LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

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

Staff present:

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

PUBLIC HEARING—INQUIRY INTO THE POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2019

TRANSCRIPT OF PROCEEDINGS

MONDAY, 21 OCTOBER 2019

Brisbane

MONDAY, 21 OCTOBER 2019

The committee met at 10.15 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Police Powers and Responsibilities and Other Legislation Amendment Bill 2019. My name is Peter Russo. I am the member for Toohey and chair of the committee. With me here today are: James Lister, member for Southern Downs and deputy chair; Stephen Andrew, member for Mirani; Jim McDonald, member for Lockyer; Melissa McMahon, member for Macalister; and Corrine McMillan, member for Mansfield.

On 18 September 2019, the Hon. Mark Ryan MP, Minister for Police and Minister for Corrective Services, introduced the Police Powers and Responsibilities and Other Legislation Amendment Bill 2019 into the Legislative Assembly. The parliament has referred the bill to the committee for examination, with a reporting date of 4 November 2019. The purpose of the hearing today is to hear evidence from stakeholders to assist the committee with its examination of the bill. Only the committee and invited witnesses may participate. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

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 my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. These images may be posted on the parliament's website or social media sites. Only the committee and invited witnesses may participate in the proceedings. As parliamentary proceedings, any person may be excluded from the hearing at my discretion or by order of the committee. I ask everyone present to turn mobiles phones off or switch to silent mode. The program for today has been published on the committee's web page, and there are hard copies available from committee staff.

WILLIS, Ms Karen, Executive Officer, Rape and Domestic Violence Services Australia (via teleconference)

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

Ms Willis: I thank the committee for the opportunity of presenting some information today. Rape and Domestic Violence Services Australia is a national non-government organisation that provides a range of specialist trauma counselling services to people whose lives have been impacted by sexual, domestic and family violence. Each year we provide telephone, online and face-to-face counselling to support over 18,000 clients—roughly about 90 per cent of those are women. In particular for Queensland, we work with the Commonwealth Bank to provide domestic and family violence safety and trauma counselling for their customers and clients who have experienced domestic violence. We are also a referral point for Queensland police when they attend domestic violence situations. We also provide counselling for those who are engaged in the Redress Scheme as a response to the Royal Commission into Institutional Responses to Child Sexual Abuse.

We have quite a number of clients. In fact, 26 per cent of our clients come from Queensland. In addition to providing the counselling services, we believe that it is our responsibility to ensure that our clients' experiences inform the development of safe trauma informed legal systems. For many of our clients, the criminal justice system represents a critical part of their journey towards safety, justice and healing. As such, we are grateful for the opportunity today to discuss with the committee the potential implications that this bill may have for people impacted by or at risk of sexual, domestic and family violence.

We are supportive of the bill and in particular the proposed amendments to access information on or through electronic devices as this legislation needs to keep up with the technological advances that are available in our society. We are also supportive of the proposed amendments that would legislate better information sharing in the context of domestic and family violence between government agencies and non-government agencies where services are being provided for individuals.

In our submission we have made four recommendations as to the proposed bill. I draw your attention to our key concerns in formulating these recommendations. We again reiterate that we are supportive of the proposed bill as to the access of information on or through electronic devices so far as access information powers may be used against those who have experienced sexual, domestic or family violence, and we would say that access information powers should only be used where the complainants consent to the electronic devices. For the defendant, that is fine. For the complainant, they would need to be fully informed about why their devices are being requested, what would be looked at and how that information will be used, and they would need to consent to that. That would be consistent with any other victim of crime. It is also consistent with what we know about the impacts of trauma and the need for empowerment in terms of recovery.

We also state that we are supportive of the proposed bill in relation to information sharing within the scope that has been suggested. We would suggest that those civilian members of the Queensland police, if this section of the bill goes through, are provided with initial and ongoing training in relation to privacy laws and confidentiality so that the great work by police within that confidentiality and privacy area continues. We also recommend that if the proposed bill is to become law there be a mechanism for ongoing monitoring and evaluation of the changes to ensure there are no unintended consequences of the changes that have been made.

Mr LISTER: Ms Willis, I note your support for the bill and I do not have any questions for you.

Mrs McMAHON: I note in your submission and, as you mentioned before, your recommendation in relation to the use of the powers being only used for offenders or suspects, as opposed to victims or complainants. Have you had an opportunity to read the Queensland Police Service's response to your submission?

Ms Willis: No, but we certainly have spoken to clients who have talked about having their devices removed and being quite surprised by that but also concerned about what is going to be done with those devices, when they will get them back and what other information will be looked at. If police in terms of their investigation feel that they need to access those devices, there should be an explanation as to why and how that will be done—exactly what will be looked at and when that information will be returned—and the client should consent to that.

Mrs McMAHON: The response that the QPS provided specifically in relation to your comments was—

> Access information provisions are attached to search warrant and crime scene warrant provisions in the PPRA. Neither type of warrant could be used to gain access to a complainant's device without their consent.

Does that address the concerns that you had about those powers?

Ms Willis: Absolutely. We understand that at times police may need to look at a whole range of information that complainants have—but with consent that is fine.

Ms McMILLAN: You raised some concerns around QPS and ongoing training required for them, particularly in relation to privacy laws and confidentiality. Do you have any concerns that have been raised or could you provide specific situations or circumstances for the committee?

Ms Willis: Not in relation to Queensland, but we are aware of circumstances in other states and territories where there has been a breach of an individual's privacy. In one particular circumstance in relation to one of our clients it actually caused a decrease in their safety. We put that in more as a potential unintended consequence of an expansion of provision of information requirements.

CHAIR: Jim?

Mr McDONALD: I have no questions. Thank you very much, Ms Willis, for appearing today.

Ms Willis: Thank you.

CHAIR: That brings to a conclusion this part of the hearing then. Thank you for your attendance, Karen, and for your written submission.

De SARAM, Ms Binny, Legal Policy Manager, Queensland Law Society

MACKENZIE, Mr Ken, Deputy Chair, Criminal Law Committee, Queensland Law Society

POTTS, Mr Bill, President, Queensland Law Society

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

Mr Potts: Thank you for inviting the Queensland Law Society to appear at the public hearing of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2019. As many of you will be aware, the Law Society is the peak professional body for the state's legal practitioners, over 13,000 of whom we represent, educate and support. In carrying out its central ethos of advocating for good law and good lawyers for the good of the community, the society proffers views which are truly representative of its member practitioners. The society is an independent, apolitical representative body upon which government and parliament can rely to provide advice which promotes good, evidence based law and policy.

At the outset we note that the society promotes efforts to protect children and young people from harm and efforts to clarify uncertainty in the law. However, in our view, the bill as it currently stands does not strike the right balance and seeks to grant police officers what we would term as extraordinarily broad powers.

Before I go on, I should indicate for the record that I was contacted this morning by the chief policy officer of the police minister, Hon. Mark Ryan. He advised me that the matters relating to the amendments to the prostitution legislation were not to be part of the debate—that they were either being withdrawn or would be dealt with by a separate inquiry. I simply place on the record that we did have some significant concerns with respect to that, and we look forward to having those concerns heard if and when a separate inquiry is held.

To outline our key concerns with respect to the bill, excluding those sections, I would now like to hand over to Mr Ken Mackenzie, who is the deputy chair of the Criminal Law Committee, to expand upon those issues.

Mr Mackenzie: There are two things I would like to say at the outset. The first is that the broad policy aim of this amendment is to allow the police to obtain evidence which is contained on digital devices or stored in some digital form. The society takes no position on the broad policy behind the bill. That is not something that we oppose. We are here today to raise our concerns about the way in which that policy is specifically implemented in the bill.

The second introductory matter that I have to raise is a correction to our submission. In our submission we said that these orders for access to electronic information may be made by justices of the peace; they may not. It requires an order of at least a magistrate or a Supreme Court judge to provide those orders. Even with that correction, it makes little or no difference to the concerns we have raised in our submission.

It was long ago decided that the police should have powers to search places to find evidence, but the limitation on that power has always been that the police officer requires reasonable grounds to suspect that there is evidence to be found on the place. Under the proposals in this bill, if the police officer wants the passwords to an online account or to an electronic device—and that could include your banking details, your email accounts, your activity on dating accounts and even your medical records—there is no requirement in the legislation that the police officer have reasonable grounds to suspect that access to that account or to that particular device will provide evidence of the offence which the police officer is investigating. Once the order is made by the magistrate or judge, there is absolutely no limitation on the types of accounts or the types of information to which the police officer can demand access. That power, that order in the search warrant, will apply to every person who happens to be at the place to be searched or who is in possession of an electronic device at the place to be searched.

I note in passing that that means the advice given about access to complainants' phones, which was mentioned in the previous witness's evidence, is wrong. If the complainant is at the place, if the complainant's device is at the place that is going to be searched, then the police officer can demand the access information to that device. It is not limited to people who are suspected of having committed the offence. Indeed, a search warrant is not limited to people who are suspected of committing the offence. A search warrant is issued where a police officer suspects there is evidence. If a police officer suspects there is evidence at a complainant's home then a search warrant may be issued for the complainant's home and/or their devices and then the information which may be accessed from their devices.

If a warrant is issued because a junior staffer in one of your electorate offices was suspected of some criminal activity, a search warrant with this order attached to it would allow the police officers access to your phones, to your computers, to your email accounts and to the search history of all of things you had searched on the internet. It is a power unlimited in scope and is ripe for abuse. An example of the potential for abuse is thrown up by that recent case of a police officer who accessed the Queensland Police computer to obtain personal information of a victim of domestic violence. The officer in that case could be held to account because there are rules restricting the access that police officers can use and make of information on that computer. However, the proposals in this bill do not put any such restrictions upon what a police officer can search, what a police officer can demand access to.

Much of the digital information, the data, being sought under the powers in these amendments is not actually at the place for which the search warrant is issued. It is often not on the device at all; it is on a computer in California where people's Facebook data is stored, for example. If the policy aim, which may be legitimate, is to require people to provide access to their online accounts, to their digital lives where those accounts are reasonably suspected of containing evidence, then it would be far better to structure the legislation in a way which is directed towards that policy—that is, separate these orders completely from search warrants, have an order which can be applied for on grounds where there are reasonable grounds to suspect the evidence is in an account, and direct it to the person who has access to that account. If the legislation were structured in that way, it would allow a sensible limitation upon what the police could search for that did not go well beyond the bounds of the investigation they were conducting. Unless I can assist this inquiry further, those are my submissions.

Mr Potts: To give a practical example of that, let's imagine, putting aside matters of all parliamentary privilege, the police come along and suspect that the member for Macalister has material on her phone, her iPad or her devices, not all of which are here. They can take your devices, Mr Andrew, and search every single thing on that. You can be forced to give up your codes. The computers—and, as we know, mobile phones are computers—these days not only will tell the history of what you have been searching but where you have been. They will be able to say who you rang, how long you spoke to them for, how often they have rung you and what sites you have looked at. Effectively, these devices are not merely a microscope of your life; they are a macroscope. Your device can show a huge amount of material about you completely irrelevant to any complaint about the member for Macalister. Of course, once those things are revealed or known by others, it may well be that your entire private life is exposed to people who have, quite frankly, I would have thought, no right to it. Your privacy issues are completely blown out the door and it may, in fact, be used in circumstances we simply cannot predict.

The point of these things is: if there is a policy reason for a power, it should be limited to relevance and it should be limited specifically to that. As many of you will know, I have practised criminal law for a very long time. I say to you in all seriousness that if you give the police a power, they will use it. That is what they are there for. That is what we empower them to do. We should not give away, effectively, the keys to the kingdom of your life without having very good cause and without having significant restrictions upon those uses. We say this in all seriousness to you. It is not just a matter of trying to scare the horses. If you give them the keys to the kingdom of your life, they are gone.

CHAIR: Before we proceed to questions, I would like to read into the record a letter dated 21 October 2019 which was received in the secretariat about 9.25 this morning addressed to myself as chair of the Legal Affairs and Community Safety Committee. It states—

Dear Mr Russo

I write to advise that I have been informed by the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice of her intention to refer the development of an appropriate regulatory framework for the sex industry to the Queensland Law Reform Commission ...

I also note that the Legal Affairs and Community Safety Committee is conducting a public hearing today in relation to the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2019* with stakeholders, such as Respect Inc and the Scarlet Alliance, Australian Sex Workers Association listed to appear.

Given the decision to refer the matter to the QLRC, the Premier has granted permission to remove proposed amendments to the *Prostitution Act 1999* from the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2019*.

The letter concludes—

You may wish to bring this matter to the attention of witnesses appearing at today's hearing.

Thank you for considering this matter.

Yours sincerely

The Honourable Mark Ryan MP

Minister for Police and Minister for Corrective Services

Thank you for that indulgence.

Mr Potts: For the record, I confirm that that was the information conveyed to me.

CHAIR: Mr Mackenzie, obviously the reason that has been put forward for these amendments is trying to get access to mobile phones in relation to offences committed against minors or in that sphere—

Mr Mackenzie: I am not sure that is right, because the existing legislation already gives the police access to the phone. Where the amendment—

CHAIR: Sorry, I meant the passwords.

Mr Mackenzie:—is specifically directed—and passwords to the phone. The amendments are specifically directed to the information beyond the device itself—that is, information that is stored, to use the term, in the cloud, which just means on a computer somewhere else. There has been some debate and uncertainty in the legal advice to the police about whether the existing legislation allows them to go beyond the device itself and demand access to, for example, emails put on a server accessed from the phone.

Mr Potts: To assist, it is contained within proposed section 85A, which is set out on pages 11 and 12 of the bill.

CHAIR: Is the issue not that most information these days is stored in the cloud?

Mr Mackenzie: Increasingly that is so, yes.

CHAIR: What the police are asking for is to be able to access that by way of these amendments?

Mr Mackenzie: Yes.

CHAIR: I know you raised it in your submission. Is your suggestion—and if I have this wrong, correct me—that that should be only by order of a court?

Mr Mackenzie: Not necessarily. It is already by order of a magistrate or a judge. The problem with the bill is not the making of the order itself but the scope of that order. Instead of an order issuing for a search of a person's email account or a search of a person's social media account that they have been using or suspected of using to commit an offence, the order presently will give carte blanche to the police to demand access to everything that that device can access online. It will not just be the email account that is suspected of the offence but also the person's banking records, the person's medical records if the computer is connected to their My Health account, their dating records—and it is not just directed to a particular person. The act uses the words 'specified person', so you might think that a person is named, but that is not right. If you look at the definition of 'specified person' it is then every person who happens to be at the place where the search warrant is executed, whether that person is suspected of an offence or not. What we would recommend as a better alternative is that the order which is made is targeted at the area where the digital information which is relevant to the suspected offence is kept.

Mr Potts: Just to draw your attention to that specifically, under the definition of 'specified persons', on page 12 it includes people reasonably suspected of having committed an offence—that seems fair enough provided that it is a suspicion based on reason; the owner of the device, who does not need to be suspected in any way, shape or form; and the person who is in possession of the device. We know the definition of 'possession' under the Drugs Misuse Act includes concepts of knowledge and control. Your phone on the desk is known by people beside you and they have the power to control it. Each person in turn has that. You will see then it says 'any person who uses or who has used the device'—no specified time. It could be a device that was being used six months ago. Then if you look at the next proposed subsection (f), it states 'the person who is or was a system administrator'—whatever a system administrator is. It could be a former employee of your computer server's organisation who has not worked for them for six months. It is just so broad it catches everything.

Mr Mackenzie: Although that section refers to the device in the singular, it applies to every device at the place for which the search warrant is issued. If a search warrant is issued, for example, for a government office, then the order applies to accessing information from every single device produced in that government office.

Mr Potts: It is not sufficient to say, 'Oh, they would never use it'; you are giving them the power to use it.

Mr LISTER: Thanks, Ms De Saram, Mr Potts and Mr Mackenzie for coming in today. I have taken careful note of the points that you have raised regarding those aspects of the bill. I am interested to hear the Law Society's position on aspects of the bill relating to prostitution. I would like to ask you a question and ask if you could expand on your position in the course of answering it. As I recall from the

dark old days pre Fitzgerald, one of the things that was used to protect from graft in the prostitution industry was confining the policing of prostitution to one group, the licensing branch. I am not suggesting that provisions in this bill are exactly the same, but by letting the Prostitution Licensing Authority staff have less reliance on police to be able to enter licensed premises and conduct their affairs, is there a potential backsliding in allowing one group to dominate with the potential for adverse consequences such as corruption, for instance?

Mr Potts: I was around in those days. In those days I represented most of the major illegal brothels on the Gold Coast. It is different and I will explain why. Firstly, today prostitution itself is not illegal. I say that in the broadest sense of the word. One person acting as a prostitute is acting perfectly lawfully. The government licenses it, so it is a form of licence for which the government is able to render a licensing fee. This is aimed at not just licensed premises but also any premises used for the purposes of prostitution that includes more than two people. It has to be more than two people. In essence, you are allowing government inspectors to film in circumstances where there are clear issues of privacy to gain evidence around, essentially, a licensing issue for the government. It is not about criminal offending; it is about operating without a licence governed by the government.

The issue of corruption, of course, is an extraordinarily important thing and something that I have spent my entire professional life fulminating against. The reality is that the current circumstances of licensing and control do not work. To see that they do not work, all you have to do is look at the *Gold Coast Bulletin* on any particular day and you will see endless pages of advertisements. You will see that particularly young women who are working as sex workers are often exposed to the very real dangers of being butchered—by people they call 'bad Johns' or bad people, effectively—because they are not able to have any form of security or anybody to drive them or help them. Yes, corruption will always be an issue, but we are merely concerned with the expansion of powers to people who are not police officers and the manner in which these things are licensed and, in fact, administered.

Mr McDONALD: Thank you very much to the Law Society for being here. I note your submission, Mr Mackenzie. When the Police Service were here I asked them if this was a proactive initiative or whether it was a court matter they had come across that meant they needed to discover this. They outlined the case of Gill. I understand your proposal about having a separate order, but surely the search warrant process is very well tested. I understand the fear that you have, but the fact is that there still has to be an offence that is being investigated. Mostly for this type of offence it is a child exploitation material or CEM offence.

Mr Mackenzie: With respect, that is an unsafe assumption because the power is available for all sorts of offences. It will not be just used in relation to those.

Mr McDONALD: Sure, but the magistrate or judge is actually receiving that application. If it is for CEM, they are not going to be looking into a bank account because there is no CEM on it.

Mr Mackenzie: Firstly, the magistrate or judge who receives the application has no test to apply in the legislation. It just says that they may make the order. There is nothing that the legislation sets out that requires them to be satisfied of something before they make the order. Once the order is made, it is not limited to the places where the CEM might be found. You are then relying upon the police to exercise their powers within the scope that you expect them to, but there is no restriction placed upon them by the law in that regard. That is in contrast to when they search a place.

Section 157 of the act sets out their search warrant powers for a place, and paragraph 1(c) states that police officers have the 'power to search the relevant place for anything sought under the warrant'. Even if the police officers have a warrant to search your house, that does not mean that they can go through absolutely everything in the house. If they find the stolen car part sitting in the lounge room when they walk through the front door, that is effectively the end of the search.

However, that sort of restriction will not apply to these online searches. There is no equivalent. Once the order is made that a person must provide access to their online material, then it is an order for any online material that the police officer asks them for access to.

Mr Potts: They may also discover evidence of other offending not related to the CEM. Let us imagine some concern around—I do not know—electoral fraud. Why would you allow them to access devices, as in the example I initially gave in our opening speech, when it has nothing to do with CEM or the grave social ill that you are referring to? Our point is that it is so broad that it catches everything.

Mr Mackenzie: There was a case in Queensland a couple of years ago before Justice Henry. I do not remember its name. It was a case where police officers had obtained a warrant to search for cannabis and the officers, when the case came to court, admitted that that warrant was a pretext. They were not really looking for cannabis at all. Their real interest was in obtaining evidence of an under-age

sexual relationship. The court was very critical in that case of the police officers using the warrant as a pretext and excluded the evidence. That sort of conduct will be encouraged by the legislation in the form that it is in presently in this bill, because there is no limitation, correlation or relationship at all between the extent of the police officers' search powers into the digital world and the offence being investigated.

CHAIR: That brings to a conclusion this part of the hearing. Once again, thank you for your attendance and thank you for your written submissions to the committee. I now welcome representatives from Respect Inc. and DecrimQLD.

FAWKES, Ms Janelle, Campaign Leader, DecrimQLD

FORREST, Ms Candi, Committee Member, DecrimQLD

JEFFREYS, Ms Elena, State Coordinator, Respect Inc.

CHAIR: Good morning. I invite you to make a brief opening statement, after which the committee members may have some questions for you, although those questions may be redundant.

Ms Fawkes: Good morning and thank you for your time this morning. DecrimQLD and Respect Inc. have made a submission to detail our concerns with the legislation, as you know. Respect Inc. is the funded sex worker organisation that provides services to sex workers throughout Queensland and DecrimQLD is a group of sex workers who have joined together with Respect Inc. with the specific aim of removing harmful laws that impact on sex workers and to achieve decriminalisation in Queensland. As organisations, we have been arguing for a systemic review of sex work here in Queensland and have been talking to politicians about that change. The Prostitution Act 1999 made licensed brothels legal, as well as individual sex workers here in Queensland. However, at the same time it criminalised all other sex industry businesses.

When the Criminal Justice Commission review in 1991 considered the sex industry, it identified that sex work was occurring in brothels, massage parlours, cooperatives, sex workers working in pairs, escort agencies et cetera. All of those locations other than legal brothels and individual sex workers working alone were criminalised. It is this aspect of the legislation itself that creates the problem we currently have here in Queensland in that the majority of the sex industry is locked out of and unable to participate in the legal or licensed sector.

Some of the submissions to the committee have incorrectly framed everybody working outside of licensed brothels as being illegal. We wanted to raise this point with you and put it in on the record that, in fact, many individual and independent sex workers in Queensland are operating perfectly legally, as has been mentioned here earlier this morning. As such, any consideration of legislation needs to recognise the diverse number of sex work locations and the many reasons that sex workers would choose to work in any one of those locations.

The current laws simply do not work as they were intended. They leave the majority of the industry outside and regulated by criminal laws with ridiculous outcomes. Currently, sex workers cannot text another sex worker to advise that they are safe or their location, or check in at the end of a booking. Sex workers cannot use a receptionist. We cannot drive each other. We cannot use a driver that another sex worker uses or recommends. We cannot work in pairs. We cannot share overheads. For all intents and purposes, we pay our tax and we are treated as small businesses but we do not have the same rights. It is the same for all sex workers. We do not have the same industrial and workplace health and safety rights, and that is what we are looking for.

All of this uses valuable police resources that could be better used elsewhere. Police themselves have said to us that they do not see this as an important role for them and that they have other more important work in other areas.

Queensland laws do not work in the real world and have fallen behind what occurs in other states and territories. Right now there is a bill before the parliaments in South Australia and the Northern Territory to decriminalise sex work. That is because there are countless reports, research projects, considerations and reviews of sex work legislation that demonstrate that decriminalisation is the best practice model and, as such, other states and territories are considering that model to provide sex work health and safety and valuable outcomes for government. There are valuable outcomes for government in that there are public health outcomes, it is a low-cost model, it has high levels of compliance and it provides those important health outcomes for sex workers. It is a model that is demonstrating its value wherever it has been introduced. New South Wales is one place that has a version of decriminalisation.

We thank the government for listening to our concerns raised in our submission. It is very important to us that we have been heard on this matter, because the changes could have been devastating for sex worker health and safety. The demonstration today has been that the government and the committee are open to listening to sex workers and value the health and safety of sex workers in Queensland. We thank you very much for your time.

Mr LISTER: Thanks very much, Ms Forrest, Ms Fawkes and Ms Jeffreys for coming along today. Could you tell me a little bit more about the bill in South Australia and explain how it is more in line with your view of what the law should be?

Ms Fawkes: Yes. If you like, I will tell you a little bit about South Australia and the Northern Territory at the same time. The South Australian bill was put up by a Labor woman as a private member's bill originally, then a Greens politician. Now the Liberal Attorney-General has taken that into the House. Currently it is criminalised in South Australia and the bill, importantly, puts in place valuable workplace health and safety protections. It takes it out of the Criminal Code and moves it into a space where the sex industry businesses would be regulated in the same way as any other business. Spent convictions would be dealt with, so people who have previously been charged under the act would not have those on their record.

The Northern Territory bill has a similar impact in that it is moving the sex industry out of police control, if you like, and into a space where sex industry businesses would be regulated in the same way as others. For example, zoning, location, amenity impact, car parks et cetera would fall within the local government space. There would be a role for WorkSafe in having created a set of occupational health and safety guidelines in collaboration with the sex worker organisation and they would be implemented. Sex workers, most importantly, would be able to access the rights that other workers currently have—industrial protections and be able to report conditions or problems in workplaces to the authorities.

Privacy legislation and every other piece of legislation that currently applies to other types of businesses and individuals would apply to the sex industry. It is very wrong for people to try to frame the model as deregulation, no regulation or laissez faire. In fact, it is a whole-of-government regulation—a very comprehensive system that, once you remove the criminal law, allows existing regulations to apply to the sex industry.

Mr LISTER: Could you expand on any concerns you have about how regulation, if not done the right way, could allow corruption to flourish, leading to the exploitation of sex workers?

Ms Fawkes: We are all aware of the pre-Fitzgerald times when it was not unusual for sex workers to have to either pay or provide free sexual services in order to avoid charge. Unfortunately, the changes that have been made in legislation in Queensland have not removed the parts of the Criminal Code that criminalise sex worker safety strategies. We still have a high level of policing of sex workers in Queensland for advertising, for minor offences related to, as I said, communicating with each other about safety, texting another sex worker, even getting someone to help us put our ads in or write our ads. These simple administrative aspects that should be the day-to-day mechanisms of you operating your business currently are criminalised. As such, the police statistics from 2016-17 showed a very high increase—a 450 per cent increase—in charges. We have a problem right now with the level of criminalisation of some aspects of sex work, and particularly I point you towards how that criminalises sex worker safety strategies.

Ms Jeffreys: Even though there has been a massive rise in charges against sex workers in the last three or four years, we have not seen sex workers have the confidence to plead not guilty or to challenge those charges in court. That gives the perception of the possibility of police corruption anytime. Privacy and confidentiality limitations on our own lives and our family and our children mean that sex workers are less likely to challenge those charges in court. That has to be a consideration broadly. We are pushing to be under an industrial relations framework so that if there is conflict resolution or issues in the workplace they can be brought forward to a civil authority and dealt with in an expedient manner without it turning into a court case and people's names in the paper and this kind of thing.

Ms Fawkes: That is an important point you have raised. We should state for the record that right now it is very difficult for a sex worker to report a crime to police, whether it happens in their personal life or in their work life—a robbery, harassment or whatever it is. An area that we need to address is the barriers to sex workers being able to report crime. It is an unfortunate outcome of the current legislation that sex workers do not have trust in the police currently and therefore are very unlikely to report crime.

CHAIR: That brings to a conclusion this part of the hearing. Thank you for your attendance and for your written submissions.

SCHMIDT, Mr Troy, Barrister-at-Law, Queensland Police Union of Employees

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

Mr Schmidt: Thank you. Could I start by apologising for Mr Ian Levers, the general president of the police union. Unfortunately, he had pre-existing commitments that prevented him from attending this morning. I know that he likes coming before the committee and providing his evidence. I hope that I am able to assist in that regard.

The Queensland Police Union of Employees represents pretty much the majority of sworn police officers as well as civilians, such as watch house officers, throughout the state. It is particularly supportive of this bill and, in particular, the information access powers that are being updated. The union has recognised that the increasing use of digital technology by offenders is something that is confronting our membership and making it difficult to bring offenders to justice. This bill will allow police the ability to use technology to gather evidence and, importantly, prosecute offenders.

Whilst digital technology is not used in all prosecutions, it is used in some of the most serious prosecutions in criminal law, such as murder but also paedophilia and sex offences. Paedophiles are becoming increasingly sophisticated in the way they store their information, including, for example, storing them on email accounts that are kept in the cloud. That makes it very difficult for police to locate that sort of material on their computers, because it obviously is not on their computers, yet they are still able to access it when and as they prefer. This legislation will allow police to download that information and actively prosecute those types of offenders.

Also, in recent times social dating applications such as Tinder are increasingly used. In more recent times, quite a number of rape and other sexual offences have occurred as a consequence of a complainant meeting an offender through those sorts of apps. Having access to that, particularly where it is an offender, will also allow police to identify potential other victims who have been reluctant to come forward or too scared to come forward. The ability of police to target a suspect's online presence and stored data will allow police to potentially identify more victims as well as get the necessary evidence to convict those persons.

I can indicate that the union was generally supportive of the proposed amendments to the prostitution legislation. I understand that that has been referred to another committee, so I will not address that.

The bill is also very important in terms of the machinery changes that it is making. It ensures that legislation is kept up to date and recognises that society and circumstances are changing over the years. A good example of that is the amendment to the Weapons Act, which is going to allow authorised officers who suspend a weapons licence holder's licence for 28 days to now have 90 days in order to process that suspension and determine whether the suspension needs to go ahead. The union sees that as a very good outcome, because it removes some of the paperwork that at the moment authorised officers have to do as well as ensures that their workload is balanced. It allows them to make sure that they are making an informed and proper decision in relation to weapons licence holders so that things are not rushed.

Finally, I would like to thank the police minister, Mr Mark Ryan, and his office for regularly consulting with the union in relation to these sorts of matters and readily listening to any concerns that Mr Levers raises, not just in relation to the powers and responsibilities of police but in respect of all aspects of the policing portfolio. That is my opening statement. Thank you.

Mr McDONALD: The Law Society expressed concerns about the potential broad application that these laws could have, particularly around making an application before a magistrate or judge and then allowing police to search somebody's phone for any number of things in terms of bank accounts or other sources of information in the cloud. I put to them that, in my experience, the police officer would be applying for access for a particular offence. I used the example of child exploitation material. Would police be able to make a search of things that were not evidence for the actual offence they were seeking?

Mr Schmidt: Not really. Sorry, I can clarify it. 'Not really' is the answer. The search warrant can be quite detailed in terms of what it allows people to search for. For example, if it were a warrant specifically in relation to paedophilia, the warrant would authorise the searching of applications relating to online storage, email and that sort of information as opposed to opening bank accounts and going through a person's banking. Obviously, if something came up during the search of the email, for example, for which they are using their draft folders to store pictures or images—if one of those searches showed a receipt to, say, a Russian pornography site—it then may be necessary to go back and get a further warrant to go into an offender's bank account to look at where that goes to.

On the same basis, if there is a financial crime being investigated, it may well be that bank accounts are the things that are being looked at. Generally, if police want to go through bank accounts, the Police Powers and Responsibilities Act has a document called a notice to produce, which is also issued by a judge or a magistrate. It is specifically served on the bank to get that information. It is very unlikely that officers would need to be going into a person's banking apps on a mobile phone. In any event, it would be better evidence to get that directly from the bank under a warrant or a notice to produce. I do not think there is a concern from a practical perspective in relation to that.

Mr ANDREW: There was a case just given by the Law Society about someone producing marijuana and a warrant to search for that but being given the opportunity to look for other things. I know what you are saying, but that opens up a can of worms. Will we start with this and go to that?

Mr Schmidt: Yes.

Mr ANDREW: The Law Society has big reservations. Do you find that the Law Society are correct in what they said this morning?

Mr Schmidt: Yes, I am sure their position is correct. I think it is a balancing act. For example, there is a difference between somebody who is growing a single plant for their own personal use and somebody who is growing 50 plants, for example, with the idea of having a commercial purpose behind that. Police are not silly. They know the difference between somebody who is growing to supply and somebody who just needs to use marijuana for whatever reason they are using it.

For the person who is growing for supply, police will rely upon a chance discovery and other legal aspects to fully and properly investigate that. I would also suggest that, unless they have stumbled across the 50 plants, they would have known going in that they would be looking at somebody who was growing for a commercial reason and would make sure that the warrant they were relying upon covered the various offences, including supply. If it were just somebody who was on medication for a bad back or was using marijuana for pain relief and happens to grow a plant in their backyard, police are not going to be going there and looking at charging that person with supply. The warrant itself would be limited to that.

I would be very surprised in that instance if police would even be looking for a power to go through their mobile phone. In fact, I would be very surprised if a magistrate would grant that power, because it is just an everyday citizen who happens to have a back problem, for example. It is a different level.

Mrs McMAHON: I understand that in the example the Queensland Law Society brought forward about the search warrant application for cannabis which was duplicitous probably, at best, to search for evidence of other offences, as a result of that particular instance I believe the case was lost and adverse comments were made against the police in those particular circumstances. Is that your understanding of what went down there?

Mr Schmidt: I do not know the precise case. I can only go off what was in the submission. I can say that generally as a lawyer I would be very surprised if a prosecution was not dismissed by a magistrate or a court in those circumstances. Warrants are very invasive. Magistrates understand that and are very cautious when issuing a warrant to make sure it is for a legitimate purpose and a limited purpose. Where police try to use them as a fishing expedition, then undoubtedly the outcome of that is evidence would be excluded from the trial.

There are very important safeguards under the Evidence Act, for example, that give discretion to the judicial officer who is presiding to exclude evidence obtained unlawfully by police and also to exclude evidence which is obtained unfairly. For example, if I was a police officer and I sought a warrant to go and get evidence of possession of a dangerous drug when in reality I was investigating an assault and I just wanted to use that and maybe get over the line to find some sort of evidence of the assault, that would be extremely underhanded. That is something that would really come out in court. I would be really in a difficult position trying to justify my actions to the court in those circumstances. It would most likely result in adverse criticism.

Mrs McMAHON: Turning to those examples we are probably familiar with, which is the physical possession of items, whether it be under the Drugs Misuse Act or the Criminal Code, for property which is a lot easier to be found when it is physically there or not, and turning our minds to electronic evidence particularly in relation to instances of child exploitation material and identifying the concerns of the Law Society, which would be that, for example, police through a search warrant and the order to access information identify a range of apps, I would imagine is how it would have to be presented, in the search warrant looking for digital imaging and/or text messages and/or emails supporting the attempt to locate evidence of child exploitation material, and then as a result in the example that you gave where you

find that there might be funds that have been transferred to purchase or access additional information, how do you see in this new amendment that an original application that was limited to just searching for images now would be extended to bank accounts, online or otherwise?

Mr Schmidt: Ordinarily, what would happen in that instance would be a notice to produce or a separate document would be obtained from a magistrate—or an application would be made for one, I should say. If it is issued then that would be served on the bank. That would actually get the police the necessary information they require from the bank. However, if there was a need to go further, then it would be a case of having to go back and making another application for a crime scene warrant, basically, to search further through the phone.

In terms of paedophilia, my brother is a detective sergeant with the Queensland Police Service and basically impersonated a young female online for 15 years in his previous position, so I have had discussions with him in relation to this. A lot of the time it is the case that police actually detect these people and have them send child exploitation material to the police posing as an innocent child, so by the time they come around to having a search warrant it is really a case of mopping up at the end. They already know what apps are being used. They know some of the images that are being shared. They know the activities that these people are engaging in, so that all goes into the basis of the application to ground the warrant.

They almost effectively have a brief of evidence before they even go so far as to execute the warrant, so they go specifically knowing what they are looking for. I can indicate that is certainly the case in a number of other types of serious crimes as well, that they basically know or have a very good idea of what they are looking for. For example, when a young person who might be raped as a consequence of meeting somebody on Tinder comes forward as a complainant, that person most of the time will have the message trail and so forth, so by the time the police come to locate the offender they know what the evidence will be and they know what apps to be targeting in terms of the phone, so the search warrant is for those apps and so on so they can actually link it to the offender's phone and prove that the offender is the person who was sending them, but they already have an idea of what it is.

Mrs McMAHON: The Queensland Law Society made the comment—I will try to paraphrase as much as I can—that a magistrate issuing an order would provide police carte blanche to search for particular evidence. Is that your experience with magistrates issuing orders for police to find evidence?

Mr Schmidt: I can say that search warrants issued by justices of the peace tend to be somewhat wider because of a lesser amount of training. Certainly my experience with magistrates is that they are quite on the ball in terms of what they are doing and they are very particular in terms of what the warrant is issued for. There are two checks in terms of this. It is not just the magistrate who issues the initial warrant. If somebody is subsequently charged, that magistrate would have to recuse themselves. They would not be sitting on a trial in relation to whatever offence where they have issued the search warrant. There is a second magistrate who then comes in, and the offender or the defendant can make submissions in terms of the admissibility of evidence that was gained under the warrant in any event. There is a second balance and check there to make sure that if a really wide warrant was issued and material was obtained that should not have been obtained, then the court has the discretion to exclude that even if it has been lawfully obtained under the warrant.

CHAIR: Just to pick up on that, the Law Society said—I am paraphrasing also—that if a warrant was issued—they used the example of an electorate office—and they were interested in one particular person in the office it would mean the police could also seize the rest of the computers in the office.

Mr Schmidt: It would, but they would have to be able to justify why they were doing that. It would be no different to going to a shared accommodation house, or you might have quite a number of uni students where one is using drugs but there are five other people living in five separate bedrooms. The warrant is issued for the entire house, but you are not going to go and search the rooms belonging to other individuals unless you have really good grounds for doing so. For example, you would search the common areas but you would not search the bedroom of a particular student who clearly is not on the warrant and is not part of the conduct you are there to investigate without reasonable grounds. I am a former officer myself. I can indicate that I have been on raids in those sorts of houses and there will be a unique lock on each of the bedroom doors, so the only ones that we would search would be the ones that were accessible by the suspect we were there for. We would not search rooms that belong to other people.

CHAIR: You just indicated that the police could go to an electorate office and take all of the computers.

Mr Schmidt: They could, yes, but they would have to be able to justify that.

CHAIR: Yes, but at the time they go in, the warrant allows them to do it. The justification is in the warrant itself.

Mr Schmidt: It is, but if they are there for a specific purpose—for example, I noticed you each have an iPad or something similar before you. If the warrant was issued in relation to you, Mr Russo, it might be issued for this room. It would be completely inappropriate—

CHAIR: I would hope not.

Mr Schmidt: I am sure it would not be, but it would be completely inappropriate for me to then take the computers and electronic devices off of every other member here unless, for example, there was evidence you were using them. In practicality, yes, you are correct—it could all be seized—but in reality, the last thing the police want to do is seize tonnes and tonnes of property because then they have to store it, they have to go through it, they have to deal with it, they have to return it. They are there for a particular purpose.

CHAIR: That brings to a conclusion this part of the hearing. We understand there were representatives from the Prostitution Licensing Authority. Thank you, Mr Schmidt, and all of the witnesses who appeared today. I would also like to thank the secretariat and Hansard. The archived broadcast and a transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare this public hearing for the committee's inquiry into the Police Powers and Responsibilities and Other Legislation Amendment Bill closed.

The committee adjourned at 11.24 am.