Queensland Law Society

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Office of the President

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BY:.....

9 August 2016

Hon W S Byrne
Minister for Police, Fire and Emergency Services and Minister for Corrective Services
PO Box 15195
City East, QLD 4002

By email: police@ministerial.qld.gov.au

Our ref BP/LD/MD

Dear Minister

Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016

I refer to the report of the Legal Affairs and Community Safety Committee in relation to the *Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016* (the Bill) which was tabled on 2 August 2016.

The Society, supported by its Criminal Law Committee, supports the Government member's Statement of Reservation in that report, namely that the amendment proposed to section 439 of the *Police Powers and Responsibilities Act 2000 (Qld)* (the Act) not be made. The Society is of the same opinion as regards the reduction of evidentiary safeguards which that proposed amendment would make; allowing the judiciary to admit evidence where there is noncompliance or insufficient evidence of compliance with relevant safeguards is neither desirable nor necessary.

The proposed amendment would redraft section 439 of the Act to allow judicial discretion to admit evidence of unrecorded admissions or confessions where the admission of the evidence is in the interests of justice.

The proposed amendment takes away the protection afforded in law to both the public and the police. The public will be at risk of being 'verballed' by police. The police will be at risk of having unrecorded verbal admissions challenged. In *R v Smith* [2003] QCA 76 at [11], the President of the Queensland Court of Appeal identified this risk when she stated:

> *To allow in such evidence here would be to ignore the safeguards for those the subject of police investigation and questioning provided by Ch 7 of the Act and to risk a return to an earlier less accountable period when police evidence of verbal admissions was regularly challenged in the courts as fabricated, often with justification.*

The evidence to which McMurdo P referred in that case was an alleged admission by the appellant during police questioning. The statement was not electronically recorded and was denied by the appellant. The Court of Appeal held that section 439, then section 266, of the Act did not confer a discretion to permit the testimony of the police as to the statement to be given. As a consequence the appeal was allowed and a retrial ordered. That case has been cited as authority in subsequent decisions of the Supreme Court and the Court of Appeal.

The amendment in the Bill is proposed in the context of recent media reports which indicate that the Queensland Police Service has ordered 2,200 body-worn cameras to augment the reported 500 cameras already deployed to front line police officers. Further, every police station in the State has electronic interview rooms or, in the alternative, recording devices. The ubiquity of electronic recording devices in contemporary society leads to an expectation that there should be no reason why statements of such import would not be recorded.

For your information I have also written in similar terms to Mr Mander, the Shadow Minister for Police, Fire and Emergency Services and Shadow Minister for Corrective Services.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Ms Julia Connelly, on (07) 3842 5884 or j.connelly@qls.com.au.

Yours faithfully

Bill Potts
President