to ask me after that presentation.

The concepts are, as has been addressed in questions, proposed to be Australia-wide. In partial answer to one of the questions, there have been differences in the legislation between the states, but on my reading the principles seem to be generally the same. There are tweaks and there are different formulations, but the policy aims seem pretty much uniform. How those policy aims are implemented is a primary concern for the Parole Board Queensland. As said in the submission, proposed sections 193B through to E are of particular concern to the board. May I raise a few matters in those provisions which the committee may find of interest? Proposed section 193B(2) states—

> The parole board must refuse to grant the application ... unless the board is satisfied exceptional circumstances exist to justify granting the application.

There are a couple of issues of concern. As has been said, there is no definition of 'exceptional circumstances'. The board functions now with that phrase in relation to other parole applications. The only guidance the board has is in the ministerial guidelines, which talk of things such as terminal illness of the person involved or the need for that person to be a carer of a relative without any other carers. I am not certain whether the committee sees those concerns as ones which are primarily relevant to a person charged with these sorts of offences. That may be something of concern. It may be something that can be dealt with in the ministerial guidelines which the Hon. Mark Ryan is looking at at the moment.

The background of me speaking in terms of these provisions is that the board is currently entrusted, as I am sure the committee knows, with the no-body no-parole legislation. That involves similar concepts. It involves similar refusals of parole in circumstances which go beyond a risk to the community, which is the Parole Board's primary concern. It is how we operate. As Mr Potts has said, we act to make sure, to the best of our judgement, that no-one is released who is going to be an unacceptable risk to the community of Queensland.

No-body no-parole is an exception to that, and in a way this legislation is also an exception to that. I am not sure what exceptional circumstances will be. The board being satisfied that they exist again raises issues which are yet to be clarified by a superior court as to what the burden is and who has it. Does the prisoner have it? Does he have to raise it? Does he have to satisfy the board beyond reasonable doubt, on the balance of probabilities or on the Briginshaw scale, which is somewhere in between those two tests? They are issues which are undefined by legislation—probably deliberately so—but they are also matters which the board will have to determine for itself in the absence of guidance.

The other matter which I raise so that the committee is aware of it is in proposed section 193C(2). That section allows for the board to defer making a decision until information is obtained. That power exists in the board generally now, but the difference with this legislation is that subsection (2) states that, despite the section allowing a deferral, the board must decide the application within 200 days after receiving the application. For myself, I am not sure why that limit is there. Maybe it is a policy consideration. Maybe there are concerns, to use the vernacular, of political prisoners being held beyond that date, but the concern I raise is: what is the position, for example, of the board if we get to 190 days and the prisoner writes in, as they do now, and says, 'I have important information that is crucial to the board's decision but it will take me three weeks to a month to provide that'? The board, under this legislation, will have to say, 'Sorry, you've missed the boat but we will make the decision on what we have.' I find that a bit strong.

If it happens at the moment we have statutory time frames which we operate within, but if we are going outside of those time frames we seek the approval of the applicant or the prisoner. They say, 'My position is that I want this decided on all the relevant information and therefore I consent to the time limit being waived.' Whether or not the committee thinks that is a relevant consideration in these circumstances is another matter.

The final concern—and, again, it is a drafting matter raised in the submission—is the definition which was spoken to by my friends from the Law Society in section 247A of promoting terrorism. It seems odd to the board that that is not part of the insertion of the new provisions which deal with

terrorism including for promoting terrorism so that for everyone's sake and clarity it is all in one area of the act rather than spread throughout the Corrective Services Act, which, as I am sure you would appreciate, is where parole currently sits. It is scattered amongst a number of diverse provisions dealing with various topics. Subject to questions, they are the particular matters I wanted to bring to the committee's attention.

CHAIR: I want to deal with the last aspect where you spoke of the scattered effect of it being under the Corrective Services Act. Do you have an issue with this piece of legislation as it is currently drafted? Is your suggestion that it should all be under one piece of legislation? This will be a stand-alone piece of legislation if passed.

Mr Byrne: It will come into various parts of the Corrective Services Act is my concern. We have bail legislation and we have corrective services legislation. What we do not currently have in Queensland is an act called the parole act which brings together all the provisions which are relevant and applicable to parole applications and their refusal of grant. This, again, is diversified over the very thick Corrective Services Act. That was the point I was trying to make.

CHAIR: In other words, if there were a parole act in Queensland it could remedy the issue of having it in the Corrective Services Act?

Mr Byrne: Having it spread across, yes, it would.

CHAIR: This type of legislation could be incorporated, for want of a better definition, into a parole piece of legislation?

Mr Byrne: Correct.

Mr LISTER: Mr Byrne, thank you very much for coming in today. Can I bring you back to your presentation earlier. You spoke about exceptional circumstances—those which the Parole Board would need to feel satisfied in order for someone subject to this to be considered for parole. Did you say that currently exceptional circumstances in the eyes of the Parole Board are things such as carers' responsibilities or terminal illness—the sorts of things which might be pretext for getting out of an exam on the day and which the police minister is currently coming up with a broader set of considerations which would apply in this case? Did I understand you correctly earlier?

Mr Byrne: No. You have partially understood and I think I put it badly. There are existing ministerial guidelines which deal with parole considerations. They are normal parole applications. If a person is in for a drug offence, they are not eligible for parole for another six months. If they personally contract a terminal illness with less than a month to live, that is an exceptional circumstance under the guidelines. Similarly, if they are the sole carer for a child, that is an exceptional circumstance. There is nothing currently in those guidelines because this is not yet legislation. My point was that, if we are to keep the term 'exceptional circumstances', either there will need to be a definition within the legislation or the ministerial guidelines will have to be expanded to give some guidance to the Parole Board as to what is considered to be exceptional. Otherwise, just leave it blank and we can form our own views.

Mr LISTER: Have you been invited to provide a submission to the minister in regard to his working on ministerial guidelines which would apply here?

Mr Byrne: We have recently given submissions to Corrective Services about the current exceptional circumstances guideline. It has not considered this because this is still in bill stage.

CHAIR: My understanding is that when someone is charged with a Commonwealth offence the Crimes Act is what governs bail in that situation. When someone is charged with a Commonwealth terrorism offence, the Commonwealth act applies as to how they get bail. There is the reverse onus within the Crimes Act, I understand.

Mr Byrne: That is so. The Commonwealth Attorney-General deals with parole for Commonwealth offences, not the Queensland Parole Board.

CHAIR: Again, I am probably asking for legal advice when it is something I should know, so I apologise in advance. Is the term 'exceptional circumstances' defined in the Crimes Act or is it left?

Mr Byrne: It is left, as I understand it, to interpretation. As you would know, courts from time to time define what is exceptional, but that is in a general sense. It has never focused on what is exceptional to release a person convicted of a terrorism offence. It is quite a different scenario.

Mrs McMAHON: You have raised some of the issues arising from proposed new section 193B, specifically the exceptional circumstances. I note in subsection (2) the wording, 'The parole board must refuse ...'. For those of us who apply legislation, the difference between 'must' and 'may' is a big one.

Mr Byrne: It is.

Mrs McMAHON: How many other pieces of legislation would the Parole Board have before them that require them to do something in terms of 'must' do something?

Mr Byrne: My understanding is that the only current one is no-body no-parole. The consequences of course are that with a 'must' refusal that person cannot get parole and it becomes full-time, be it 10 or 20 years or a life sentence.

Mrs McMAHON: In itself, this particular amendment is an exceptional piece of legislation in terms of what restrictions it places on the Parole Board.

Mr Byrne: Correct.

CHAIR: Dealing generally with parole applications, if someone is serving mandatory life, is my assumption correct that on release they are on permanent parole?

Mr Byrne: They are on parole for life, yes.

CHAIR: Is there a mechanism for that category of person to bring an application or is it simply that they are on parole for life?

Mr Byrne: If you are sentenced to life, you are on parole for life. That parole can be suspended or amended for the term of that order, and we often do that.

CHAIR: So a person could bring an application?

Mr Byrne: They can never get off parole. They will always be on parole. It is just the conditions of that parole.

CHAIR: It can be amended.

Mr Byrne: Yes.

CHAIR: If a person is convicted of a terrorism offence, they could end up with very large sentences such as 20 years or so.

Mr Byrne: Yes.

CHAIR: They fall outside the definition for that category of person that I just gave.

Mr Byrne: For mandatory life, yes, that is right.

CHAIR: It is the mandatory part that kicks in.

Mr Byrne: Just so that we are not at cross-purposes, as you would know from your own practice, a life sentence, albeit not mandatory, applies for a number of offences. We have recently had to deal with persons who were sentenced to life for rape, particularly child rape. They are the same. They are on parole for life.

Mrs McMAHON: Proposed new section 193D provides for the Parole Board to seek a written report from the Police Commissioner and then proposed new section 193E compels the Police Commissioner to provide the report within certain time frames. Would you envisage practically that in every instance you would be applying for a written report from the Police Commissioner or only in certain circumstances? Do you envisage there being some kind of guidelines in which a threshold is reached in which you start that process under proposed new section 193D? How do you think that would work as the Parole Board?

Mr Byrne: To again give an example, under the no-body no-parole amendments, the Commissioner of Police must supply, to use that term again, the Parole Board with a report within certain time frames. Here, if there is not a mandatory requirement then as a matter of practice the board would in every case, I believe, request such a report so that the board can be as well informed as possible because we are not the possessors of the information, as the legislation states. That can come from a number of sources, some of which are privileged, but certainly sources well beyond the resources of the Parole Board. We would need to be given that information through the provisions of the commissioner's report.

Mrs McMAHON: Has there been any examination in terms of the numbers of people that this legislation would apply to where it will be within the remit of the Parole Board? How many people appearing before the Parole Board would be anticipated? How many of these reports will be written? Do you have any idea of how frequently this legislation will be utilised?

Mr Byrne: There is a rolling list for the no-body no-parole. There are people who are coming up for parole who have been in that situation. That is continuing. They are coming a lot more frequently than what was envisaged. In Queensland, to my knowledge, there is one person in prison for a terrorist related offence who is eligible for parole. I do not know of the other numbers.

Mr McDONALD: Earlier I asked a question on notice with regard to the deradicalisation of offenders. Under proposed new section 193E, you are able to get a report from the Police Commissioner and any other information the board considers relevant. Would that information contain expert information regarding deradicalisation? What other information might the board consider?

Mr Byrne: As I mentioned in answer to the previous question, without giving too much away, there is one application before the board for a terrorism related offence. There have been developed on a worldwide basis what are called programs or testing for deradicalisation. The leading one at the moment is called VERA2. A person has to be approved to administer that test, for want of a better term, to a person. It gauges, through various indices and answers to questions, the extent of radicalisation or the contrary. That is what is currently being used. Certainly for myself, I would imagine that that, or whatever comes in its place, would be a primary tool for use by the Parole Board.

CHAIR: Thank you, Mr Byrne, for your written submission and for the evidence that you have provided to the committee today. A number of witnesses were due to appear from the Bar Association of Queensland and the Youth Advocacy Centre. Unfortunately they are unavailable, so that concludes this hearing. I thank all the witnesses who have appeared today. Thank you to our Parliamentary Service staff and thank you to Hansard. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare the public hearing for the committee's inquiry into the Justice Legislation (Links to Terrorist Activity) Amendment Bill closed.

The committee adjourned at 11.10 am.