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

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 19 JULY 2018

Brisbane

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The committee met at 12.50 pm.

CHAIR: Good afternoon. I declare open the public hearing 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 the Macalister; and Corrine McMillan, the member for Mansfield. With us on 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. Parliament has referred the bill to the Legal Affairs and Community Safety Committee for examination, with a reporting date of 9 August 2018.

The purpose of today's hearing is to hear evidence from stakeholders as part of the committee's inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee.

The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to 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. I ask everyone present to turn mobile phones off or to silent mode. The program for today has been published on the committee's web page. There are hard copies available from committee staff.

WILSON, Ms Elizabeth QC, Chair, Criminal Law Committee, Bar Association of Queensland

KEIM, Mr Stephen SC, Member, Criminal Law Committee, Bar Association of Queensland

CHAIR: I invite you to make an opening statement after which committee members may have some questions for you.

Ms Wilson: We thank the committee for issuing us the invitation to come down here and address matters that we have raised in our submission and for the opportunity that that brings us. We have provided a written submission. I will briefly address a number of points that we raise in that submission.

We have made comments about a number of matters or issues that the bill raises. The first you will see is the amendment to part 2 of the child protection act. The Bar Association is opposed to these provisions. We have on previous occasions expressed concern that young people who engage in consensual sexting are not adequately protected against offending child exploitation material laws and being listed on the register in Queensland. The application of laws intended to prevent sexual exploitation against children involved in relationships with other children of roughly their own age, without carefully considered adjustments to the regime imposed by those laws, causes many absurd results.

The point that we are wanting to make here is: go carefully, go slowly. These matters should be referred to the Law Reform Commission for inquiry or the Sentencing Advisory Council for inquiry. Do not just convict kids in the meantime. This is a three-dimensional kind of problem. Like a Rubik's cube, you move one bit and other issues arise. The message that we wish to convey is: go carefully, go cautiously and these matters should be referred to bodies that have those tools to be able to investigate.

Then we come to the amendment to the Corrective Services Act 2006. This is the situation where people convicted of offences of life imprisonment cannot make an application for parole on the Parole Board deciding that a person cannot make application for parole being extended from six months to

12 months. The association is very aware of the dangers associated with leaving people incarcerated potentially for life without regular reviews. We acknowledge the workload involved in such reviews, but the association would be concerned if a person who has already served more than 20 years in jail was not able to apply at least every six months. We take the opportunity in our response to this issue to talk about mandatory life imprisonment for murder. We make comments about the sentencing meeting the criminality of the offence.

In relation to part 7 of the bill, the amendment of the Police Powers and Responsibilities Act in relation to crime scenes, section 163B, there are two issues that we raise. The first is: what is a crime scene threshold offence? The second is that it may have application to a crime scene threshold offence that happened at another place. The issue that we have with the crime scene threshold offence is that it is a low bar. It is an indictable offence for which the maximum penalty is at least four years imprisonment. The example that we give is this. Stealing is regarded as a serious offence. There is a high maximum penalty, but this could have application for quite minor offences where very low sentences are usually given.

One of the ways that you might be able to deal with it—and we have heard reference to the QPS submission—is to make specific reference in a schedule perhaps to the offences that you are specifically concerned with and not just have everything for four years having the same application. That could mean that this provision could be used for relatively minor offences.

We have made reference to storage devices. We have serious reservations about investigating police being able to access information on a storage device located at a crime scene without first obtaining a search warrant, particularly we say given the low threshold that we have been talking about proposed for a crime scene threshold offence.

In terms of missing person scenes generally, our submission states that we cannot comment on the merits of this proposal because of the limited empirical research and data relating to missing people in Australia. We acknowledge and note the QPS submission in relation to this which refers to the Alberta provisions and such laws being applied in the Netherlands. We maintain our reservation. We suggest that this is an opportunity to gain real data in our own environment. Again, we would recommend a cautious approach being undertaken. Perhaps this is a matter that could go to the Law Reform Commission as well.

In relation to the missing person scenes of high-risk missing persons, we note that the association is of the view that the officer should be required to have probative evidence that a person is high risk before being able to establish a missing person scene under 179E or, alternatively, should be required to apply for a warrant before being able to establish any form of missing person scene.

That is a quick pencil sketch summary of our submission. If there is any matter that we can further assist you on, we would be pleased to answer any questions.

CHAIR: Stephen, do you wish to make a comment?

Mr Keim: Perhaps I might mention a hobbyhorse of mine. While the committee keeps on listening to me we will continue to raise it whenever it is vaguely relevant to the referrals that are coming to you. We urge the committee in the context of the parole issue but more generally to consider non-mandatory life—that is, non-mandatory sentences for murder. The defences for murder are mainly provocation and self-defence. They are technical. They apply by accident, in a sense, and they do not apply by accident. The battered wife syndrome is the example that is always trotted out, but it can occur in a number of different circumstances. You have a broad range of heinousness for murder.

Not only would the Parole Board be saved resources but also the Parole Board would receive much greater and better indication from sentencing judges, if the sentencing judge were actually considering what head sentence should be imposed—whether it is five years to serve six months or 48 years to serve 42 years—it would be of great assistance to the Parole Board if the court were actually considering what the right sentence is for the heinousness of this crime. It may be that if it is a very heinous crime, and people do get sentenced to a parole period of over 20 years. That would save the resources of the Parole Board because they would not just have to do it because that is the time that it kicks in. If a very short sentence is imposed—because although the defences do not apply it is not a heinous form of murder—that is going to save a lot of resources because that person will no longer be in prison.

That is something we would really ask the committee to think about, both on this reference and in terms of other considerations of criminal law issues, because we think it can make a huge difference. We think that the current mandatory provision imposes great injustice, because there will be people guilty of murder who should not serve anything like 20 years. I make mention of that.

The other thing is perhaps no-body no-parole. Not only was I here on behalf of the bar but also we heard some very coherent submissions made to the committee from people, some of whom are sitting in the back, that that was bad policy and bad legislation. I think that is already being seen. A lot of Parole Board resources are being chewed up, including in defending judicial review proceedings with regard to a person who is not even sentenced for murder but to, I think, assisting after the fact. You can look at the circumstances of that case, which is presently before the Supreme Court and judicial review hearings, as impossible to discern whether that person is saying, 'I have told you everything about where the body was and it just cannot be found.' The Parole Board is being forced to make decisions with regard to credibility in issues that it is just not suited to. That is another way in which the resources of the Parole Board are being used up, and I think getting rid of no-body no-parole would be a much better way of saving those resources. Those are the two things that I wanted to mention, thank you, Chair.

Mr LISTER: Thank you very much to Stephen and Elizabeth for appearing today. I am sorry I am not there in person; I am in my office in Stanthorpe. I want to ask you about the threshold offences and the Bar Association's concern about a watering down of the threshold. I asked the Police Commissioner about this earlier. His nominee, the senior sergeant, said that among the offences that they commonly find were previously beneath the threshold but would be within it this time are stalking, grooming of a child under the age of 16, unlawful striking and dangerous operation of a motor vehicle such as being intoxicated or through a high level of speeding. Those things seem to me to be fairly serious matters. Only the other day I was speaking to a constituent of mine about this bill. He made the rather pithy observation that the state government has just made it possible for landholders to have an authorised officer come onto their property without a warrant to check to see if they are clearing land unlawfully but there are—as he called them—do-gooders wringing their hands over someone who may be suspected of a crime of the kind that we were talking about just before, saying that that is not enough of a reason to declare a place a crime scene. If you contrast what you have said with the sort of opinion that I have heard from my constituent, what would you say?

Ms Wilson: I will take the first answer and I am sure Stephen will take up the ball behind me. I think that you have to be very careful about putting bland limits or saying 'a maximum penalty of at least four years imprisonment'. If there is mischief that you are trying to be able to rectify, the legislators should look at what they are actually trying to do. By just putting a ceiling at four years and saying, 'We have at least four years,' you are going to be picking up a lot of offences that should not be included below that ceiling. Think about what you are wanting to do and what is the mischief that you are trying to rectify. Perhaps, as I stated in my opening remarks, because of the maximum sentence, there might be provisions that you think could go into the regulations. That could be monitored as well. Because it is in the regulations, that can be amended as you find what works and what does not work. Stephen?

Mr Keim: Mr Lister, I think there are two answers to your question. First, as Liz was just mentioning, what we have suggested is a procedural response to the concern that we see, which is going to be that either in regulations or in a schedule to the act you mention those specific offences that are of concern and you avoid picking up a whole lot of other offences which, up to this point in time, have not given any rise to a cause for a crime scene.

The second answer is perhaps more specific and less informed. Of the list that you have provided, I think some of those would justify obtaining a warrant to create a crime scene. I am not sure about unlawful striking. I lack expertise on it. If it is not assault causing bodily harm then it is probably not that serious, but that depends obviously on what was charged or what is intended to be charged. If it is unlawful striking and it is a very serious version of it, one imagines that you have a victim who has suffered some kind of bodily harm, which probably qualifies otherwise. However, I am much more uninformed when I am talking about the specifics of it. With regard to the procedural answer to your question, it is very clear: if there are specific offences that, as a matter of evidence and practice, justify the imposition of a crime scene, that can be dealt with by a schedule or in regulations.

Mr LISTER: Thank you for that. I will pass on your words. I look forward to seeing you both at the next AgForce protest when they are remonstrating against the right of entry without a warrant on farming properties.

CHAIR: My question relates to the amendments to the Corrective Services Act. Some of the evidence that we have received would indicate that, even though the legislation will be amended to say that you cannot bring an application earlier than 12 months, the Parole Board as it exists has the ability, for example, to say to someone who may just have a couple of issues that need to be resolved—more administrative than issues of rehabilitation—'You can sort that out and bring your application as soon as you have it resolved or you can come back in three months' or whatever. My concern about the

legislation as it stands is that it does not seem to reflect that. For a layperson or even, for that matter, a lawyer reading the amendments—and correct me if I am wrong—it would not necessarily mean that the person can actually do what I have hypothetically summarised.

Ms Wilson: The situation that you are talking about is where perhaps an administrative error occurred. Perhaps there is information that they know that they have, but it was not included and it does not warrant going back into never-never land or to the six months and coming back at a convenient time when this can be done, because we are looking favourably at this. We are quite favourable with this. Without putting my microscope over the legislation, I think you are correct: if there are powers that these bodies should have, how they should be utilised should be open and transparent and in legislation for all to see.

Mr Keim: I cannot recall what the precise section says, but the problem as you describe it is probably fairly easy to solve in drafting terms. Whether you make a policy decision that it be six months or 12 months, which is what we have addressed in the submission, you simply say that a person serving a life sentence will not be able to make an application more frequently than six months or 12 months—as you decide—unless the Parole Board indicates otherwise or unless the Parole Board grants leave at the conclusion of the existing application or whatever. I think in those terms that can be catered for fairly easily in the drafting.

In a sense, my concern is probably for the people who will never get out. If we form the view as a society that your crime is so heinous or your personality issues are so bad that it is likely that you will never get parole, there is something terrible about that person never being reviewed because mistakes could be made. The legislation, of course, is not saying that they never be reviewed but that they do not get reviewed more frequently than 12 months. It is easy to think that this person will never get out and, therefore, why should we waste all these resources just looking at it again every six months? However, I think in a sense they are the most important cases and they should be regularly reviewed. I have real concern about saying, 'You have to wait for another 12 months before you can even come back and state your case again.' Twelve months is a lot longer when you are in prison and you have already been in prison for 28 years than it is for us going through our everyday work. We have concern not only about the cases that almost got across the line in the mind of the Parole Board but also those cases that are much more difficult to succeed. However, when you throw away the key you need to review things regularly, in my view.

Ms Wilson: The process of six months allows a checking mechanism for the cases that Stephen mentioned, that is, the ones that prime facie the view is 'never to be released'. There should be a checking mechanism. There should be a constant checking mechanism, so we do not have it just go off to where no-one can see it or no-one sees it; it is there, but no-one sees it.

Mr McDONALD: On the matter of the six to 12 months, some victims choose to be listed on a register to be informed when parole applications may come about. I understand the position that the association has taken. However, I am trying to balance the victim's concern about an ongoing application for parole and the angst that that may cause the victim versus any perceived opportunity for rehabilitation by narrowing it from 12 to six months.

Ms Wilson: Your question is actually one more of policy. It really needs to be considered about the policy and how the government wishes to deal with this. There is always a balancing act. For a victim who puts themselves on the register to be contacted when any parole application will be made, that will happen in 12 months. If it happens at six months, it increases that from once a year to twice a year. That is a factor that should be taken into account.

Mr Keim: I will not add anything to that.

CHAIR: There are a couple more questions. I ask the people I have delayed to bear with the committee.

Mrs McMAHON: Thank you very much for coming. I imagine the question I am going to ask might be quite relevant to others who will be presenting afterwards. While the commissioner and his team were here, I asked them about the child protection amendments, specifically in relation to the issue you raised and the concern you expressed that young people engaging in consensual sexting are not adequately protected.

I did get to ask the commissioner about this, and he was able to provide a written response to your submission. I hope I was clear—and forgive me, because Commonwealth law is not my strong point. He stated that when it is consensual between two like aged participants and there was an absence of coercion, control or any other kind of power—I guess the usual domestic elements—they would not be subject to going on the register. That is his response as I understood it. Are you happy with the response that the QPS has provided to your concerns on this issue?

Ms Wilson: Is that a discretionary view that is taken, that in certain circumstances they would not go onto the register or—

Mrs McMAHON: The way it was explained to me was that it was a legislative requirement or a court based determination.

Mr Keim: The response is fairly brief in the QPS submission. It talks about the Commonwealth Criminal Code offences that are of concern and lists the sections. It does not seem to address that particular point that it is discretionary with regard to the Commonwealth offences.

Our concern is expressed in this way: it needs to be sorted out legislatively. Therefore, any addition of the net should not apply to children until the proper exceptions are written into that legislation as well as the existing legislation. We understand that at the moment there is a degree of discretion being exercised—that is, the QPS is aware of the problem that we are addressing. You might express it as there being an operational solution to it.

Mrs McMAHON: In looking at the response, I note that it is contained in the Office of the Director of Public Prosecutions guidelines about prosecutions. My apologies: it is not a legislative requirement but more a policy application.

Ms Wilson: No, and that is important. We can see in their response to our submission the paragraphs that are applicable. There is that paragraph which refers to the guidelines and the one above that which refers to protections for children which 'excludes entry on the register when the offender, as a child, committed a single offence of possessing or publishing child pornography'. That is limiting but there would be circumstances where the application will be far wider that fit the circumstances of our submission, and there we look at the guidelines of the Office of the DPP. You can see in the next paragraph it is stated—

However, in circumstances where there is evidence of coercion, grooming or there is an imbalance of power, a child, upon conviction and sentence, may be placed on the child protection register.

I think that is where they are getting their answer from. Being contained in the guidelines is not, as I am talking about, being open and transparent in legislation—and easy for everyone to have a look at to see that this is what happens.

Mr Keim: What is being said now, that restraint is being shown with regard to charging people, has not been the case. In recent years a child would be produced in a line-up outside a nightclub mainly searching for evidence of drug taking. They will be asked to consensually allow the police officer to look at their mobile phone. If they find a photograph of that person's girlfriend on the phone, the person has been charged with criminal sexting. Any degree of maturity and discretion that has been shown by the QPS at this point in time was not shown as recently as perhaps 12 months ago.

It is a really important problem. We would very strongly recommend that it be looked at thoroughly by either the Law Reform Commission or the Sentencing Advisory Council. In fact, the Sentencing Advisory Council has raised these issues in its existing reports, but I do not think it is prepared to report specifically looking at this issue.

CHAIR: That brings to a conclusion this part of the hearing. Thank you for your written submission and for presenting to the committee.

Mr Keim: It is always a pleasure, Chair.

DOCWRA, Mr Mark, Deputy Director, Legal, Crime and Corruption Commission

HOLLIDAY, Ms Deborah, Acting Chairperson, Crime and Corruption Commission

CHAIR: Welcome. Ms Holliday, I invite you to make an opening statement after which committee members may ask some questions. We are running about 20 minutes behind so I will extend the liberty if you require it of the 20 minutes that was allocated.

Ms Holliday: Thank you, Chair. It will depend on the questions.

CHAIR: Yes, it will.

Ms Holliday: I thank the committee for the opportunity to appear and give evidence on this bill. You have before you the Crime and Corruption Commission submission. I will firstly speak to the importance of the bill in strengthening the evade police provisions under the Police Powers and Responsibilities Act by implementing the recommendations of the then Crime and Misconduct Commission report *An alternative to pursuit: a review of the evade police provisions*.

In 2006 the evade police provisions were introduced to support the restrictive pursuit policy that was introduced at around the same time. It was with the specific aim of reducing the need for police to commence a pursuit even when a pursuit was permitted by police. The provisions provide police with powers to identify and prosecute the driver after the fact and so avoid a potentially dangerous pursuit. These powers were at the time the first of their kind in Australia.

In June 2011 the then CMC delivered that alternative to pursuit report detailing a review of the evade police provisions. The report made 13 recommendations which primarily aimed to address legislative weakness and improve Queensland Police Service policy and training. Recommendations 3 and 4 of the report were policy and training recommendations which were addressed all the way back in 2011 through the provision of new restrictive Queensland Police Service policies and training practices.

Recommendation 5 has also been met through the provision of annual monitoring reports of police pursuit data. The CCC has received these reports for 2014, 2015 and 2016. The recommendation has been further met through the publication of police pursuit data in the government open data portal and in the QPS Annual Statistical Review.

This bill was introduced to parliament on 4 June 2018 and includes clauses 35 to 42 which address recommendations 1, 2, 6, 7, 8, 12 and 13 of the 2011 CMC report. As indicated in the written submission of the CCC, it supports the inclusion of clauses 35 to 42 and agrees that they adequately address the recommendations of the 2011 CMC report that were outstanding.

The need for the strengthening of the provisions by the insertion of clauses 35 to 42 is highlighted by the information that is contained in the Queensland Police Service brief to the committee on the Police Powers and Responsibilities and Other Legislation Amendment Bill at paragraph 20, in particular that the percentage of unsolved police offences has continued to rise since the 2011 CMC report—it stood at 63 per cent in 2017—and that the offences remained unsolved primarily due to police not being able to identify the offending driver. This bill addresses that issue.

The insertion of clauses 35 to 42, in implementing the recommendations of the 2011 CMC report, will strengthen the provisions and assist in bringing to justice those persons who evade police by failing to stop their vehicle as soon as reasonably practicable at the direction of a police officer. I specifically mention recommendation 7 of the CMC report which has been addressed in clause 41. It amends section 756 of the Police Powers and Responsibilities Act to preclude the owner of the vehicle or nominated person from relying on evidence in their defence in subsection (4) that is information that the person was required to include in the statutory declaration but did not provide.

The bill includes a natural justice safeguard provision that was not part of recommendation 7 of the 2011 CMC report—namely, there is the residual discretion in the court to grant leave to the person to be able to rely on that information. It is noted that the mandatory penalties within the act were introduced post the 2011 CMC report, making such a natural justice safeguard supported.

The CCC supports the exclusion of a separate clause to address recommendation 9 as it was deemed that the changes addressing recommendations 6 and 7 adequately covered the issue and, as such, that additional clause was not necessary. Further, in relation to the exclusion of clauses to specifically address recommendation 10 relating to definitions of what constitutes an evade police offence and recommendation 11 relating to the power to seize or move a vehicle involved in an evade police offence, the CCC is satisfied that those concerns which led to the making of those recommendations are adequately addressed in other areas of the act. Therefore, in conclusion, the passing of this bill will finalise all of the recommendations of the alternative to pursuit report.

I turn to the insertion of the new chapter 7, part 3A in the bill. The CCC supports the introduction of police entry and search powers to investigate the disappearance of high-risk missing persons. Evidence gained through the use of these powers may assist the CCC in more effectively performing hearing powers.

As detailed in clause 44, the CCC is willing to accept responsibility for the review of chapter 7, part 3A relating to missing persons and the delivery of a report for tabling in the Legislative Assembly. The report will be prepared in consultation with the minister and conducted as soon as practicable after the end of year 5 of the introduction of the chapter. It also provides a safeguard. The CCC welcomes this responsibility as an appropriate part of its research function.

The CCC further supports the proposed amendments to expand the offences falling within controlled activities and controlled offences. In reading the CCC submission in relation to the accessing of information orders to storage devices seized within a crime scene warrant, that is also supported by the CCC. It allows stored devices to be accessed but with appropriate judicial oversight. I am happy to respond to questions that the committee has.

CHAIR: James, do you have any questions?

Mr LISTER: Thank you, Mr Chair. There are no questions from me.

CHAIR: Steve, do you have any questions?

Mr ANDREW: Thank you, Mr Chair. I am happy with that too.

Mr McDONALD: I appreciate your appearance and the submissions you have made. In regard to the length of time, the seven years, it has taken for the recommendations for the evade police provisions to be implemented, are there any other matters that the CCC might recommend being included in these amendments at this time?

Ms Holliday: The CCC is satisfied that the concerns that brought about the recommendations in 2011 are still current to date, such that the implementation of the recommendations from 2011 bring to conclusion what is of concern in relation to the legislation.

Ms McMILLAN: I have a question in relation to how the QPS can support the review proposed by you. What sort of information could the QPS keep in terms of assisting you with that review?

Ms Holliday: It is not new to the QPS to assist the CCC in relation to a legislative review function. Indeed, we are completing one at the moment in relation to the terrorism legislation in Queensland. There is always interrelationship between the QPS and the CCC in terms of that monitoring function and what is required, and that will take place if and when the act is put into place.

It is that core statistical data and, hopefully, the decrease in unsolved evade police cases that will mark itself in the review in five years time, and it will demonstrate that the provisions are performing their function and that they are achieving the purpose of the title of the provision—not evading police. Again, it could flow on with the pursuits and to ensure that you have the pursuits not being implemented by police because this legislation is working.

Mrs McMAHON: Submissions from the Bar Association of Queensland and the Queensland Law Society considered the bill's proposal to allow police to access information on storage devices to be unjustified. Your submission from the CCC supports the amendments in the bill, noting the included appropriate judicial oversight. Would you like to elaborate on your position on the proposed amendments regarding accessing information on storage devices? How would you address those concerns that have been raised by those stakeholders?

Ms Holliday: The CCC, as it says in its submission, has a limited role in terms of making contributions to that provision, but it is the natural justice safeguards that are within the legislation that will ensure the provision is used as it is intended. That is really what it comes down to. The frustrations which are evident in the QPS submissions in response, in terms of not currently being able to access data in storage devices, are such that there is a necessity for amendment, and the safeguards that have been put in place in the legislation are such that it will not be abused.

Mrs McMAHON: So the CCC has confidence in the safeguards that are proposed?

Ms Holliday: That is right.

Mrs McMAHON: Thank you. I have no further questions.

CHAIR: There being no further questions, unless there is something you would like to add, I thank you for your written submissions and for coming today. Again, I apologise for having to make you wait.

Ms Holliday: Thank you.

GREENWOOD, Ms Kate, Barrister, Aboriginal and Torres Strait Islander Legal Service

CHAIR: Good afternoon. I invite you to make an opening statement. After that, the committee members may have some questions for you.

Ms Greenwood: Thank you. I represent the Aboriginal and Torres Strait Islander Legal Service. We are an organisation that provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide legal assistance and representation in criminal law, civil law and family law, including child protection representation. We are also funded by the Commonwealth to perform a statewide role in the key areas of law and policy reform, community legal education and monitoring Aboriginal and Torres Strait Islander deaths in custody. We have four decades of experience in practice, and the submissions we make are informed by those experiences.

ATSILS had the opportunity to provide some initial input to the police before the drafting of this legislation. The primary concerns that we raised were to do with the proposed section to remove the discretion of a court to extend a notice to appear before the first appearance date. We also commented on removing the necessity to prove instruments of delegation for police transport and state penalty prosecutions. We also commented on allowing a notice to appear for traffic appearances to be served at an address that police identify as being a relevant address.

Coming out of the other submissions made by the Bar Association and the Queensland Law Society, our experiences often intersect. I can also assist the committee with some information about the likely effect of the fail-to-stop provisions, especially as most of the fail-to-stop charges occur in remote and regional areas and there are particular concerns around what happens. Boiling it down to its basics, our submission is that that provision is based on Brisbane conditions and it would operate quite unfairly in remote and regional areas, in particular in remote and regional communities. I do not know which topic you would prefer me to start with.

CHAIR: Whatever you choose. You may find the questions are not in the order of the suggested amendments in the explanatory notes or the bill. Do you want us to ask questions and maybe that would help?

Ms Greenwood: I might start with the simpler ones, the notice to appear ones, which are fairly discrete and easy. The other issues probably open up a wider discussion.

CHAIR: Okay.

Ms Greenwood: I will start with the notice to appear for traffic offences. I am now a policy officer and a community legal education officer. I worked with ATSILS as a criminal law practitioner up north in Cairns, Townsville and the surrounding communities so I am familiar with the issues which have arisen over notices for traffic offences. As part of my work, I had a number of charges discontinued by the prosecution. It is often difficult to prove a negative when clients say, 'I really did not receive a letter,' even though they were, for example, checking regularly for offers of employment or other issues, so they could say with a fair amount of certainty that they were checking. It is very hard to prove a negative. However, on at least three occasions we were able to pinpoint what had happened. On one occasion, with one woman the nature of her work meant she had these constant shifts and it was a big deal to get one day off to do the moving house, go into the department of transport to change her address and all of that.

Based on the experience of the clients for whom we could pinpoint when the address was changed with a level of certainty and when the notices did or did not appear, there appears to be a time lag in the department of main roads updating addresses. Our experience is that it is probably quite likely that the police are expressing a level of frustration with notices not reaching the people that they are intended for. The assumption that it is due to clients not updating their addresses is probably wrong.

What occurs is that, if any of us fills out a form for our driver's licence, we nominate both the address that we live at and also a suitable postal address. Many people have itinerant lifestyles—for example, they work in fruit picking, they work out on the trawlers or they are fly-in fly-out. There are all sorts of people who do not reside normally at their residential address so they will nominate a post-office box, for example, as a reliable address or they will nominate a family member who is at home all of the time and can receive this mail. Any notification of importance will never be sent to that address because the presumptions of delivery under I think the Acts Interpretation Act require that it be sent to the place of residence. People can make every arrangement under the sun to try to make sure that the mail reaches them, but for the important ones where they are actually going to lose their licence over it, where they need to exercise an option to apply for a special hardship order—all of that will go to what is meant to be a residence address. If they have moved, that has probably not been reflected quickly enough in the records of the department of main roads.

CHAIR: Ms Greenwood, I am sorry to pull you up, but we are running about 20 minutes behind and we are currently running out of time. I understand your submission in relation to the addresses. One of the things I am interested in is your comments in relation to the act amending the delegation. Why do you believe that would disadvantage the people you represent?

Ms Greenwood: Because it properly forms part of the elements to prove in that offence that there was a properly delegated officer who was performing that function. The purpose of having a properly delegated officer is so that it is someone who has been trained, who will not be bouncing the detector off metal road signs, for example, who will not be operating it near an airport, although the newer technology is better. An offence can have such serious consequences that someone could lose their licence, lose their means of livelihood or lose their means of paying off their mortgage. In communities up north, it could affect accessing health care, accessing food, accessing basic services, responding to Centrelink appointments et cetera. The offence should be properly proved. It does not take that much. The Queensland Court of Appeal went to great lengths to explain why it does not take that much and why it is an important factor to do properly. That is probably the briefest of all my submissions.

Mrs McMAHON: One of the fundamental components of this bill is the evade police provisions. In your submission you touched on how the provisions may work fine in an urban setting. Could you enlighten the committee as to the physical and practical impacts in the communities that you believe will be adversely affected by this provision?

Ms Greenwood: I can provide you with a few good examples. Just by way of setting that scene, the original Crime and Misconduct Committee report made several quite valid comments. First, quite often the person police are seeking to stop is not the owner of the car. The most common place where this offence is charged is in rural and remote communities. It is used primarily to pull over drivers for what the Crime and Misconduct Commission described as relatively minor matters. The then CMC noted that in only one-third of the cases was it actually a serious crime such that a pursuit would be justified which they called stealing cars but unlawful use of a motor vehicle, dangerous driving—I think those were the two main examples that they used.

The vast majority of these situations where police start to follow a car are for relatively minor offences. As has probably already been canvassed, a fail-to-stop charge gets the driver into much more trouble than they were in originally. The difficulty is that this deeming of an owner to be the driver at the time and the requirement for the owner to supply some sort of description to the police are not unreasonable; however, the timing is unreasonable and I would also note for the committee that it is also an offence for an owner of a car if the declaration does not comply with the expanded requirements.

To give an example, I once got a call from the owner of a car in a remote community. The police had just come to his house and told him that they were going to crush his car. The reason they were going to crush his car was that a disqualified driver had driven disqualified four times—four different cars, I might add, when I did the research—and because it was his bad luck that on the fourth occasion it was his car being driven, his car was going to be impounded and then crushed. There is good news to this: after a lot of work from my service that did not happen. The owner's daughter was at the time dating a man who was the disqualified driver. My client, for his work, travelled frequently out of the community for extended periods and came back. In that community it was quite common for relatives and friends to borrow the car because of the distances, the expense of food and the need to get services in Cairns, which is the closest city. There is a complicated arrangement that happens which the community solves between themselves in terms of the way these cars are shared around. What he found out later that he did not know at the time was that the daughter's then boyfriend had been charged with disqualified driving. He had scooted through to Rockhampton, had been found and was convicted there, and then the order was issued from Rockhampton for the impounding of the car. As I said, after a great deal of representation, a great deal of reasonableness all round, that car was saved from that fate.

Had he been asked straightaway who was the driver of that car he would have said, 'I can't tell you. I was out of the community at the time. There are certain people that I do allow to use the car. I have asked them'—and the daughter did not know at that time either—'if they were driving the car and they said no.' How much further can you take that? A danger would be that if his response was considered vague or unsatisfactory he could end up being deemed to be the driver of the car and likely to be convicted of not the fail-to-stop, which is section 60 of the PPRA which carries a fine, but section 754, which you have already heard has been designed by the police to either impose harsh community order consequences or harsh actual time in custody consequences. There has been some discussion of that provision by Justice Henry in the Cairns Supreme Court, but for the moment that is the intent of the legislation.

Mrs McMAHON: If I may, looking at the new legislation, the police must personally serve the evasion notice on the owner, so it is not a matter of, 'I was out of the community for 14 days. Therefore I didn't receive the notice and therefore not filled it in in time.' It says that 14 days starts from the personal service of that notice. Then there are provisions within 755A: if the driver is unsure of who was actually driving at the time there is certain information that they must provide even if it might be multiple people. Does that not cover that particular eventuality?

Ms Greenwood: Provided that saying, 'I really don't know. There are multiple people and that is as far as I can take it,' is not considered an inadequate response.

Mrs McMAHON: I notice it does provide for the owner, if they do not know where the driver was when it happened, to provide the usual location, the names and addresses of possible potential drivers and that is all that is required to be put on the notice.

Ms Greenwood: To use another example of a fail-to-stop that I defended in Yarrabah, there was a car parked in the street. Everybody in the community knows where the keys are kept and relatives quite regularly stop in and pick it up and take it away. Because the owner of the car is a disqualified driver, he never drives it. There were some issues around him describing to police, 'This is the arrangement. This is what happens.' Again, provided that sort of description would be considered a reasonable description then there are no issues.

CHAIR: I am sorry to do this to you, because I know that your representation of the people you represent is very important and the committee is also concerned about some of your reservations about how the legislation this parliament passes impacts on your communities, but we have run out of time. If you could wind it up as we need to move on to the Law Society.

Ms Greenwood: I am happy to do that. The only remaining point on that is that the original CMC report recommended that the appropriate penalty for an offence of failure to supply the name of a driver in a way that was considered adequate would be an obstruct. Even if the position has changed, my submission is that that would be appropriately an obstruct.

The only other provision—they all have an impact—with the greatest impact is notices to appear and simply leaving judicial discretion in place when there is a variety of reasons someone is not aware and does not attend court. In our view it is unnecessary to remove judicial discretion where judicial discretion currently exists. We have also seen the Queensland Law Society submission and agree with many of the points as being sound. Thank you.

CHAIR: I would like to thank you for your time and your patience with the committee today.

Ms Greenwood: My pleasure, Chair.

DE SARAM, Ms Binari, Legal Policy Manager, Queensland Law Society

POTTS, Mr Bill, Deputy President, Queensland Law Society

CHAIR: I invite the Queensland Law Society to make an opening statement.

Mr Potts: I commence by reminding those who perhaps have not heard submissions from the Queensland Law Society that it is an independent, apolitical representative body and it is the peak professional body for the state's legal practitioners, over some 13,000 whom we represent, educate and support.

We broadly are very supportive of the measures to preserve and enhance community safety, and I would like to acknowledge the important role of both our hardworking police officers and the CCC, its research division in particular. I note that we were consulted in the preparation of some of the legislation. Perhaps like this committee, not everything we suggest is accepted but all we can do is consult and do what we can. We consider that all legislative reform must have a strong foundation in cogent evidence based data and respect the fundamental legislative principles and principles of good legislation as defined by the Office of the Queensland Parliamentary Counsel.

I do not intend to speak any further with respect to the submissions—you have them—but to join, if I can, these things. Firstly, I had the pleasure of listening to both Ms Wilson and Mr Keim give their evidence before this committee, and where their submissions differ from ours we adopt and accept them and, indeed, I would like to hop on the wooden horse that Mr Keim attempted to drive round this committee. It has been a bugbear of mine for a very long time that, like other states, we should adopt in Queensland a sliding scale for murder sentences. Whilst all human life is precious, the reality is that there is a significant difference in heinousness from, for example, a paid hitman all the way down to someone who takes the life of their partner of 70 years who is demented and they are doing an act of mercy. Why should there be the same penalty? We think that would assist the hardworking people at the Parole Board.

Another bugbear which I like to push—and perhaps this is for Mr Lister down there in Stanthorpe trying not to be a do-gooder—is that we are concerned significantly about the use of the breach of the peace legislation and people being detained. It is the experience, I suspect, of every criminal law practitioner—and I have had some little experience in that area—that, whilst we hear from the Police Commissioner and his informed officers here in the quietude of this particular room and it is all well meaning and intentioned, more often than not you are dealing with a first-year constable on the ground facing quite often overwhelming circumstances so we have to have legislation that is clear that guides them in the use of the law. Otherwise, significant concerns will arise. For example, Mr Lister, your farmers protesting outside a farm may well find themselves both detained and searched because they are, in the eyes of a 27-year-old first-year constable, breaching the peace and that is not really what is intended. I throw it open for questions.

CHAIR: James, do you have any questions?

Mr LISTER: No. Thank you for your appearance, though, Mr Potts.

Mr Potts: Any time, James.

CHAIR: Steve, do you have any questions?

Mr ANDREW: No. Thank you also for your appearance today.

Mr Potts: Any time.

CHAIR: Jim?

Mr McDONALD: Mr Chairman, honestly I do not. The submissions that the Law Society has made are quite comprehensive. I am satisfied with what has been said here.

Mr Potts: Thank you. Can I say this: we try as best we can to assist the parliament. It is an important role and we significantly appreciate the consultation that is granted to us. Thank you for listening to us and for your attention to our submissions.

CHAIR: I will pick up the theme that Ms Wilson and Mr Keim spoke about of the reportable offences and the inclusion of the Commonwealth offences into the reporting provisions. My understanding is the reason that has been proposed as an amendment is that it comes out of a meeting of the states and Queensland being a state that had a deficiency in that it was not possibly being noted.

Mr Potts: I understand that. Whilst broadly I think it is important that there be consistency across all jurisdictions, that does not mean that Queensland has to slavishly follow other states. We are an independent sovereign state. We can make laws that best represent the best interests of our citizens.

CHAIR: I am trying to get some input from you about this cohort of juvenile offenders who get caught up in these rather broad-ranging offences. Even though they appear to be quite serious, when you boil them down to the nitty-gritty you find out that all is not what it seems. For me, the one that comes to mind is the kid in the classroom who is 14 or 15. He gets a photo from his best mate at another school. Before you know it, the class of 94 has 94 versions of it, which is the distribution.

Mr Potts: Yes. The reality is, as all people know, child exploitation material is a very serious offence. It is a market offence in the sense that people who consume and use this generally for their own sexual gratification have to be punished fairly condignly because, if they do not exist—if there is no market—there is no reason to exploit children. As I understand the thrust of your point, Mr Russo, more often than not we are dealing with unformed minds often in circumstances where the photographs were taken, I will not say necessarily in innocence but certainly sometimes in mischievous circumstances or circumstances where there is an emotional attachment. It seems to us to be an extraordinary step to criminalise that kind of behaviour.

I accept that quite often in legislation we give examples of offences that should not fall within it. That is also an assistance to our police officers. Whilst I accept that they show a degree of maturity and discretion, more often than not the person who is charging them may not. The police prosecutors down the track may, but in the meantime some 14-year-old young man with an overextended sense of his own self-worth and an underextended view of the self-worth of the girl whose photograph he is distributing—

CHAIR: Sorry to interrupt again, but is your suggestion that a way to assist not only the police but also legal practitioners or anyone else would be to have examples of what would be reportable or what would not be reportable?

Mr Potts: Absolutely. When lawyers stand in court trying to discern what parliament meant, we can look at the first reading speech, but it is far better and it is a more modern technique of drafting to give examples, which are not exhaustive but which give both sides—the prosecution and defence—some guidelines. In this particular case there is a need for clarity, because it may well be that someone does not follow—

CHAIR: Am I correct in also assuming that if you are convicted of such an offence, whether you are an adult or a juvenile, it is automatic reporting—that it is not the discretion of a judge or a judicial officer?

Mr Potts: Exactly. In fact, I heard that evidence before. The reality is that it is automatic. The courts do not make orders; it simply follows that if you are convicted of a certain range of offending then you go on the register. That can have devastating effects in terms of not merely reputation but also the efforts you have to go to every three months to say who you have been dealing with. That might well be the kid in the classroom next door to you. Yes, we need to have some better guidelines and some better cogency across the whole field for that, because they are not the people who I would have thought most people would be trying to catch.

Mrs McMAHON: You raised the issue of the notice to appear and the addresses. It was explained to the committee that the idea of this amendment is to address the gap between a last known address that might be recorded on a department of transport driver's licence or vehicle registration and a new address that is not in there. Under the Justices Act it has to be an address that is on either the driver's licence or the vehicle registration. That has resulted in notices going to places where people clearly no longer reside. We know that people are not always updating their addresses within 14 days. The way it was explained to us is that this will allow police to serve via registered mail to more recent addresses than those obtained from or contained in the registration. Would this amendment not increase the ability for those notices to reach the people they are intended to reach?

Mr Potts: It does, but it is an imperfect solution. The most perfect solution is when the police officers detect the offence, rather than hanging around and waiting and serving them the notice to appear then, which, quite frankly, is what happens in 99 per cent of the cases.

The second thing is the use of traffic infringement notices. It used to be—in fact, it still is because I had a case like this just two days ago—where a police officer at the scene with an unregistered car and an unlicensed person, the typical sort of offending—

Mrs McMAHON: Ham, cheese and tomato.

Mr Potts: Ham, cheese and tomato, exactly—decides whether they are going to give a traffic infringement notice or whether they are going to give a notice to appear. The traffic infringement notice can be handed over, as can the notice to appear. If you get the notice to appear, you have to pay the offender levy of $130-odd. I accept what you are saying and it is a step, but the reality is that the police should be serving people at the time of the detection of the offences.

Whilst I am on that point, I recall something that may be of some use to this committee with respect to the evade police offending. We broadly have no dispute with that, but you may be aware that the Transport Operations (Road Use Management) Act has a provision within it that the owner of the vehicle has to reveal who the driver is unless there is some reasonable cause. Reasonable cause includes—and I do not think it is shifted by this—if the statement they gave may incriminate themselves. It does not abrogate the right to silence, but I do not see that the evade police—and this panoply, in fact—changes that legislative protection.

Mrs McMAHON: Okay. Thank you. I have nothing further, Chair.

Mr McDONALD: I have nothing further, Mr Chairman. I note that Ms Greenwood is still here. I had a personal experience because of a change of address recently. It took me four minutes on the phone to change my address. You might be able to pass that on to your prospective clients.

Mr Potts: I had a similar experience, but it took me half an hour because I am hopeless at computers.

Mr McDONALD: I was on the phone.

Ms Greenwood: I would be checking that.

CHAIR: If the representatives from the Law Society wish to add anything further, we have four minutes to do that.

Mr Potts: I seek your indulgence for a moment to deal with two minor issues. One relates to police and the crime scene for high-risk missing persons. You will see within the provisions that it says who may enter, and it has to be people with a legitimate interest and there are examples of that. Under new section 179Q of the legislation, a police officer in those circumstances has the power to detain a person for questioning with respect to the high-risk missing person. One of the examples that could be added to that, in my respectful submission, would be that one of the people who may have access then ought to be a qualified legal representative seeking access to a client. Otherwise, the person may be effectively left without legal advice in circumstances where, in fact, we may be dealing with a murder. I just think that is an issue.

The second thing that I would like to raise is the powers of the police to require secondary crime scenes. You will see that it says any place where the person is reasonably suspected of being. The difficulty with that, of course, is with a person under 13 who is missing. They ask the family, 'Who are all their friends at school?' In theory, each of their houses becomes a secondary crime scene that can be searched and entered without warrant, which I suspect is an unforeseen consequence. Whilst I accept and understand that the police will use discretion, that should be clarified.

The third issue that I want to raise, just on a slightly different point, is the access to codes for phones. You will see within the proposed legislation that it includes people who have used the phone. It then goes on, I presume, to effectively require them to give the code. If I show you what I think is a funny meme of Putin and Trump together and you have had possession of my phone—you have looked at it—under this legislation you may well be deemed to be a person who is required to give the code to it. I think there are some unintended consequences there. Not only must it be demonstrated that they have had their contact with it; they must also reasonably be expected to know what the code is. Again, some guidelines as to that may be of some assistance and clarity for police. Otherwise, it is just too much of a catch-all. They were the issues that I wanted to raise in addition.

CHAIR: Thank you. That concludes this hearing. I would like to thank you very much for coming along. I would like to thank all the witnesses and stakeholders who have participated today. I thank our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare the public hearing for the committee's inquiry into the Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 closed.

The committee adjourned at 2.14 pm.