LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

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

Staff present:

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

PUBLIC BRIEFING—INQUIRY INTO THE POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 19 JULY 2018

Brisbane

THURSDAY, 19 JUNE 2018

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The committee met at 10.33 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Police Powers and Responsibilities and Other Legislation 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 McDonald, the member for Lockyer; Melissa McMahon, the member for Macalister; and Corrine McMillan, the member for Mansfield. With us by teleconference are James Lister, the member for Southern Downs and deputy chair; and Stephen Andrew, the member for Mirani.

On 12 June 2018 the Minister for Police and Minister for Corrective Services, Hon. Mark Ryan MP, introduced the Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 to the parliament. The parliament referred the bill to the committee for examination, with a reporting date of 9 August 2018. The purpose of the briefing today is to assist the committee with its examination of the bill.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to the chair's 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 might be filmed or photographed during the proceedings. Only the committee and invited officers may participate in the proceedings. As these are parliamentary proceedings, any person may be excluded from the hearing at the discretion of the chair or by order of the committee. I remind committee members that witnesses are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House. I ask everyone present to turn mobiles phones off or to silent mode.

CARROLL, Senior Sergeant Ian, Instructing Officer, Legislation Branch, Queensland Police Service

HANSEN, Detective Inspector Damien, Operations Manager, Homicide Investigations Unit, Queensland Police Service

PETRIE, Ms Kate, Director, Policy and Legislation, Queensland Corrective Services

POINTON, Superintendent Dale, Superintendent Engagement, Road Policing Command, Queensland Police Service

POWELL, Detective Senior Sergeant Damien, Operations Leader, Missing Persons Unit, Queensland Police Service

STEWART, Commissioner Ian, Commissioner of Police, Queensland Police Service

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

Commissioner Stewart: Thank you, Mr Russo. I acknowledge you and the members of the committee and thank you for this opportunity to brief you in relation to the Police Powers and Responsibilities and Other Legislation Amendment Bill 2018. I also take this opportunity to acknowledge the traditional owners of this place. I pay my respects to elders past and present.

I would like to introduce to you Ms Kate Petrie, Director, Policy and Legislation, Queensland Corrective Services; Superintendent Dale Pointon from the Road Policing Command; Damien Hansen, who is the operations manager for the Queensland Police Service Homicide Investigations Unit; Detective Senior Sergeant Damien Powell, who is the operations leader for our Missing Persons Unit; and Sergeant Ian Carroll, from the QPS Legislation Branch. There are a number of other persons from the service and from Corrective Services here today to assist us as necessary if that is required in answering any questions that you may have.

We are grateful for your interest in this amendment bill. As you know, the bill contains a number of different themed amendments, primarily focused on police powers. There are also three legislative changes to the Corrective Services Act. With your agreement, Ms Petrie may be happy to speak about them after I have explained the police powers amendments.

If I may, I will briefly discuss the three main features of the bill that have significant operational impact on police. The primary amendment contained in the bill is the introduction of the new high-risk missing person search warrant scheme as part of chapter 7 of the Police Powers and Responsibilities Act. By way of background, in the 2016-17 financial year approximately 8,000 people were reported missing to police in Queensland. Of those, two people were later found murdered and 31 committed suicide. Generally, there are three main reasons people go missing. The first is relationship problems, the second is financial problems and the third is health problems, typically related to mental health issues.

The Queensland Police Service is the lead agency for directly responding to and investigating the disappearance of missing persons. As such, we must immediately be able to gather critical information to assist in locating these persons. Policing experience has shown us that the early stages of a high-risk missing person investigation can be the most critical for saving lives or determining who may be involved in a disappearance. An internal Queensland Police Service review of high-risk missing person cases that subsequently became homicide investigations identified a gap in the investigative powers of police in this early critical stage of the investigation. It identified the need for powers to be available to police to search specific places for high-risk missing persons or for information as to their whereabouts in the early critical stages of their disappearance. This is particularly important when consent to search those places cannot be obtained or is not provided.

The identified gap in investigative powers stems from police being unable to form a reasonable suspicion that a criminal offence has been committed and, therefore, being unable to obtain a search warrant or establish a crime scene. In most instances relatives, friends and employers of high-risk missing persons freely provide police with every assistance to enter and search the missing person's residence, place of employment or vehicle to locate the person or obtain information as to their possible whereabouts.

Each and every missing person's risk level is assessed on the circumstances of the particular case. There are a multitude of factors to be considered, such as the missing person's physical capabilities, mental health, environment, disabilities, age and so on. In some instances, one factor may place them at high risk while in other cases it may be a range of factors to escalate them to the high-risk status. Missing persons are categorised by police as either low risk, medium risk or high risk. The bill provides that a high-risk categorisation may be given to a missing person where they are at risk of serious harm based on the circumstances of their disappearance. For instance, the missing person may suddenly stop using their bank accounts or travel cards and that person has not attended important social occasions as previously planned. The influencing factors are truly varied.

The bill provides police with the capacity to search a place for a high-risk missing person or for information about their disappearance without being required to establish that an offence against the person has been committed. The scheme requires police to apply for a missing person warrant from a Supreme Court judge or magistrate as well as to obtain the preauthorisation from a commissioned officer to apply for such a warrant. In urgent circumstances, the missing person warrant, which is in force for up to 48 hours, can be applied for as soon as reasonably practicable after establishing the missing person scene. The scheme is about ensuring that our front-line police investigators have the powers to search places for a high-risk missing person where and when necessary.

The powers provided to police under the high-risk missing person scheme are similar in nature to the existing crime scene provisions. In particular, the police officer responsible for the missing person scene or any police officer acting under the responsible officer's direction will be able to enter the missing person scene and, if necessary, enter another place to gain access to the scene; investigate, search or inspect the scene for the missing person or any information about the person's disappearance; exclude any person—for example, the occupier of any place—from the missing person scene; remove any obstruction from the scene; direct a person to leave the scene or prevent them from entering the scene; remove or cause to be removed an animal or vehicle from the scene; prevent a person from removing anything or interfering with the scene or anything in it and, if necessary, detain and search that person; open anything; photograph the scene and anything in it; seize anything or part of a thing that may provide information about the missing person's disappearance; and take electricity for use at the scene if necessary.

In developing this aspect of the bill the QPS has been mindful to provide a proportionate and reasonable balance between additional police powers designed to find a high-risk missing person and the rights and liberties of individuals. Apart from the judicial oversight previously mentioned, safeguards include that police will be required to electronically record the use of the high-risk missing person powers—for example, by the use of a body worn video camera or an audio recorder. Police will have to enter the details of the use of missing person powers in the police register of enforcement acts and the Crime and Corruption Commission is to conduct a review of the scheme five years after commencement. The CCC will be required to provide a copy of the report to be tabled in parliament. Our objective is to deliver an integrated missing person warrant scheme that will assist in returning those vulnerable high-risk missing people back to their loved ones as soon as possible. The bill is pivotal in reaching this objective and is a first for Australia.

I would like now to inform the committee on amendments to police crime scene powers contained in the bill—the second key theme. The current crime scene powers contained in the Police Powers and Responsibilities Act are at times complicated for our front-line officers to apply. In deciding whether crime scene powers can be engaged at a place police must firstly determine whether the place is a primary crime scene or a secondary crime scene. The bill will simplify these definitions with a new single definition of a crime scene.

A place will now be a crime scene if a crime scene threshold offence happened at the place or there may be evidence at the place of a significant probative value of the commission of a crime scene offence that happened at another place. That definition maintains all the main elements of the current definition but replaces the need for a serious and violent offence to have occurred at a secondary crime scene. Also, the crime scene threshold offence has been reduced from a seven-year offence to a four-year indictable offence to capture those serious indictable offences, such as stalking, discharging a firearm through a public place and serious workplace incidents, that are not currently captured under the crime scene threshold offence. The new threshold will better align Queensland with our interstate counterparts, many of whom have a significantly lower crime scene threshold to the seven-year offence.

The bill will also implement seven legislative amendment recommendations made by the 2011 Crime and Misconduct Commission review of the evade police provisions—the third main theme of this amendment. Those recommendations of that review are numbered 1, 2, 6, 7, 8, 12 and 13. An evade police offence occurs when the driver of a motor vehicle fails to stop their vehicle as soon as reasonably practicable after being directed by police in a vehicle to stop. Effectively, this is the start of what could become a police pursuit should police then decide to continue to engage the vehicle.

I will briefly mention two significant recommendations that form part of the then CMC review. In line with recommendation 6 of the commission's review, the bill inserts a new section 755A in the Police Powers and Responsibilities Act to require additional information in response to an evasion offence notice where the owner cannot identify the driver; namely, where the owner was when the evasion offence happened, the usual location of the vehicle when it is not being used, the name and address of each potential driver known by the driver to have access to drive the vehicle when the evasion offence happened, the way each potential driver has access to drive the vehicle, how frequently each potential driver normally uses the vehicle and for how long each potential driver normally uses the vehicle and whether each potential driver uses the vehicle in connection with a business or for private use.

The bill will also give effect to recommendation 7 of the commission's review by amending section 756. This section is the deeming provision that allows police to charge an owner or nominated person with the original evasion offence if they do not provide a statutory declaration as required in response to an evasion offence notice. Subsection (4) of section 756 provides a defence to the owner should they be able to prove to the court on the balance of probabilities that they were not the driver of the vehicle at the time. Police investigators and prosecutors have been frustrated by persons who choose not to provide police with a statutory declaration and instead go on to successfully raise the defence in court using information that could have been provided to police had they provided a statutory declaration. Clause 41 of the bill will now preclude the owner of a vehicle from relying on the rebuttal provision with information that was required to be provided in their statutory declaration but that the owner chose not to provide to police. To ensure the discretion of the courts is maintained, a defendant can seek leave of the court to allow that information to be relied upon in certain circumstances.

In addition to the 2011 Crime and Misconduct Commission recommendations, the bill further amends section 755 of the Police Powers and Responsibilities Act to create a new offence for the owner or nominated person if they fail to give a statutory declaration in response to an evasion offence notice within 14 business days. The new offence is a simple offence and imposes a maximum penalty

of 100 penalty units. The amendment also removes any doubt that an owner or nominated person can be charged with the new offence in addition to being deemed the driver of the vehicle in the evasion offence. To ensure procedural fairness, the person will not commit the offence if they have a reasonable excuse. The new offence is aimed directly at improving the clear-up rate of unsolved evasion offences where a person is served an evasion offence notice but instead chooses not to provide a statutory declaration.

Those are the significant amendments to the PPRA which I wanted to speak to you about in detail. There are a number of other amendments in this bill which I can talk to but for brevity I will just mention now and if you have questions concerning these amendments either I or one of the team can give you more detail. Those amendments are clarifying that a numberplate confiscation notice can be issued to a vehicle subject to impoundment even if that vehicle has no numberplates attached; creating a new simple offence for owners of the vehicle subject to a numberplate confiscation notice not to modify, sell or dispose of the vehicle; allowing police to search a person to be transported for breaching the peace; allowing police to transport a person in order to photograph them for a police banning notice; creating two simple offences for a person who assaults or obstructs a civilian watch house officer; separating the offence of assaulting or obstructing a police officer into two distinct offences; including unlawful bookmaking offences under the Racing Integrity Act 2016 as controlled operations and controlled activity offences in schedules 2 and 5 of the PPRA; including 10 Commonwealth child sex offences as reportable offences under the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004; including two child sex offences as prescribed internet offences under section 21B of the PPRA; allowing a notice to appear for traffic offences to be posted to the most recent address; and removing the necessity to prove instruments of delegation for police transport and state penalty prosecutions.

Finally, the bill amends the Corrective Services Act 2006 and, with your agreement, Ms Kate Petrie from Queensland Corrective Services will now speak to those amendments.

Ms Petrie: On 16 February 2017 the Queensland Parole System Review final report and government response were tabled in parliament. A key recommendation of the review was the establishment of a full-time, centralised, fully independent and professional Parole Board operating under a new parole process. Parole Board Queensland commenced operations on 3 July 2017 following passage of the Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017. Since its commencement a number of legislative amendments have been identified that are required to enable the board to more efficiently conduct its business.

Clause 6 of the bill amends section 193 of the Corrective Services Act to allow the board to decide a period of not more than 12 months within which a prisoner serving a life sentence can make a further application for parole after being refused parole. For all other prisoners the period of time in which they may reapply remains six months. This amendment does not include exceptional circumstances parole applications. The amendment would not preclude the board from setting a lesser period to reapply for a life sentence prisoner who the board deems as nearing readiness for parole.

Clause 7 and clause 8 amend sections 208B and 208C of the Corrective Services Act to allow the board to directly consider and decide a request from the chief executive for immediate suspension of parole. Currently, requests by the chief executive for parole suspension are subject to a two-stage decision-making process, with a single board member's decision being referred to the board for a final decision. The amendment will enable the board to consider a request for suspension as part of its daily business, with a single board member still being able to consider and decide on applications for suspension as required.

Clause 9 amends section 234 of the Corrective Services Act to enable the board to suspend the parole of prescribed prisoners while sitting as three members, including the president or deputy president, a professional board member and a community board member. The amendment ensures that the composition of the board is consistent for a decision to cancel and a decision to suspend a parole order of a prescribed prisoner. Thank you.

Mr LISTER: Thank you, ladies and gentlemen, for your appearance. I trust you will pardon me for not being there in person today. I am in my office in Stanthorpe. Police Commissioner, could you go over the threshold offences for establishing crime scenes? I think you may have touched on it briefly during your address, but could you please outline what kinds of offences your officers typically encounter at crime scenes which previously would not have met the threshold but now will? What sorts of offences do you typically see there?

Commissioner Stewart: Thank you for that question. I am going to ask Senior Sergeant Ian Carroll to reply to you.

Snr Sgt Carroll: The crime scene offence threshold definition at the moment is an indictable offence punishable by a maximum of seven years imprisonment or an offence involving deprivation of liberty. That offence threshold is to be reduced to an indictable offence punishable by a maximum of four years imprisonment or a deprivation of liberty offence. The reason behind that is that there are a number of offences that we cannot currently capture by our first response police when they are attending crime scenes. I will just go through a couple of the main offences, if you will allow me: unlawful stalking, which is punishable by a maximum of five years imprisonment; grooming of a child under 16, which is punishable by a maximum of five years imprisonment; unlawful drink spiking, which is a five-year imprisonment offence; dangerous operation of a vehicle whilst intoxicated or speeding, which is punishable by a maximum of five years imprisonment; discharging a weapon in, through, towards or over a public place, which is punishable only by four years imprisonment; and dangerous conduct with a firearm, which is a four-year imprisonment offence.

I will just touch on three workplace offences that are not captured and the reasoning for those: section 40B, reckless conduct category 1 under the Electrical Safety Act, punishable by five years imprisonment—it is where a person exposes an individual to risk of death, serious injury or illness; section 31, reckless conduct category 1 under the Work Health and Safety Act; and section 21, reckless conduct category 1 under the Safety in Recreational Water Activities Act, both punishable with a maximum of five years imprisonment.

Those last three offences are important for the Police Service to capture as crime scene offences. In 2011 the QPS and Department of Justice and Attorney-General signed a memorandum of understanding between the two organisations that the QPS would be the lead agency investigating those serious workplace incidents until they were relieved by the relevant workplace investigators. The ability to establish a crime scene is important for police in that it gives us some extra powers that we do not have under a search warrant. Those powers are to direct persons at the scene and direct persons from entering the scene so that we can control it and also conduct our forensic examinations at the scene and seize things from the scene to conduct further investigations. It goes beyond a search warrant. Our operational police are telling us those offences are offences that need to be captured within the crime scene definition.

CHAIR: Commissioner, I understand if you wish to direct this question to one of your colleagues. Why do police need the scheme if section 609 of the Police Powers and Responsibilities Act provides a power to enter a place without a warrant when police reasonably suspect there is an imminent risk of injury to a person, property or domestic violence?

Commissioner Stewart: With your permission, I will direct the question to Ian Carroll.

Snr Sgt Carroll: I go back to the reasoning behind the high-risk missing person scheme. Back in 2012, the QPS homicide group conducted a review of missing persons cases reported in Queensland that subsequently ended up being sudden death investigations. They identified a gap in our legislative powers in relation to searching places for information that may lead us to understanding why that person had disappeared or, alternatively, trying to locate the missing person themselves. That review looked at the existing legislative powers that the QPS has, both with and without a warrant. You are correct: section 609 provides police with a power without warrant to enter a place if there is an imminent risk of injury to a person or damage to property, or if there is domestic violence that has occurred, is occurring or is about to occur. There is another provision—from memory, section 596—that talks about an ability for police to enter a place without warrant if a person is likely to be dead inside that residence or is in need of urgent medical treatment. Therefore, we already have those powers in those instances to enter without a warrant to make those inquiries.

However, the research that was conducted by the homicide group revealed that there are instances in between those scenarios—in between a search warrant or a crime scene warrant—where we have a suspected criminal offence and knowing that the person is in imminent need of medical treatment or we need to get in there to justify that the person is not injured. It is in those circumstances that we feel that the scheme is appropriately placed within the current legislative arrangements for entry, both with and without a warrant.

Commissioner Stewart: It might be of assistance to the committee in their deliberations if I ask Damien Hansen, the detective inspector from homicide, to give you a practical example of where we think the gaps lie.

Det. Insp. Hansen: There was the Larissa Beilby murder in the last month. Obviously I cannot go into too much detail as it is before the court. However, with these powers—

CHAIR: I do not wish to interrupt, but would there be another historical example. I can understand—

Mrs McMAHON: That it is recent?

CHAIR: Yes.

Det. Insp. Hansen: I can say that our response would have been totally different. We did not have powers under 609 and the matter would have been resolved far quicker than it ultimately was.

Commissioner Stewart: Can we go back perhaps to one of the others?

CHAIR: Are there any historical cases that have been resolved by the courts that would have been handled differently had you had these powers?

Det. Insp. Hansen: There was a couple from Mount Isa. We knew they were in Cairns. They were reported missing. With the contact there, we had no power to go and search. Subsequently, it turned out there was a double murder at that address.

CHAIR: For example, would you have handled the Baden-Clay matter differently?

Det. Insp. Hansen: Certainly. There was a delay in us being able to establish the offence—being able to reach a threshold for those powers. We would have gone in earlier if that was the case. Potentially there is a loss of evidence subsequently. As we know, it was a murder by then but in other cases there is the potential for loss of life.

Commissioner Stewart: In my submission to the committee I mentioned that in most cases—and I think the records show that we have about 8,000 missing persons each year—

Det. Snr Sgt Powell: That is correct, sir.

Commissioner Stewart: Sadly, there are still those cases in what we would all consider a true missing person case where someone has taken themselves away or has 'disappeared'. Mostly, family, friends, acquaintances and work colleagues will be absolutely 100 per cent supportive in providing whatever access and information we need. However, we know that sadly in other cases, where often we find that the person who has disappeared has died through various means, there are times when we do not get that support. The tricky bit is that, while we have some legislation that helps us in cases, there is that gap where police are unable to determine; they just do not have enough facts to be able to settle on the current categories or have the power to actually act. That is what this gap has been identified as. We are very keen to close that gap because—and it is quite right what Damien said and what you said—this could ultimately save lives. There is none that I can put my finger on—maybe one of my colleagues can—where potentially a missing person is still alive when police arrive at an address but, because they do not have enough facts to reach a threshold to allow them to go in, that person could be disposed of or pass away without assistance from authorities.

Mr McDONALD: The statement that you just made, Commissioner, almost clarified the question that I was going to ask. From my experience, I can see that these amendments will certainly meet most of the community's expectations, and that is what we as a government and an opposition want to achieve. Could you outline to the committee not just examples but also a quantum where people may have been at risk or were being mischievous and were hiding themselves away? I am not all about quantum, but—

Commissioner Stewart: Some idea of the scale.

Mr McDONALD: That would be great, whether that be in number of incidents or scale of investigations required to resolve those things.

Commissioner Stewart: That is a very important point and thank you for your question. Again, Ian Carroll or Damien Powell might be able to assist the committee.

Det. Snr Sgt Powell: As the commissioner indicated, we had 8,000 missing persons last financial year. It is an increasing number. The bulk of those missing persons are in the sub-18 age group so, as the commissioner indicated, consent is rarely an issue. To put a number on it is very difficult because of the varying circumstances each year. I have been with the unit for nine years, and one year we will have 14 homicides that from Missing Persons we refer to Homicide. In the past 12 months we have had only two. It is a very flexible and floating situation from year to year. Each missing person is considered on their individual merits. The capabilities of one 12-year-old compared to another 12-year-old will be very different and it will depend on the environment, their habits and things such as that. In terms of quantifying the numbers, it is a very difficult situation. Fortunately, we recover 99.7 per cent of all missing persons each year. That leaves about 20 that we do not locate each year. We had potentially 10 suicide deaths last year where this could have been used. What I am trying to say is that it is very variable.

If you are talking about people who potentially take themselves away, that is a high incidence within missing persons as opposed to the three categories that the commissioner spoke about. We launched a homicide investigation into a gentleman who had not been sighted by his brother for some

six years. He had lost all contact. We contacted his nearest relative or friend. Initially she denied having any contact with him. After a number of days and a number of inquiries we were able to locate him alive and well, but we had wasted days of homicide investigators' time to try to locate him. With these powers, we may have been able to take the next step and enter the property and establish that they were inside the dwelling, alive and well, and had simply made a lifestyle choice. It is hard to quantify.

Mr McDONALD: You said that 10 people died. That is pretty significant—as well as the number of people who take themselves out of the community.

Det. Snr Sgt Powell: Mental health is a huge issue in this environment and suicide is something we deal with on a daily basis in this arena. If we can prevent one of those deaths, it is a worthy cause.

Mrs McMAHON: Thank you, everyone, for your attendance and for the work that has gone into this bill. My question is probably more a procedural and process one about the use of the powers under the high-risk missing person scheme. The high-risk missing person threshold is reached. Police will enter and use the powers under these new provisions and then, as soon as reasonably practicable, will apply for the missing person warrant. As a result of the search, evidence is found that may lead us to believe that a crime has been committed. At what point do we go from a missing person search warrant to a crime scene warrant? Where is that fine line between having obtained a missing person scene warrant to then going to a crime scene warrant?

Snr Sgt Carroll: They are two different schemes. The missing person warrant scheme is different to the existing crime scene warrant scheme. Although the missing person scheme is based to a certain extent on the crime scene warrant powers, they are different. It is certainly possible and foreseeable that police will declare a missing person scene, execute the missing person powers and come across a crime scene, whether it is directly related to the missing person investigation or it relates to something that is not specific to the missing person warrant application. It would be a case-by-case basis for the investigators to deal with that.

However, the basic understanding that we have is that, depending on the severity or the seriousness of that crime scene where the other evidence is located, we will shift from a missing person scene to a crime scene and engage those powers and carry out an investigation based on a crime scene investigation. It does become additional work for police procedurally, which you have alluded to. In urgent circumstances, they will have to apply for both a missing person warrant and a crime scene warrant if it is a crime scene that is being established. If an offence is located that does not require a crime scene, we will use our existing chance-discovery powers under section 196 of the PPRA, which allows us to seize that evidence and conduct our investigation. Really, that is also a training issue that we plan to cover in our training material.

Mrs McMAHON: That leads to my next question, having an interest in police training. What is the proposed training process not just for the high-risk missing person but also for the broad suite of powers and offences covered under this amendment bill? What does the QPS propose, generally speaking, across all these amendments for training?

Commissioner Stewart: It is an important consideration for the committee. I would ask Damien Powell to provide a response.

Det. Snr Sgt Powell: We have developed an online learning product that is currently in its final stages of completion. We have discussed it with the commissioner. That learning product will be required learning for all police officers from the rank of inspector down, given that inspectors are the ones required to approve the entry and approve the warrant process. It is going to be a required educational process for the staff.

Commissioner Stewart: This is basically the process that we now use for compulsory training across these types of amendments. Based on both your questions, it is also important to recognise that we understand the need for a balance in the powers that we are given by the legislation, by the parliament. Powers such as these, we believe, are very necessary in our bid to ensure the safety of the community more generally, particularly in the case of missing persons.

We also recognise that the accountability factor has to be part of our submission to you and to the proposed legislation. There will always need to be checks and balances in terms of what we do in these investigations, even though we know that they will probably only be used in, I think we worked out, about 10 cases a year. The potential for saving a life, the potential reduction in time for police investigators so that they can give that time to other not more important jobs but jobs that actually need their attention is critical for us moving forward.

As Senior Sergeant Damien Powell mentioned, the issue of missing persons is a growing factor in our society. For many, many reasons people decide that they want to drop out. We understand that, but reducing the amount of time that is necessary in trying to find them and reunite them with those

who care for them or care about them is an important factor moving forward. It is not only about the potential to save those one or two lives every year; it is also about ensuring that the trauma to the community is reduced wherever possible.

CHAIR: Steve, do you have any questions for the panel?

Mr ANDREW: Everyone has covered what I was going to go into. I am pretty happy with the responses.

Mr McDONALD: I am always interested in having to give notice to occupiers. The wording here is that 'a police officer must give notice unless the giving of that notice would frustrate or hinder the investigation'. Could you give some insight into when you might give a notice or when you might not give a notice?

Det. Snr Sgt Powell: I can give you an example of that. We had the case of a station owner of a large property in Central Queensland whose wife and the sole other occupant of the property was overseas in Germany at the time. It was very difficult to communicate given the time frames and the different time zones. In those circumstances it would be very difficult. Time is of the essence, given this person had gone missing on a large property, to conduct a search. Getting permission could be difficult. We need be able to expedite things in the interests of the safety of the missing person and the interests of the investigation.

Snr Sgt Carroll: That section you have talked about is mirrored in the crime scene powers—that is, giving notice to the occupier of their rights and our obligations. That is plausible for a missing person scene. It could be that the occupier may not be supportive of police entering the scene and it may in fact slow our investigation down. It may be that it is inappropriate at that point in time to give notice to the occupier. That can be given at a subsequent time. That is determined on a case-by-case basis.

Mr McDONALD: Will leaving a copy of the notice once the warrant was activated or executed satisfy the provisions of the legislation?

Snr Sgt Carroll: To me that makes common sense. It would depend on the circumstances of each case. Wherever practical we would want to hand that notice to the occupier.

CHAIR: In reality, don't police say when they knock on your door, 'Here's the notice; here's the warrant'?

Snr Sgt Carroll: Yes, similar to a search warrant.

Commissioner Stewart: Very much so. That would be the norm. It would be a very limited number of times when we could not actually serve the notice or at least have the notice ready when the search warrant is executed.

Mr McDONALD: We have a warrant issued by the Supreme Court or magistrate and another provision for something else. It seems duplicative to me.

Det. Snr Sgt Powell: If we are looking for a missing person, we do not have them to serve the notice on if we are searching their own premises.

CHAIR: Exactly. Is it not the case that you can leave the notice at the premises?

Commissioner Stewart: Absolutely.

Ms McMILLAN: Special thanks to the service for all the work that has gone into this bill. What constraints will there be on the use of the information that you obtain under these new powers?

Snr Sgt Carroll: When the information is obtained or if information is obtained by using the missing person powers—that information could be a suicide note, hardcopy banking statements, travel documents, for instance—we have a current legal obligation under chapter 21 of the Police Powers and Responsibilities Act to lodge that property at a police property point. If we retain that property for a period of time and we have not acted upon it, we have to return it to the lawful owner if they can lawfully possess it.

The term that is used in the Police Powers and Responsibilities Act at chapter 21 is 'relevant thing'. The information that we would seize under those warrants would be captured by the existing legislative safeguards. Those safeguards make reference to receipting the property, lodging it, storing it and returning the seized property. A member of the public can make their own order through a Magistrates Court for the return of the property if they are not happy with the police's retention of it under section 693 of the PPRA. That is the legislative scheme that we did not have to mirror or duplicate in relation to the information that we have. I could go on and mention the misuse of information if that is of any assistance to the committee.

Ms McMILLAN: It would be great if you could do that.

Snr Sgt Carroll: We currently have sufficient legislative safeguards in relation to police handling information and misusing that information. Under the Police Service Administration Act, which is an act that does a number of things including control the manner in which we discipline our employees, there are offences such as the improper disclosure of information. They are at parts 10.1 and 5AA.14. This is for a police officer potentially misusing the information. They carry penalties of a maximum of 100 penalty units.

We are subject to disciplinary action under the Police Service Administration Act which can range from dismissal, demotion, reprimand or a reduction in salary to receiving a fine of up to two penalty units. There is official corruption under the Criminal Code which has a maximum penalty of between seven and 14 years, depending on how the police officer is alleged to have misused that information. There are also computer hacking offences if they had used the police computer system to obtain that information unlawfully. Under the Criminal Code that has a maximum penalty of between two and 10 years.

It is something that the Police Service is very aware of. We are also guided by the privacy principles in terms of how we manage that information in a law enforcement environment. I think it is fair to say that we are not reinventing the wheel in terms of police having information, storing it and using it appropriately.

CHAIR: In relation to the training around the new powers for members of the service, where are the funds going to come from to allow that to occur?

Commissioner Stewart: We regularly deal with new legislation, new processes and new procedures within the organisation. That is seen as business as usual. Whilst the development of an online learning product, an OLP as we call it, would be part of the project for the new amendments or the new process or procedure, that is already covered off as business as usual. The critical issue then becomes the time that officers need to undertake the training. That is why we use online products: because they can do that anywhere in the state simply by engaging, through computer access or the police network, with those systems. It is certainly something that is taken into account in the overarching requirements of the Police Service and being able to provide our daily services to the community.

CHAIR: Ms Petrie, you said in your opening statement that the Parole Board was able to shorten the length of time for a person to bring back their parole application. Where in the legislation or in the amendments is that reflected?

Ms Petrie: The period is 12 months. At the point at which the board refuses parole they can ask the person to reapply within a shorter period. There is nothing to preclude the board giving permission for a reapplication for parole.

CHAIR: Does the legislation reflect that or not?

Ms Petrie: It says that it 'must not be more than 12 months'. There is a minimum requirement that it is 12 months, but there is nothing to preclude the board from setting a lesser period. That is the same at the moment. The provision in terms of the current six months—it is six months for all prisoners currently—does not set it out, but it does not preclude the board from saying, 'You are two months away from finishing a rehabilitation program. We would like you to reapply after that program is completed.' It is not specifically set down in the legislation that that can occur.

CHAIR: Do you think it would be a limitation on the Parole Board being able to do its job if there were an amendment to indicate the intent? I can understand changing it from six to 12 months. I can understand the Parole Board having the discretion to say that a prisoner can bring their application back in three months once they complete the course, but when it is not reflected in legislation is there a danger that that could be overlooked because it is left to the discretion of the board as it may be constituted at any particular time?

Ms Petrie: I am not sure about that. I will just say that it does say 'a prisoner must not make a further application in that time without the board's consent'. I think the implication is that the board can consent to a prisoner returning sooner. I am not sure what the implications would be at this point if we specifically set out that a prisoner could, with the board's consent, come back sooner than 12 or six months. Saying 'a further application made without the board's consent' certainly enables the board to give consent before that six- or 12-month period.

Mr McDONALD: Ms Petrie, I am wondering how many life sentence prisoners apply at every opportunity for parole and what the cost is of that. Is there any benefit in allowing them to do that in terms of their own rehabilitation?

Ms Petrie: To more frequently apply for parole—is that your question?

Mr McDONALD: I will break it down. How many life prisoners apply at each opportunity? What is the cost of that? Alternatively, is there some benefit in allowing that to occur?

Ms Petrie: I do not have a churn of prisoners who are frequently applying for parole. What I can say is that at 30 June 2018 there were 335 life sentence prisoners in custody. Of these, 78 were past their parole eligibility date. I cannot break down the individual cost of a parole application, but what I can say is that both Corrective Services and the Parole Board invest a great deal of time in parole applications, especially for prisoners such as life sentence prisoners who, as you can imagine, have committed very serious offences. A great deal of time and effort goes into making recommendations to the board and the board's consideration of those prisoners.

The issue with life sentence prisoners, particularly in the current period of time, is that some of them present a very great risk to the community. Some may never be released because of the risk they present. There is a cost to both the board and Corrective Services in having to deal with applications which have an incredibly low chance of being approved. As I said, if a life sentence prisoner appears to be genuinely nearing release for parole and the board feels that, the board would be able to say, 'We want you to return sooner than 12 months.' Was there a third part to that question?

Mr McDONALD: In your response you mentioned that there are some life prisoners who will never be released. Should they be informed that they will never be released and not to waste their time making an application for parole, or is there some other corrective or rehabilitative benefit in allowing them to apply and be knocked back?

Ms Petrie: Having parole eligibility and the ability to apply for parole for those prisoners would encourage them, I believe, to do what they can to rehabilitate. My understanding is that when the board goes through that process it would inform the prisoner of what it believes they need to demonstrate in order to be released on parole.

CHAIR: I turn to the evading police sections of the legislation. I want to float something here. Would it not be easier to change the legislation to move the onus to the owner of a car to prove they are not the driver? In the Drugs Misuse Act, if drugs are found in your car or on your premises you can be charged with being in possession and then it is up to you to come to court and prove on the balance of probabilities that those drugs found in your car or on your premises were not yours. Would that not be a simpler process than what has been proposed here?

Supt Pointon: There are a couple of other aspects too. It goes beyond that, because if you look at it they do not only have to prove they were not the driver. There is a whole heap of other information they have to provide which may identify who the driver was. It is not just a case of them saying, 'I wasn't the driver.' They need to say, 'These are the steps I have taken to identify who the driver of the vehicle was at that time.' It is really to assist police in their investigation of determining who was evading police at that particular point in time. Quite often it is not the owner of the vehicle but they will know who was driving or will have information that will lead to who the driver is. Currently what happens is that they will not provide that information. This really forces them to assist police in their investigation.

CHAIR: Wouldn't appearing before the court force them to—

Supt Pointon: That is another aspect. Yes, it does, but we are forever looking for ways to try to save the court time. If we can get that information before it gets to court then it saves court time. It may be the case that once we have that information the matter does not proceed to court. They may not know who had the vehicle so it may turn up negative. It does not waste court time, it does not waste extra investigation time and it does not waste prosecution time. It is trying to get to the nub of things as quickly as possible. If we go to court we make sure we have someone so that we can say, 'This is how we have come to get this person to bring them before the court.'

CHAIR: Has there been an increase in this type of offending behaviour in the last 12 months? You may or may not be able to help us with this at this stage.

Supt Pointon: If you look at the statistics there has been an increase. Whether in actual fact there has been an increase I do not know, because they may have been under-reported in the past. We have put a greater onus on pursuits. I think what has happened is that our officers are more compliant with reporting on matters of evades and pursuits. What I think we are really seeing—and there is an element of speculation here—is more accurate figures as time goes on. As time has gone on, the officers have become more familiar with the evade provisions and more familiar with the pursuit policy so we get a more accurate result. I think what we are seeing is a truer picture of where we are at with things. At the same time, I would speculate that risk-taking people are also aware of the evade provisions and pursuit policy so there has probably been a spike or an increase because of that too. If you look at the types of offenders that we often have, they are recidivist offenders. They do not want to get stopped and they think, 'I'm going to take the risk.'

Because of the increases in penalties for evasion—and initially they will not know what those penalties are because they are recidivist offenders—what I would like to think would happen is that once they have been caught if there is a sting in the tail for them hopefully they will think twice before they do it the next time. Because they are recidivist offenders they are the sorts of people who would think about reoffending.

Mr McDONALD: I think this is a great opportunity to provide some education to the broader community to know where your car is or else. If we can stop offenders getting the cars and see the owners of vehicles take a lot more care, I think that would be a great proactive initiative. Are there any plans afoot?

Supt Pointon: It is not something I have turned my mind to but it is something we can do. I know that between us and the department of transport we often have scenarios that we put onto our websites. There is an opportunity between the two of us to put some information out about that sort of thing to educate drivers. Truck drivers, for example, have to keep registers so they know where they are. You would like to think that most people know where their car is, but sometimes people do not know where their car is. If we can educate people and give them an opportunity to do the right thing in the first place, I would rather see people have that opportunity than find a sting in the tail for them.

Ms McMILLAN: Commissioner, the CMC report of 2011 was some seven years ago. Can you please tell the committee why it has taken the QPS this long to make legislative amendments regarding the evasion offence in the bill?

Commissioner Stewart: That is a very good question. I will pass that one to Superintendent Dale Pointon.

Supt Pointon: During that period of time, as you would probably be familiar, pursuits and evasion have been fairly topical. We have run a number of evaluations over that period of time looking at pursuits and, as a consequence, evasion. We have done comparisons with what has come out of those recommendations. There has been some crossover. Then there is the preparation of legislation, which takes a fair bit of time, and there was a change in government which meant that we had to restart the process. During that time we have put through a number of recommendations. It has probably been those ones where there has been more crossover with our evaluations where we have asked whether this is the way we want to go or not, and this is where we have got to at this point in time. With pursuits and evades in particular, it is an ongoing process. I can imagine that we will have more incremental changes as time goes on. You would like to think that in the future, with changes in technology, this will continue to change as well.

Mrs McMAHON: During your opening remarks in relation to evade police provisions the term 'reasonable excuse' piqued my interest insofar as what an ordinary person thinks is a reasonable excuse for not providing information versus what is legislatively considered a reasonable excuse. What sorts of excuses are we anticipating people to provide that would be considered a legislatively reasonable excuse versus an excuse?

Supt Pointon: One reasonable excuse might be that you turn up to a place and they might say, 'That description matches my car and that is my registration plate number but I was overseas at the time and I know that the car was locked away at the airport during that period.' As a consequence, you might say that that is a reasonable excuse and you probably further your investigation. If you really wanted to look into it, you might check with the airport corporation. You would check their ANPR device and then you would know that that vehicle was definitely there. That would seem to me that somebody has cloned their plate and they have put it on a similar car. That is probably one example.

Mrs McMAHON: Versus the reasonable excuses we are expecting to hear that are not going to be—

Supt Pointon: I am sure there will be lots of unreasonable excuses that will come along with it.

Mrs McMAHON: What consequences are we talking about for people who provide false information on the notice or who are deliberately misleading an investigation as to the identity of a driver?

Supt Pointon: I have to look at the provisions—and Ian might be able to answer this—but there is an offence for not providing a declaration at all.

Mrs McMAHON: That is within those 14 days?

Supt Pointon: Yes. These would be statutory declarations. There is the offence of providing a false statutory declaration. I just do not know what the—

Snr Sgt Carroll: I think section 205 of the Criminal Code talks about declarations that are required by statute in the Criminal Code, and there are various offences for supplying false declarations. Perhaps the new offence which the commissioner briefly discussed is aimed at addressing when an owner or a nominated person does not provide any declaration at all. They give us nothing. That will have a maximum penalty of 100 penalty units. It is seen very much as assisting police in getting at least a statutory declaration response to an evasion offence notice to commence an investigation.

If I can go to section 756 of the PPRA, which is the deeming provision, if an owner or nominated person does not provide a statutory declaration or it is not provided as required then they can be deemed to be the driver at the time. There are significant offences, as you know, for the offence of evading police. The deeming provision is relied upon when that declaration is not provided as required. The minimum penalty for evading police under section 754 is 50 penalty units or 50 days imprisonment served wholly in a corrective services facility. There is a mandatory two-year disqualification of their driver's licence. To answer your question, it is that deeming provision that we use when they have not provided sufficient information in their response to us.

Mrs McMAHON: I know that the high-risk missing person powers are to be reviewed by the CCC after five years. Has any consideration been made of a mechanism to review the impact of these evade provisions on the evade rates, any issues with people completing the notices and how often we are having to trigger those deeming provisions so we get an idea of whether this piece of legislation is having an impact on evade offences? Are we catching the people who are evading?

Commissioner Stewart: I think the best way of answering that is that obviously we will be evaluating the impact of these new provisions if the parliament is prepared to provide them to us. This goes partly also to Ms McMillan's question previously. We have not been sitting on our hands since we originally got the evade police provisions. We have had amendments on a number of occasions, and that is because we have continually reviewed the impact of what is occurring out there and, to some degree, where the gaps have appeared as a result of those new provisions. I think it was in 2012, 2013 and 2016 that we had further amendments to the evade police provisions, so this is part of that scheme that we continually look at what is effective in keeping the community safe and assisting us to make sure we are not wasting our time with investigations where we do not have the appropriate powers. This is what the scheme is about.

Mr McDONALD: I have tried to put into practical terms what this means for our community. It is always good to catch offenders, but the reality is that every time a vehicle is used and is reported stolen there may be insurance implications, and insurance is a big cost to our community. Could you give us some insight into what benefit it might be for the community in reducing insurance costs or certainly improving charging offenders and providing a clear-up that may benefit the community in general?

Commissioner Stewart: Thank you for that question, and it is a very important one. I will ask the other panel members if they wish to comment in a moment. I think primarily what we are trying to do is to stop people running from police. We want them to pull over and be accountable for their actions, whatever that may be. Sometimes, and this is the ridiculous nature of this, it may be as simple as someone having a number of points and they are worried that the police may be pulling them over to give them another ticket so they make a very, very foolish decision and take off and attempt to evade police, and sometimes do. Hopefully, this legislation will provide us with extra information that will help send a very clear message to the community that if you do so there are consequences.

When you look at some of the proportion of unsolved evade offences, we are probably running about half-half at the moment, maybe a little higher. The figures already for this year do show a little bit higher in unsolved, but sometimes there is a lag in solving some of these. I am really hopeful that, by closing some of these loopholes, we may be able to encourage people to do the right thing.

The major issue around this is safety—it is absolutely safety of our community, safety of our officers, safety of other emergency services workers. To my mind, hopefully downstream we can save people money in insurance costs and all of those things, but primarily it is still about the safety of the community and the safety of police. I would encourage any of my colleagues if they want to comment as well.

Supt Pointon: The only thing I could add is that if we can deter people from evading police or us having to pursue them, there are likely to be fewer traffic crashes, which flows straight on that there will be fewer claims on insurance. Hopefully it does change driver behaviour and hopefully there is some deterrent effect there with it.

Snr Sgt Carroll: The only thing I could add is that the legislation does exactly that. The amendments incorporating recommendation 6 of the CMC report, which was to increase the information required by the owner or nominated person in response to the evasion offence notice, adds

to the value of the response that we get and hopefully clears up the original offence. Recommendation 7 talks about limiting the use of the defence in the deeming provision when they are deemed to be the driver to provide police with information in their declaration, and also that new offence where they provide no response to us. Those three aspects of the bill go some way to hopefully assisting in clearing up evade offences and will have a flow-on effect to insurance claims.

Mrs McMAHON: A scenario has come to mind in relation to these evade police provisions. A reasonable excuse might be, 'My vehicle was stolen at the time,' and therefore the deeming provisions are not likely to be triggered. I am just worried—not that I dream of ways that you could rort the system—if someone evades police, for whatever reason, and then clearly regrets that particular decision. Many people are not aware that their vehicle has been stolen until police knock on their door and say, 'We've seen this car,' et cetera. You could have someone who evades police, dumps the vehicle, wanders home and then when police knock on their door they say, 'My vehicle's been stolen.' Obviously, there are evidentiary things that we go through in recovering a stolen vehicle, and people will always find a way to work around systems, but in that particular instance the deeming provisions initially are not going to particularly help us if they are fraudulently going to claim that their vehicle was stolen.

Commissioner Stewart: You are absolutely right but, ultimately, tying people down to a set of facts is very much part of these amendments that we are asking. They are the sorts of issues that we are trying to reduce so that police do not have very long and laborious investigations to establish whether it was really stolen or whether it is in fact a story that has been made up. Having the statutory declaration around that provides us—

Mrs McMAHON: Another offence.

Commissioner Stewart: Absolutely, and it locks them down to their claim, which can actually work in our favour in an investigation. Dale, is there anything else that you could add?

Supt Pointon: No, I think that is right. It really will come down to the investigation as to when they report it stolen and where they were at what time. That declaration will give us some of that information. I always think of the scenario where dad is thinking to himself, 'I know it wasn't me but I've got a feeling my son might have had my car,' and they do not want to tell you. This will oblige them to tell you, 'Yes, I think my son had my car and this is where I was at these times.' It is those sorts of things.

CHAIR: I would like to move on to searching persons to be transported for a breach of the peace. Would you be able to advise the committee of examples of possible breaches of the peace that would require the person to be transported by police?

Snr Sgt Carroll: I can give my own practical example in relation to the legislative amendment. I used to work at Oakey Police Station in the Darling Downs where quite often you work by yourself in a marked vehicle in uniform. I can remember an occasion where there was a disturbance outside a licenced premises. There was only one taxi in town, and the disturbance was over jumping in the taxi; there was a dispute over the cab. There was pushing and shoving so it fulfilled those elements of a breach of the peace or a potential breach of the peace in terms of being a violence or a threat of violence. I drove one of the warring parties a short distance away to their hotel—they were from out of town—and the other party caught the taxi. That was an example where I transported a person who I had effectively detained for a breach of the peace and drove them a short distance away to the local hotel.

This amendment is removing any doubt that they can search a person who has not been arrested per se but detained for a breach of the peace to be transported. It is not unusual for people to secrete things on their clothing and whatnot. It is a matter of safety that we be able to search them—for their safety, our safety and other people's safety. That is one example. There are different scenarios, I am sure, depending on the style of policing, city based policing. It is definitely something that our front-line police are seeking to get clarified.

CHAIR: They would not be being transported to a watch house or to a police station because of the low-range offending in most instances for breaches of the peace. It is like you described with the pushing and the shoving; it is not the actual next step which is a criminal offence.

Snr Sgt Carroll: Again, it is a case-by-case basis. It is an option available for police and it has been a longstanding option for police around the world to deal with a breach of the peace or a potential breach of the peace. In policing areas where they are resource limited, sometimes it is not the safest option for everyone to arrest someone and drive 30 minutes out of town to process them and be out of

town for a period of time or be out of your division or district. That is a case-by-case basis. I see it as a real positive. It is a positive for the courts because they are not processing persons for criminal matters. We have to trust our operational police that they apply those laws correctly.

CHAIR: Basically, it is to ensure the safety of the officer on the ground going about his duties. My understanding is that most of these breaches of the peace would not end up before the courts.

Snr Sgt Carroll: Correct.

Commissioner Stewart: Chair, you are right. If I could help, I think in many of these instances it is about trying to prevent a reoccurrence of an incident or an occurrence actually happening. If you leave all of the parties in one place, often that is exactly what happens. The dispute will flare up again. By removing that person and taking reasonable steps to protect the officers who are removing them by searching, that is the only reason for this legislation. It really clears it up for our people. It gives them a very clear power to do that.

Mrs McMAHON: Do we have some statistics on how many people are transported due to breach of the peace? How often is this going to be triggered or used—transporting for breach of the peace?

Commissioner Stewart: It is an interesting one and thank you for that question. I do not have statistics in front of me but if the committee would so like we could certainly attempt to find that. I am not sure whether we are going to be able to give you a very definitive view of this because I think it happens quite a bit more than people would expect. I am talking about instances where police in good faith have taken that step to try to separate the parties, or at least get someone closer to their home and give them a chance to work off some aggression and that sort of thing.

I think it probably happens very regularly, particularly in regional and rural communities. The record of that and any dispute over that does not occur because it is seen as a very logical and proper process. Obviously, we have had difficulties in terms of ensuring the coverage of our officers—the lawful coverage—and that is what this amendment is trying to do. I apologise that I cannot give you a very definitive view of how often this would occur, but I would suggest that it occurs very, very regularly right around the state.

Mrs McMAHON: I would imagine there is a different class when someone is in custody, whether it is under provisions of the different acts, whether it be a breach of the peace or whether it be for disorderly or other custodial matters?

Commissioner Stewart: Absolutely, quite different.

Snr Sgt Carroll: That is the whole idea of this legislation, because we do have a power to search persons who have been arrested, but in a breach of the peace we have not technically arrested them in accordance with the legislation so that is why we are seeking the amendment to make it clear that we have that power to search them when we are transporting them. We may attend a breach of the peace and have no intention of transporting them and we have no power to search them. We may deal with that breach of the peace and take it no further criminally. This amendment is about when we have to put them in our custody and drive them somewhere. It is not currently captured because they have not been arrested for an offence.

Mrs McMAHON: They are not arrested for breach of the peace?

Commissioner Stewart: No, and we may not take any form of further action other than to separate parties and let the situation cool down. If we look at the general direction of restorative justice principles, not taking action against someone who has made a stupid decision—a big verbal argument outside the local hotel or arguing with a taxidriver—but has not committed any other criminal offences and simply removing them from the area I think it is a very, very good option for our people to be able to consider but to do it lawfully and do it safely. That is where the option to search on transport comes into it.

CHAIR: This may be a double-barrelled question, so I apologise in advance. A new offence of assault or obstruct a civilian watch house officer is proposed to be introduced. It seems to separate the offence of assault or obstruct police into two separate offences. Then clause 33 inserts a new offence. I am trying to understand the reasoning behind the separation of that scenario.

Commissioner Stewart: Again, that is quite a proper question. I will ask Ian to respond to you.

Snr Sgt Carroll: There are two reasons for that. Currently section 790 of the PPRA is the offence provision for where a person assaults or obstructs a police officer in the execution of their duty. It is one section where police can charge with either the assault or if the person was to obstruct—and/or obstruct—it would be the same section number but obstructing. That has caused two issues for the Police Service. One is that we have found it hard to break down the occurrences for the individual

offences of assault as opposed to obstruct for our statistical analysis. Secondly, it makes it very clear for a person's criminal history which particular offence they have committed. In relation to the criminal history that is produced for a person who assaults or obstructs a police officer, it is clear that the person has committed that particular offence but the short title of the offence provision could be read by a person, for instance, who has committed the obstruct offence but they see the word 'assault' in the short title. It is really to make it very clear to a member of the public what offence they have committed when they receive a criminal history.

CHAIR: What about the issue in relation to civilian watch house officers?

Commissioner Stewart: That is probably an easier one to answer. At the moment, because we do not have a specific simple offence for civilian watch house keepers, offenders have to be charged with a criminal offence no matter how minor it might be. It might be simply a shove or a continued number of shoves. By creating the offence and the fact that we have quite a large number of AWHKs, as we call them—assistant watch house keepers—who do an absolutely brilliant job, this allows discretion and it allows a simpler offence rather than always having to prefer a criminal offence.

CHAIR: The bill will allow the police to take a person—these are my words—and detain a person who has been issued with a police banning notice from the scene for the purposes of having their photograph taken. Obviously this has been brought about because of things that have happened in the past and the difficulty, I am assuming, that was created in terms of police being able to do their job. Are you able to tell us what was happening previously and then how this legislation will help the officers on the ground do their job?

Snr Sgt Carroll: The reasoning behind the amendment came from our operational police particularly up north, where they use the police banning notice at licensed premises, safe night out precincts and events where alcohol is sold for consumption. At the moment, the powers in relation to a police banning notice allow police to take a photograph of the respondent who is subject to a police banning notice at a police vehicle, watch house or police station. Quite often our operational police have an appropriate police camera to take the respondent's photograph when they are dealing with a banning notice matter and they can take the photograph using their police iPad device. They can do that at the scene.

If for whatever reason they are being processed—for instance, they have been arrested for a public nuisance offence at a public licensed premises and they are being processed at a police station or watch house—they can take the photograph there, in accordance with the legislation. They have a power to transport them for the purpose of taking the photo because they have been arrested. However, there is no provision to transport a respondent subject to a police banning notice for the purpose of taking their photograph at a police vehicle, police station or watch house.

The scenario in which that might be required would be where police are responding urgently to a disturbance at a licensed premises and they do not have their iPad or police i-device to take a photograph there and then. It is really just clarifying—as I say, police up north in Cairns have brought it to our attention—where they may attend to a disturbance and they have not arrested the person for public nuisance but they want to have the person subject to a police banning notice, they want to take them to a police vehicle, station or watch house for the purpose of having photograph taken, attach it to a police banning notice and release the person. It is really just clarifying that power to transport.

CHAIR: The other issue I want clarification on is in relation to the reporting provisions if you have been charged under the Commonwealth legislation for reportable offences. It is my understanding that if you were charged under the Commonwealth act you were not required to comply with the legislation. Is my interpretation correct?

Snr Sgt Carroll: That is correct. Those 10 Commonwealth offences that are child sex related are to be included as a schedule 1 offence in our relevant Child Protection (Offender Reporting and Offender Prohibition Order) Act. They are not currently part of schedule 1. That was a result of a meeting in 2017 of the attorneys-general, justice ministers and police ministers as part of the Law, Crime and Community Safety Council. They were looking at ensuring all the respective states and territories have similar scheduled reporting offences for reportable child sex offenders. It was identified that Queensland did not have those 10 Commonwealth offences. It was recommended by the council that Queensland adopt the offences in schedule 1.

CHAIR: The next step obviously is to basically bring Queensland in line with other jurisdictions.

Snr Sgt Carroll: I am not sure whether all of the other states and jurisdictions were lacking as well in relation to those 10 Commonwealth offences or there were just several, but it is to have national consistency.

Mrs McMAHON: Would you like to comment on the Bar Association's concerns that young people who engage in consensual sexting may now be listed on the child protection register?

Commissioner Stewart: Generally children are not placed on the child protection register for offences involving children of a similar age and consensual sexual activity, which includes sexting. However, in circumstances where there is evidence of coercion or there is an imbalance of power, a child upon conviction may be placed on the child protection register. Obviously there will be a balance in this. Where it is necessary that provision will be available to the court, but it is to the courts, not to the police. Obviously we hope that the checks and balances through the court process will get the most appropriate outcome.

CHAIR: My next question relates to methods of service of notices to appear. I understand that the method of serving the notice is to be widened. It is proposed, from what I understand, to serve them by mail. Often the person may not be at the address. I am trying to understand the mechanism. Obviously with personal service it is a bit hard to say that you did not get it, but if it is posted in the mail—

Snr Sgt Carroll: The reasoning for that amendment is that the current provisions in the Police Powers and Responsibilities Act around service of a notice to appear for traffic offences allow for service by registered post. Otherwise a notice to appear has to be served personally, as you have alluded to. Service of notices to appear for traffic matters can be done by registered post, and the current restriction is that it has to be posted in a way provided for by way of sections 56(2) and (3), which means service at the person's registered address for their vehicle or their registered driver's licence address under section 56. That has presented some problems for police where the person has not updated their driver licence address or registered vehicle address within the 14 days but they have a more current address that we are aware of. They may have even provided that address subsequent to the traffic intercept. We are restricted technically in interpreting that section by only using the registered post address for their registered vehicle or their driver licence. Expanding it in this proposed way is just an option. It will give our traffic adjudicators and police who serve notices to appear for traffic matters the option of serving that notice to appear for the traffic matter by registered post at their most recent business address or residence address known to us. It is really trying to help the process and make sure they are aware of the complaint.

CHAIR: It is limited to that address. Say, for example, someone is represented. Is there currently provision for their representative to be served with the notice?

Snr Sgt Carroll: I would have to check, sir. That is my understanding.

CHAIR: I should know that too, by the way.

Snr Sgt Carroll: Can I take that—

CHAIR: That is okay. I was just seeking clarification about service by post. Senior Sergeant, you have explained that adequately for our purposes. Thank you.

Commissioner Stewart: I think it is important that this amendment will give us that extra ability rather than take away any previous ability. In other words, where we were limited to basically the recorded addresses, we can now take that matter further. It is better for the individual, the courts and the police.

CHAIR: You talk to the person on the side of the road. You ask them for their address. They give you their current address. Then you have to serve them at an old address where they no longer reside.

Commissioner Stewart: Exactly.

CHAIR: It makes sense. Thank you.

Supt Pointon: If you think about the flow-on from that with the first scenario where you are serving it to a place where they are no longer at, if you think about a traffic offence notice, that would usually end up in a court and be probably dealt with ex parte. It would go to SPER. There would be an enforcement order issued. When that person found out that there was an enforcement order, they would then be making an application to have it reversed. It would have to come back to the issuing agency. We can probably cut out all of that process by serving it on them in the first place and knowing that they are getting it. A whole heap of people who would have been involved would no longer be involved and, hopefully, the offender will get the notice right from the very beginning rather than getting to that very end stage of an enforcement order before they find out about it. That is probably one of the real benefits of it, I think.

CHAIR: Thank you.

Mrs McMAHON: Clause 29 refers to the issue of fail-to-appear warrants under the PPRA. Could you enlighten the committee about some of the issues around the difference between the fail-to-appear under a notice to appear and a fail-to-appear under the Bail Act and how that is occurring on arrest court days where the magistrates are almost enlarging somewhat ad hoc the notice to appear? I know that there are probably members of the committee who are not aware of those provisions of getting people to court. Could you explain what is happening currently and where this amendment seeks to close that loophole?

Snr Sgt Carroll: By way of background to the amendment in relation to that section, it has come at the request of the Chief Magistrate. He requested that the current provision be amended to as it is in the bill. The current provision allows a magistrate the option of issuing a fail-to-appear warrant for a person who fails to appear under the Police Powers and Responsibilities Act. That magistrate can issue that fail-to-appear warrant immediately or they can delay the issue of that fail-to-appear warrant.

In practice, a magistrate might do that. They might delay the issue of the fail-to-appear warrant if, for instance, the defendant is legally represented and they feel confident that that legal representative can bring the defendant before the court again and there will be no need to have that fail-to-appear warrant sent to police for enforcement. The option for that magistrate is to either issue the fail-to-appear warrant and, in that example that I gave, let it lie on the file and not be enforced by the police and have an understanding with the court, or with the defendant's legal representative, that they will be brought before him or her—the magistrate—and they will not need to execute that warrant or, as I said before, alternatively, not even issue it and just have that inquiry made by the courts or the person's legal representative.

There is an inconsistency in the approach by some magistrates in the court in terms of issuing it and letting it lie on the file or not issuing it and letting the inquiry be conducted. The request came to have a consistent procedure for the courts: if a magistrate were presented with a person appearing under the Police Powers and Responsibilities Act and that person had failed to appear then a warrant would be issued on every occasion and it will still be at the discretion of the court whether that fail-to-appear warrant would be sent to the police for enforcement or be allowed to lie on the file pending the location of the defendant. That is the reasoning behind the amendment.

In terms of background—and the superintendent might be able to expand on this for me—a person appearing before a Magistrates Court in Queensland can appear by way of a notice to appear, which is under the Police Powers and Responsibilities Act. A person commits an offence—for instance, public nuisance. The police may then not take them and process them through a watch house or hold them in a watch house. They may issue a notice to appear for the person to appear at a subsequent date and place at a Magistrates Court. That person is appearing under the Police Powers and Responsibilities Act and the notice to appear.

My understanding is that, from that point on, that person cannot have an extended notice to appear. If they have to reappear, it is always under the Bail Act. If that person then fails to appear after their first appearance, that is when the fail-to-appear warrant is issued under the Police Powers and Responsibilities Act, which is what we are talking about now. The alternative is where, for instance, a person might be charged with being a public nuisance, assaulting or obstructing police, or something more serious. They are arrested by the police, they are processed through a watch house and they may be released under the Bail Act on an undertaking. That is not released under the Police Powers and Responsibilities Act; they are released under the Bail Act. That person then appears in accordance with their bail undertaking to appear at a subsequent day and time at a court. That is under the Bail Act.

If a person fails to appear under the Bail Act, they commit a punishable offence. If a person fails to appear under the Police Powers and Responsibilities Act, they can be arrested and brought to court but they do not commit an offence as such. That is the basic difference between the two.

CHAIR: Ms Petrie, I want to come back to the Parole Board issues. Since the board has been instituted, do you know how many parole applications have been processed?

Ms Petrie: I do not have the number of parole applications that have been considered. I certainly have the number of parole suspensions and the number of parole cancellations that have been issued.

CHAIR: Would you mind telling the committee the information that you have there?

Ms Petrie: Sure. Since 3 July 2017, the number of prisoners admitted to custody on parole suspension is 2,563. The number of parole orders cancelled since 3 July 2017 to 30 June is 2,166. That 2,166 would be a subset in most cases of those 2,500-odd.

CHAIR: Yes. Earlier in your evidence you spoke about 300—I cannot remember the exact number of inmates—

Ms Petrie: Three hundred and thirty-five.

CHAIR:—serving life sentences. Do you know how many of those inmates are past their parole date applications?

Ms Petrie: Yes. Seventy-eight of those 335 are past their parole eligibility date.

CHAIR: Is there any mechanism whereby those people serving these sentences are alerted to that fact? Do we know what is behind the 78 not, for example, exercising their rights?

Ms Petrie: That is not to say that those 78 have not applied. Those 78 may well have applied on a number of occasions and been refused. Some of them have applied, been successful, been released to parole and then subsequently had their parole suspended or cancelled and are back in prison.

Mr McDONALD: Mr Chairman, when you asked that question you sparked my interest in another area. I understand that, for offenders who may be applying for parole, the victims can choose to be on a list to be notified when those offenders might make application for parole; is that correct?

Ms Petrie: We have a QCS victims register. A victim or family of the victim in certain circumstances can apply to be on the register. Certainly, a parole application is one of the notifications that is made to those people who are registered.

Mr McDONALD: That was part of the reason I asked the question earlier. When people make an application for parole and the victims are advised, obviously that causes a level of stress. In a short period of time we have the Bar Association coming. They expressed a concern that extending the time for people to make application for parole may affect their rehabilitation opportunities. Could you give us some insight into any benefit or respond to that issue that the Bar Association raised?

Ms Petrie: Benefit as to—

Mr McDONALD: Any benefit in terms of rehabilitation of the prisoner—

Ms Petrie: Certainly—

Mr McDONALD:—versus the anguish caused to the victim.

Ms Petrie: Sorry, the benefits to the prisoner being able to apply for parole?

Mr McDONALD: Yes. That is the assertion that the Bar Association has made—that by extending the time frame for them to be able to make application it may negatively impact on their rehabilitation

Ms Petrie: I think most of those concerns are negated by the fact that the board can consent to a lesser period of time for the person to reapply for parole. You have to remember, especially for life sentence prisoners, that many of these prisoners are not eligible for parole until 14 years, or some decades in fact. These are people who have been out of society for a significant period of time. The board may be given a parole application by someone and they may say, 'We believe that you are starting to demonstrate your rehabilitation, but before we approve your parole application we would like to ensure that you have a place to live on release, because we believe that it may be a risk factor for you to be released without a good accommodation plan.' They may say, 'Take three months to work out where you would live on release.' Corrective Services certainly assists with that, as do our re-entry providers. At that point the person would be able to come back with a new application that sets out very clearly a plan for how they would transition back into the community should the board approve their parole application. From that perspective, it certainly does not discourage people from rehabilitating as well as plan for their re-entry into the community if the board were so minded to grant approval.

Mr McDONALD: Thank you.

Mrs McMAHON: I refer to the PPRA powers in relation to storage devices. If police have reason to suspect that a storage device contains evidence of an offence, why are we not applying for a search warrant generally? In what circumstances is this power to be used over a general search warrant?

Snr Sgt Carroll: In a practical sense, at the moment sections 154 and 154A of the Police Powers and Responsibilities Act allow a police officer—under section 154—when they are applying for a search warrant to also seek from the issuing magistrate or judge an access information order for a storage device, which can be a computer or mobile phone. When the warrant is executed and, as part of their investigation, they locate a storage device that they cannot access—they cannot open it up—that order allows the police officer to require a specified person to provide the access information, if they have it. If they do not comply with that access order requirement, they may commit an offence.

Mrs McMAHON: That is the current provision?

Snr Sgt Carroll: That is the current practice. In relation to a crime scene warrant, if a crime scene is declared and the police go in to investigate and locate a storage device and the person who owns it and is in possession of it simply just refuses to provide the access information to it, there is no ability to make a requirement on that person to provide that access information. That is stymied, particularly in regard to the serious offences that the detectives are investigating. If a person who has possession of that storage device at a crime scene declines to provide the access information, police will then seize that or, alternatively, have our forensic examination unit come to the scene and try to open up that storage device. It is becoming more and more difficult with technology to open up these devices to the extent now that we are seeking that power as part of our crime scene provisions.

To hopefully answer your question, a crime scene warrant might be executed at a place and there is no need for a further search warrant. The crime scene warrant has two extra powers that a search warrant does not have: the power to examine things and the power to direct people from the scene. It really is a gap in the ability of our investigators to open up and use those storage devices as part of a crime scene investigation.

By way of comparison, a search warrant can be applied for for an offence, whereas a crime scene has a particular criminal threshold. They are usually quite serious offences. There is a bit of a disparity in the powers of a search warrant compared to a crime scene warrant in relation to accessing those storage devices.

Mrs McMAHON: If we are dealing with a crime scene, we probably have a few resources at the scene to obtain the search warrant to provide that information capability?

Snr Sgt Carroll: My understanding is that they are two separate warrants. The crime scene warrant is the primary warrant that is relied upon to seize that evidence. Once it is seized under a crime scene warrant, it does not become something else. That has been our understanding in the Police Service.

Commissioner Stewart: To add to that—and Ian alluded to this—in excluding people from a crime scene, which a search warrant cannot do but the crime scene warrant can, we reduce the chance of any interference with evidence. That is one of the primary reasons that we would like to close that gap through this amendment.

CHAIR: That concludes this briefing. Thank you, Commissioner and other Queensland Police Service and Queensland Corrective Services representatives. I thank our Parliamentary Service staff and our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. There will now be a short break with proceedings recommencing at 12.40. At that time the committee will hold a public hearing on the bill.

Commissioner Stewart: Thank you, sir. We thank you and the committee members for your attention today.

The committee adjourned at 12.32 pm.