# *COMMUNITY SUPPORT AND SERVICES COMMITTEE*

**Members present:**
Ms CP McMillan MP—Chair
Mr SA Bennett MP
Mr MC Berkman MP
Mr JE Madden MP
Mr RCJ Skelton MP

**Staff present:**
Ms L Pretty—Committee Secretary
Ms R Mills—Assistant Committee Secretary

# PUBLIC HEARING—INQUIRY INTO THE CHILD PROTECTION (OFFENDER REPORTING AND OFFENDER PROHIBITION ORDER) AND OTHER LEGISLATION AMENDMENT BILL

## TRANSCRIPT OF PROCEEDINGS

**MONDAY, 5 DECEMBER 2022**

**Brisbane**

# MONDAY, 5 DECEMBER 2022

**The committee met at 9.21 am.**

**CHAIR:** Good morning. I declare open this public hearing for the committee's consideration of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill. I would like to respectfully acknowledge the traditional custodians of the land on which we meet this morning and pay my respects to elders past, present and emerging. We are very fortunate to live in a country with two of the oldest continuing living cultures in Aboriginal and Torres Strait Islander people whose lands, winds and waters we are lucky to all now share.

On 26 October 2022, the Hon. Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, introduced the bill into the Queensland parliament. On the same day the bill was referred to the Community Support and Services Committee for its detailed consideration. The purpose of today is to assist the committee with its examination of the bill. My name is Corrine McMillan, member for Mansfield and chair of the committee. With me here today are: the deputy chair of the committee, Mr Stephen Bennett MP, member for Burnett; Mr Michael Berkman MP, the member for Maiwar; Mr Jim Madden MP, the member for Ipswich West, who is substituting for Cynthia Lui, the member for Cook; and Mr Robert Skelton MP, the member for Nicklin. Unfortunately, Dr Mark Robinson MP, the member for Oodgeroo, is unable to attend.

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 it is possible you may be filmed or photographed by media during the proceedings. Images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode. Only the committee and invited officers may participate in the proceedings. As parliamentary proceedings, under the standing orders any person may be excluded from the hearing at the discretion of the chair or by order of the committee. I also ask that any responses to questions taken on notice today be provided to the committee by 5 pm Monday, 12 December 2022. The program for today has been published on the committee's webpage and there are hard copies available from committee staff.

## DAGG, Mr Tony, Acting Chief Operating Officer, Office of the eSafety Commissioner (via videoconference)

**CHAIR:** It is now my great pleasure to welcome Mr Tony Dagg. Good morning, Mr Dagg. Thank you for appearing before the committee today. We know as a committee that the eSafety Commissioner and the staff who work within the commission do wonderful work in protecting not only our young people but all Australians from issues around cybersecurity and cyber safety. I invite you to make a brief opening statement after which committee members will have some questions for you.

**Mr Dagg:** Thank you, Chair, and good morning, committee. I do not have an opening statement. I am very happy to respond to questions the committee may wish to bring forward.

**CHAIR:** Mr Dagg, I wonder if you could give us a very brief overview. As chair, and having worked in schools for many, many years, I am very familiar with the work of the eSafety Commissioner, but other committee members may appreciate a very short summary on what the eSafety Commissioner is responsible for.

**Mr Dagg:** Certainly. We have been around since July 2015 when we opened our doors as the Children's eSafety Commissioner. Since then our responsibilities have broadened to take into account online safety as it relates to all Australians. Our activities are enabled under the Online Safety Act, which was passed by federal parliament last year and became operational in January this year.

Our focus is on achieving effects through three main pillars: protection, prevention and proactive and systemic change. Our protection work is primarily focused on the work that we do to assist Australians who have been affected by online harms. They range from child sexual abuse material, pro-terror content, people who have been affected by image-based abuse—sometimes referred to as revenge porn—serious child cyberbullying and adult cyberabuse where that abuse is

intended to cause serious harm. We have a range of regulatory powers in relation to types of harm. We also have a role in achieving systemic effect through proactive change. That is enabled through the Online Safety Act by way of a set of requirements in relation to mandatory industry codes, which are in the very final stages of being considered by the eSafety Commissioner, and Basic Online Safety Expectations, which is a regulatory tool that enables us to obtain information from companies that operate digital platforms about how they are keeping their users safe online.

The prevention aspect of our work is a very significant one. We are firmly committed to the principle that prevention should be the leading response to online safety issues. We work very closely, as you know, through the education system with schools and students. We assist teachers to understand online safety issues through preservice and in-service teacher training. We reach hundreds of thousands of children through our webinars. We enable a program of independent online safety educators, trusted eSafety Commissioner providers, to go into schools and the community to enable a better understanding of how to keep both children and others safe online.

**CHAIR:** I am sure that for many members of our committee and our community who are watching online that brief description of what you do is invaluable. I will hand over to our deputy chair, who will have some questions for you.

**Mr BENNETT:** Referencing your submission to the committee where you call on tech companies about encrypted services, for the committee's benefit can you tell us a bit about how more collaboration with those tech companies and governments and your agency would better protect those most vulnerable?

**Mr Dagg:** We do hold concerns about end-to-end encryption services, particularly messaging services. Where the problem with exploitation material is concerned, the US National Center for Missing and Exploited Children plays a massive role in obtaining information from tech companies about how their services are being abused and misused by those seeking to distribute child abuse material and contact children on those services. The information provided by companies to NCMEC, as we call it, is highly actionable by law enforcement around the world, including our Australian Federal Police through the Australian Centre to Counter Child Exploitation in Queensland. That is a very proud issue for Queensland. We are concerned because once an end-to-end encrypted service is enabled—for example, if we take Facebook's Messenger service which accounts for a vast majority of reports to the national centre—once that service becomes encrypted the ability to identify known child abuse material or content that might be relevant to the prosecution of an offence for grooming a child becomes difficult, almost impossible, to identify.

What we are wanting to see from companies is a commitment to showing how the risk of an end-to-end encrypted messaging service will be mitigated in connection with child exploitation perhaps by identifying other signals that might be used in order to flag a suspicious or harmful communication, but the point that the eSafety Commissioner has made repeatedly is that there really is no substitute for the ability for service providers to identify when specific communication has been used for the purpose of exploiting a child or for the purpose of distributing known child abuse material. The criticality of that I think is underscored by the fact that that becomes good evidence for law enforcement; it becomes good evidence for the eSafety Commissioner in exercising our regulatory powers. The ability to identify that evidence and then use it through the course of a prosecution or a regulatory action becomes substantially reduced once end-to-end encryption is enabled.

**Mr BENNETT:** Thank you.

**Mr SKELTON:** Do you think the bill adequately addresses the risks of reportable offenders being able to access child sexual exploitation material? Does it do enough to protect the lives and sexual safety of children in Queensland?

**Mr Dagg:** Throughout our submission we identified that we support the amendments to insert item 15A into schedule 2 of the act, particularly in relation to anonymising software and encrypted services. We know from both our own observations of the online environment and our very close collaboration with Australian law enforcement on this issue that the use of anonymising software and encrypted services is very much part and parcel of the skill set that is encouraged within communities, particularly on the darknet, that are centred on the distribution of child abuse material. Ensuring that they are not available to offenders is a very firm step in the right direction we think. The ability for offenders to hook into a community of well-informed, technically adept individuals who, through sharing information, substantially upgrade the skills and attributes of those participating in the community is of real concern and ensuring that there is (inaudible) means of preventing them using those kinds of tools to facilitate their further abuses against children online is a sensible option.

**Mr BERKMAN:** I appreciate your time today, Mr Dagg. You have already touched specifically on end-to-end encryption services. I think most of us are broadly familiar with VPN as another kind of anonymising technology, but are you able to expand for the committee on what are these anonymising encryption softwares and other facilities like the dark web that you mentioned before and how are these used by reportable offenders to access child sexual exploitation material?

**Mr Dagg:** There are a few options that are typically used by offenders who wish to conceal the footprint of their online activities and conceal the presence of material on their devices should those devices be seized. I need to emphasise that this is information that I understand as a consequence of engaging with my colleagues in law enforcement. The eSafety Commissioner does have a role, particularly in relation to the dark web. We do not seize devices or examine devices, but certainly we see the collateral effects of some of these activities and the use of some of these tools in our own work.

When it comes to the main tools that tend to be preferenced by offenders, they are tools like TOR, so that is The Onion Router—T-O-R—which is a special piece of software that is installed on a computer that allows one to access the TOR network, which is an encrypted network that allows for obfuscation of one's location by concealing the IP address of the device that is accessing the network and also allows full encryption of the data that travels the network. That means that if a website is established within the TOR network—and when you use TOR it looks and feels much like a normal browsing experience in the open web or the clear web which we access through our Chrome and Firefox and Edge browsers—the traffic that passes that network is concealed through successive layers of encryption, for example, and that makes our work of finding the location of the hosting service that provides a website impossible to identify. That has certainly frustrated us as a regulator where people have identified particular harms directed towards them from sites that have their home on an encrypted network like TOR.

Certainly it is very challenging for law enforcement and we understand that through the great work that has been done by Task Force Argos in Queensland and through the ACCCE that the preference for offenders to host child abuse websites online (inaudible) reflects the security characteristics that are embedded in TOR. It certainly gives them a strong advantage over law enforcement. When it comes to encrypting information on devices, there are encrypted operating systems like Tails, for example, that give one (inaudible) an operating system that is not readily apparent through examining the existing operating system or, if it is, requires a password to enter or otherwise it is subject to very strong encryption. We know that offenders very often use encrypted devices as well such as USB keys or external drives that are subject to strong encryption too. All of that significantly compounds the complexities of investigating this particular crime type, which, as I said, is the focus of our colleagues in law enforcement and not the eSafety Commissioner particularly. We are concerned that that then leads to a proliferation of material. If it is produced in a way that is secure for offenders in a way that enables their ability to distribute first-generation content produced as a result of them either being hands-on offenders themselves or feeling free to distribute other material on TOR, invariably that material makes its way on to the clear web and then that does become the problem of the eSafety Commissioner.

As you have probably seen from statistics on our website, the volume and the growth of child exploitation material online in the clear web—so we are not talking about TOR; we are talking about websites that are easily accessible to anyone—has exploded in recent years. That has been the case around the world and has been a source of significant concern for us, and not just child abuse material but the ability of criminal syndicates to contact children, groom them and compel from them through threat, force, coercion, trickery intimate material which then invariably winds up on the TOR network. These interlocking factors are all related and depending on the ability of offenders to use one or more of the levers available to them significantly increases the risk for children online.

**Mr BERKMAN:** Thank you. That is a really helpful but very complex answer. I guess nothing about this area is simple. As a follow-up, I guess what you have described is a combination of both technological change—having new tools at their fingertips—but also different behaviours on the parts of networks or individuals who are committing these kinds of offences. Are there particular threats on the horizon, be they technological or in terms of the conduct or the practice of these sorts of offenders, that the committee could or should be aware of?

**Mr Dagg:** I think the thing to bear in mind is that very often these offenders, if not themselves technically adept, have access through the communities they inhabit to very well-informed technical advice and that then leads to a general capability uplift across the board where principles of encryption, of using encrypted services, of carefully engaging in operational security steps to conceal one's IP or prevent the leakage of data that might lead to their unmasking and identification become

the norm. That creates enormous challenges for law enforcement. When it comes to what is coming down the pipeline in the last six months or so, we have seen an absolute explosion in the capabilities of generative IA—generative artificial intelligence—which enables the creation of extremely lifelike photo realistic images that are not of a person, for example, but certainly lead to a degree of photo realistic detail and the potential for some of that technology, some of which has been open sourced, to be used for the creation of child exploitation material. While not of a child, nevertheless enabling normalising the sexual exploitation and abuse of children is of real concern. I could spend some more time on that, committee, but we probably do not have the time. It is a fear that we have that is rapidly rushing on to us and it is a little unclear, I suppose, where some of the legal principles in relation to its control stand.

**Mr BERKMAN:** Thanks very much.

**CHAIR:** I appreciate, Mr Dagg, that you had us scheduled from 9.20 to 9.40. We are now approaching 9.40 am here in Queensland. I thought I might just give committee members the opportunity to ask any pressing questions that they may have.

**Mr MADDEN:** Just a quick question, Mr Dagg, and thanks very much for making yourself available to give evidence today. In a number of your answers—and I have to apologise; this is an area of misfeasance that I am unfamiliar with—you referred to what I presume is an acronym. You referred to the 'TOR network'. Is that an acronym or is that a word?

**Mr Dagg:** Yes, sorry. That is an acronym. It is the TOR network—T-O-R.

**Mr MADDEN:** What does T-O-R stand for?

**Mr Dagg:** The Onion Router.

**Mr MADDEN:** Is that something like an encryption machine or a model?

**CHAIR:** It is the dark web I think.

**Mr Dagg:** Yes, that is right, Chair. When we talk about the dark web often what we are referring to is the TOR network, although there are other services that comprise part of the dark web. The experience of law enforcement—and this is quite comprehensively explored in the film *The Children in the Pictures*, which is a focus on the work of Task Force Argos—is that the dark web more or less equates to TOR in practice. That is where the most concerning, the largest, the most prolific child abuse networks thrive and that is where the skills of our law enforcement colleagues are really tested. TOR presents enormous operational challenges for law enforcement and the proposed steps taken in the bill to limit the ability of offenders to access encrypted software like TOR, like I said before, is a step in the right direction.

**Mr MADDEN:** Thank you.

**CHAIR:** Thank you very much, Mr Dagg. I understand that you are very busy and so the committee will not take any more of your time, but we do really appreciate you making your time available this morning to help us with our deliberations around the bill. We also appreciate what you and your colleagues do on a daily basis to keep our young people in particular safe, so we thank you for all that you do. It certainly gives us great confidence knowing that organisations like the eSafety Commissioner and commission are working hard to protect the most vulnerable in our communities, so thank you very much for your time.

**Mr Dagg:** Thank you, Chair; thank you, committee. Good luck with your deliberations.

**CHAIR:** Thank you.

**Proceedings suspended from 9.43 am to 10.00 am.**

## MORCOMBE, Mr Bruce, Co-Founder, Daniel Morcombe Foundation (via videoconference)

**CHAIR:** Our public hearing is resumed. We welcome you, Mr Morcombe, the co-founder of the Daniel Morcombe Foundation via videoconference this morning. We thank you immensely for being with us. We know how busy you and Mrs Morcombe are. We certainly appreciate your knowledge, feedback and experience as we deliberate the bill that is before the committee. We also thank you immensely for all that you have done to help promote the safety of Queensland children. As a committee we certainly are in awe of the work you do. Mr Morcombe, we will hand over to you to make a brief opening statement after which our committee will have many questions.

**Mr Morcombe:** Thank you very much. I am in Tasmania at the moment, in fact, just having a short break but all is well. I thank the committee for allowing me this opportunity to present our thoughts—both myself and Denise—and those of the Daniel Morcombe Foundation.

The Daniel Morcombe Foundation aims to make Australia a safer place for all children by enabling them to reach their full potential free from the impacts of sexual abuse. The foundation helps children, educators and families to recognise the signs of harm and respond in a safe, trauma informed way. In addition, the foundation supports young victims of crime to heal from trauma through its national Walk Tall therapy program.

In December 2003, 13-year-old Daniel Morcombe was abducted and murdered by twice convicted sex offender Brett Cowan. Cowan was not known to the family and lived on the Sunshine Coast in Queensland. The community were unaware of his extensive criminal history. Cowan had sexually assaulted as many as 50 children over a 30-year period.

Since 2014 the Morcombe family have supported and advocated for the development of a publicly accessible sex offenders register in Australia, possibly referred to as 'Daniel's law' in honour of our son. On 26 October 2022, the Hon. Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, introduced the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 into the Queensland parliament. I, with the support of the Daniel Morcombe Foundation, have the following to say regarding the proposed amendments to the bill.

Yes, we most definitely support any amendment to the child protection act that will improve the identifying and catching of offenders and provide better outcomes for young people. We also support greater policing powers to protect the lives of children. The foundation also supports the collaboration of Queensland Police with the Australian Federal Police, Australian Border Force and Australian Department of Home Affairs. This would ensure a more effective and efficient use of resources to help keep children safe across Australia.

In response to providing information to the AFP, ABF and ADHA, we can use Brett Cowan as an example. After offending and being convicted and sentenced in Queensland, he completed his term in prison and then moved to the Northern Territory but reoffended. After being convicted and sentenced in the Northern Territory, he once again completed his sentence and moved back to Queensland. He reoffended in Queensland and then moved to Western Australia. What I and the foundation would ultimately like to see is a national, publicly accessible sex offender register, although this is not what is currently being proposed. We would also seek to put this on the table for further consideration.

I, Denise Morcombe and the Daniel Morcombe Foundation fully support all of the proposed amendments to the bill. We believe the amendments will provide police with the tools they need to prevent and disrupt sexual offending against children and deter offenders from reoffending. The Daniel Morcombe Foundation supports the implementation of any tool that promotes a child's basic human right to be safe all of the time.

In addition to the register, we are advocates for a national early intervention program for young people with harmful sexual behaviour, and we continue to work tirelessly towards a universal national primary prevention (child protection) education program. I do this in honour of my son Daniel and his legacy, which is to keep children safe. That concludes the opening statement.

**CHAIR:** Thank you very much, Mr Morcombe. That was a very thorough opening statement. You are right; in the bill there is not the suggestion of a national register. However, that would be a matter for the federal government. Your advocacy to our Queensland government to be part of that register is certainly very important but something that we would need to take up with the federal government. Nonetheless, it is very important. I will turn to the deputy chair of the committee, Mr Stephen Bennett, the member for Burnett, who will start off our questions.

**Mr BENNETT:** For the committee's benefit and for those who may not be au fait with the foundation, knowing the work you and the foundation do in schools, are you able to talk to some of the educational programs particularly around this online child safety issue?

**Mr Morcombe:** Most definitely. Particularly in this day and age we are all aware that the main education tool as well as a useful device in terms of kids' amusement obviously is the internet—and social media and everything connected with that. Through the Daniel Morcombe child safety curriculum, which is an Education Queensland initiative in partnership with the Queensland Police Service and many other stakeholders including the Daniel Morcombe Foundation, Denise and I have visited over 800 schools. Probably 700 of those were in Queensland and the other 100 were in other states and territories. We are face-to-face with kids every day as well as educators—that is teachers, senior staff including school principals and deputy principals and, of course, mums and dads and carers as well. There is great concern about the impact of technology on youngsters.

Indeed, the ability and the lack of knowledge that parents and carers have in regard to the use of the technology that kids are using I think is of concern. Often it is four-, five- and eight-year-olds—it is quite young—who are using these devices as an amusement toy. They will flick through and become perhaps tainted by images or vision. Also when playing what appears to be a very simple and non-threatening game online, the kids can be groomed; they can be contacted by people whom the parents and carers are unaware of. You may be thinking, 'How can that be a potential danger?' It is the old school of offering a youngster a gift. It is not necessarily a gift in the post, which is more traditional, or at the corner shop being lollies or whatever it may be; it is a gift of free games and the kids are hypnotised. They want to be the champion, so they will give them advice and they will give them free games. Then they are building trust between the groomer and the youngster, and parents and carers often are very much unaware of that. Unfortunately, this is the medium that predators use today.

**Mr SKELTON:** Thank you to you and Denise for your advocacy. You just gave me a bit of a thought there. As you pointed out, the kids are always on their tablets and playing those innocuous games. For families impacted by the actions of child sex offenders, how important is it to know that the police are able to monitor their behaviour online and future offending against children?

**Mr Morcombe:** I think it makes common sense that the public, that is ordinary Australians, need to have the confidence that our police, the frontline troops who are keeping us all safe, particularly our children, have the tools required in a modern Australia. As we know, technology advances incredibly quickly.

It is almost 19 years to the day since we lost Daniel. The time 19 years ago was very different to what it is today. We all know we get trapped with technology because as soon as we all get confident with something, there is an update; there is a change to that. Unfortunately, our predators are probably better educated on how to trick our kids than our parents are on educating our kids on how to be safe. We need to spend a lot of time educating parents and carers in particular but also the youngsters.

Most importantly, police need the tools in a modern Australia. This includes identifying changes in technology such as encrypting where offenders can hide their identity. We need the police to be able to track who these people are. If they are disguising themselves through 'vault' apps, perhaps downloaded child abuse material, it needs to be visible to our policing troops who can process and make charges as required and keep Australians and in particular Queenslanders safe.

**Mr BERKMAN:** We really appreciate you joining us today. We heard a short while ago from the Office of the eSafety Commissioner about some of the very technical and really complex issues they are trying to deal with in this space. From what you have said you seem to be far more au fait with the technological challenges that police are facing in protecting kids from online predators. Can you speak to the mechanisms in this bill and what it does from your understanding to provide police with the tools they need?

**Mr Morcombe:** Certainly one thing is the media access control where the police had the ability to, I believe, track a particular device. It is not necessarily a motor vehicle, as I understand it, but the device itself such as a mobile phone or iPad et cetera. While that may provide some concerns to civil libertarians et cetera, personally the use of technology can put you at a scene—and that is what some people are worried about. At the end of the day, technology is a good thing because it can eliminate you from the potential investigation or the ongoing investigation by saying, 'That was not me. I was not at that location. My device illustrates I was at this location helping my elderly mother,' or whatever it may be. Technology in terms of tracking devices can be just as helpful in eliminating somebody from an investigation as putting them at the scene.

The monitoring and tracking of at-risk offenders is everybody's concern, and it should be everybody's will that the police have the required powers to do that. We want to make sure that Australians, particularly Queenslanders and particularly kids, are safe. To reduce or improve the deterrent effect that tracking devices may have and the access of material that police have is a good thing. It is good for the high-risk offender because it is a deterrent. It will mean hopefully that they do not offend.

**Mr MADDEN:** Mr Morcombe, you probably do not remember me, but we met when I was a councillor in the Somerset region at Harlan, a little town on the D'Aguilar Highway. I just want to say what a lasting memory I have of that meeting—the impact it had on me—and I would like to thank you and your wife and your foundation.

**Mr Morcombe:** Thank you.

**Mr MADDEN:** My question relates to how important it is for the police to work together and share information with the Australian jurisdictions and perhaps how that might have assisted if that were done better in Daniel's case with his investigation—whether the sharing of information between jurisdictions might have helped in that investigation.

**Mr Morcombe:** It is just common sense that Border Force, the Australian Federal Police, Home Affairs, Queensland Corrective Services and Queensland police work together; otherwise, there are duplications, roadblocks and red tape. We have to work smarter to make sure that taxpayers' funds are well spent and there is not duplication with people stepping on each other's toes. I think it is a fair thing. I did mention this in my opening statement: unfortunately, predators use our old colonial system of states to move around and hide in other states. Certainly that was highly evident of Brett Cowan, who moved multiple states, and there is a litany of others who have done exactly the same.

There is one high-profile person that has been in the news over the last week or so. I will not use that particular person's name because his case has not come before the courts. He is a Victorian of note who has recently, or in the last 12 months, moved to Queensland. His offending took place in Victoria, as I understand it. For his own reasons he elected to move interstate. One can only suspect that that was to disguise his notoriety in Victoria. It is commonplace for predators with a history to move from state to state and use that veil of secrecy that unfortunately is a road block in many situations.

Certainly, to improve—as I said, it just makes sense to collaborate, to share information that is gathered between different agencies and do the best we can with that information to keep Australian kids safe.

**Mr MADDEN:** Thanks, again, Mr Morcombe. I hope we meet again personally one day so I can thank you.

**Mr Morcombe:** I look forward to that. Thank you.

**CHAIR:** Mr Morcombe, I am very conscious of time and I appreciate that you are on holidays. The committee will try not to take too much more of your time. Are there any other pressing questions from the member for Maiwar or the member for Burnett? No. Mr Morcombe, we will leave it there only because you are on holidays. We do very much appreciate your contribution to our committee and its deliberations. As I said, the committee is in absolute awe of the work that both you and Mrs Morcombe do for the children of Queensland, so we thank you immensely for that.

As committee chair, I will be making a recommendation in my report to address the issues that you have raised around the interjurisdictional movement of predators throughout our country. I will give you that undertaking that I will make that recommendation in our final report, which will go to the minister and to the House. You have raised a very important matter. Mr Morcombe, we wish you a lovely break. Give our best wishes to Mrs Morcombe. We thank you again for all that you do for our young people of Queensland.

**Mr Morcombe:** It has been a pleasure. I hope I contributed.

**CHAIR:** Absolutely. Thank you. Unfortunately, the Queensland Law Society are unable to attend today. The committee will now break until 10.40 am.

**Proceedings suspended from 10.21 am to 10.40 am.**

## SHARMA, Mrs Pree, Prevention, Intervention and Community Legal Education Officer, Aboriginal and Torres Strait Islander Legal Service

## SHILLITO, Mr Lewis, Director of Criminal Law, Aboriginal and Torres Strait Islander Legal Service

**CHAIR:** I now welcome representatives from the Aboriginal and Torres Strait Islander Legal Service. Thank you for your time this morning as the committee deliberates the bill that is before it. We certainly appreciate you giving up your very valuable time to assist us and the work that we do. I invite you to make a brief opening statement after which committee members will have many important questions for you. I turn to Mrs Sharma for a brief opening statement.

**Mrs Sharma:** Thank you for inviting the Aboriginal and Torres Strait Islander Legal Service, also known as ATSILS, to attend and speak at the public hearing for the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022. My name is Pree Sharma and my role title is Prevention, Intervention and Community Legal Education Officer. I appear today with Mr Lewis Shillito, our Director of Criminal Law. I would like to begin by acknowledging and paying my respects to the traditional custodians of the land upon which we meet today, the Turrbal and Jagera people and also to acknowledge and pay my respects to elders past and present. I extend that respect to any Aboriginal and Torres Strait Islander peoples here today and those who may be tuning in to this live stream.

ATSILS is a community-based public benevolent organisation established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland in the primary practice areas of criminal, family and civil law. ATSILS also delivers community legal education and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples. In the interests of respecting the time of the committee, rather than outlining each of the provisions we found worthy of comment in our written submission, I will discuss our concerns more broadly and the basis for those concerns.

ATSILS strongly supports measures that are based upon protecting the human rights of children, including measures which promote and preserve the safety of children and protect children from harm, including, relevantly, sexual harm. In reviewing the bill, we also looked through the lens of how the laws may apply to a reportable offender who is an Aboriginal and/or Torres Strait Islander person. In doing so, we identified some proposed amendments that highlighted the need for culturally appropriate communication of reporting obligations to reportable offenders to aid in compliance with those obligations. As the rationale for this bill is child safety, increasing compliance by reportable offenders with their reporting obligations is at the very heart of this objective.

In practice, we know that there are several barriers to effective compliance with reporting obligations by Aboriginal and Torres Strait Islander offenders. Prescriptive reporting frameworks which require timely reporting are concepts which are not naturally congruent with the culture of Aboriginal and Torres Strait Islander peoples—for example, where family and kin responsibilities may be prioritised. Furthermore, studies show that a high proportion of Aboriginal and Torres Strait Islander offenders suffer from cognitive impairment issues for a variety of complex reasons, including, for example, health and socio-economic disparities, intergenerational trauma, disruption to culture and kinship, family breakdown and poor educational outcomes.

In our view, compliance with prescriptive reporting obligations will be improved if they are communicated to Aboriginal and Torres Strait Islander offenders in a culturally appropriate way and in a way that seeks to overcome any potential cultural, literacy and cognitive barriers. For example, considering the barriers we outlined earlier, we raised concerns with the new proposed section 54A when read with the new proposed evidentiary provision in section 77(3)(e) on the basis that in our view the mere serving of a section 54A reporting obligations notice on an Aboriginal and/or Torres Strait Islander offender which contains details regarding the offender's reporting obligations cannot on its own constitute sufficient notice. In our view, police officers need to meaningfully engage with individuals on whom they are serving these notices to ensure that the reporting obligations are explained in a manner which considers the individual's cultural, literacy and/or cognitive barriers.

Additionally, we raised concerns regarding the very broadly drafted proposed new power under section 21A of the Police Powers and Responsibilities Act, which allows police to enter and inspect all digital devices owned by a registered offender in the absence of a search warrant. While we support measures aimed at preventing reoffending by reportable offenders, in our view, this power is so broad that it falls within the realms of arbitrary interference with a person's right to privacy as is

enshrined in section 25 of the Human Rights Act, especially as there appears to be no threshold for a police officer to have reasonable suspicion of new wrongdoing by the offender before they can exercise this power.

In closing, we wish to draw the committee's attention to the recent findings in the Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, which revealed systemic cultural failings within the police force including racism against Aboriginal and Torres Strait Islander peoples. In the report of the commission *A call for change,* it was found that such cultural issues have contributed to the over-representation of Aboriginal and Torres Strait Islander peoples in prison. In the domestic and family violence context, it was identified that Aboriginal and Torres Strait Islander peoples have been found to be overpoliced as police assessed respondents and underpoliced as victim survivors. We are concerned that the cultural issues within QPS may result in similar overpolicing of reportable offenders who are Aboriginal and/or Torres Strait Islander under the proposed new section 21A of the Police Powers and Responsibilities Act under this bill and, more broadly, negative outcomes for those reportable offenders under the act if measures are not taken to ensure that reporting obligations are communicated to the same in a culturally appropriate manner along with supports to assist offenders with ongoing compliance.

**CHAIR:** Thank you very much, Mrs Sharma. If I could just make mention that at the beginning of the public hearing this morning the committee did pay our respects to our First Nations peoples. I did not want you to think that we had abrogated our responsibility there. I will pass to our deputy chair who I am sure will have questions.

**Mr BENNETT:** Good morning. In your submission you talk about cultural biases under the assessment of risk. You touched on it a little in your opening remarks, but could you give some examples to explain the comment to me in more general terms perhaps?

**Mr Shillito:** Could I respond to that?

**Mr BENNETT:** Yes, thank you.

**Mr Shillito:** We see it in a number of different contexts. It can be in an ad hoc context as in when a decision-maker of any kind is making a decision and the way in which they go about doing so. That might be a court, it might be a police officer, particularly a watch house sergeant, for example, it can be operational police officers and the way in which they prepare objection to bail affidavits. A clear illustration of it was a consideration that was in the youth justice space a couple of years ago where we were looking at adopting a risk management tool that was utilised in the United States as a way of informing youth justice reports provided to the court for the court's assistance with things like bail applications and sentencing considerations. One of the real challenges of it was essentially that inherent within it, and recognised by those who prepared it, was effectively an increasing of risk considerations based deliberately on racial considerations. It was done on a scientific basis in the sense that the evidence that the tool was derived from demonstrated that there were increased risks where a person was of a particular racial background, particularly in the United States where it came from. Whilst recognising that there can be some scientific basis for that, it becomes very arbitrary and potentially racist to utilise tools in that sort of a way. It can inform things like that. It can also inform those day-to-day decisions being made. For instance, on an objection to bail affidavit provided by an operational police officer there is, I think—I cannot remember the exact heading, but there is a provision for comment on other matters and a person's Indigeneity can be commented on as a risk factor which in and of itself can be rather offensive to a person but also to the extent to which it is taken into account we would say is inappropriate.

**Mr BENNETT:** To help the committee around the challenges of First Nations people in this reporting regime that you alluded to, are there any ideas about how we can make cultural training or cultural sensitivities more prevalent in pieces of legislation like that? Obviously it is a serious issue that you have raised and you have a better understanding. What do you believe we could do better?

**Mrs Sharma:** I think, in fact, in our submission we might have made a recommendation in regard to that.

**Mr BENNETT:** You certainly talk about cultural training under the cultural biases and the assessment risk part of the submission.

**Mrs Sharma:** We have suggested, for example, with regard to section 54A and this new proposed section regarding the imposition of a reporting obligations notice, that a positive obligation could be inserted into the legislation such that QPS would need to engage with an individual with whom they intend to serve such a notice on with a view to understanding the individual's cultural literacy and/or cognitive barriers and make a written record of the police officer's observations regarding the individual's barriers and explain the content of each notice to the individual upon which

they have served the notice in a manner which considers the offender's cultural literacy and cognitive barriers. But also amendments to proposed section 77(3)(e) regarding the evidentiary aspect such that a police officer is not only required to attest to the fact that the notice was merely served but also that they have engaged in this process as well.

**Mr BENNETT:** Thank you for those recommendations. I am sure the committee can take those into consideration.

**CHAIR:** Just along those lines, your submission highlights the importance of communicating reporting obligations to Aboriginal and Torres Strait Islander offenders in culturally appropriate terms. Would you like to expand on that a little further from the deputy chair's question?

**Mr Shillito:** Can I say one thing briefly, a comparative regime is that that is in, I think it is, section 420 of the Police Powers and Responsibilities Act which is where a police officer wants to question a person of Indigenous background and the sorts of inquiries that they are required to make are, I think, set out under the Police Powers and Responsibilities Regulation. The sorts of questions are as to their educational background, their cultural connections, if relevant, any medical issues of relevance that might be disclosed by the person, any impairment by alcohol or drugs or other things as well. Essentially, it is such that they have enough of an understanding as to that person's presentation at that point in time to be able to hopefully tailor the way in which they communicate.

The term 'culturally appropriate language' is perhaps not the best phraseology there just in the sense that we are not talking about using lingo, for want of a better phrase, in explaining things, but explaining them in a way that is appropriate for whoever they have in front of them. A lot of this work has been done in other spaces such as when dealing with youth offenders and trying to communicate bail orders, court orders, having arraignments in the superior courts in a way in which the person understands what is going on.

Without wanting to offensively draw a parallel between a youth offender and a person with other disadvantages, work could be done in that way to prepare communication in a way that an operational officer can leverage so that they are not trying to—I appreciate they have a training program that they go through at the academy and this is going to be one component of it if it is, indeed, incorporated into it, but it is something that they can tangibly pick up and communicate in a clear way and ideally coupled with either support persons so that the person can step outside the room with the officer, have a yarn and discuss and raise any questions they might have at that stage because there can be those power related issues when you are sitting in a room with a police officer when you are the First Nations person particularly in this kind of a context which might simply mean whether you have zero understanding or some but not complete that you are not just going to ask a question that might assist you in understanding what your commitments may be.

**Mr BERKMAN:** I really appreciate your time this morning. I appreciate the recommendations you have made specific to the provisions in the bill. Do you see greater or lesser merit in taking that very specific approach where powers exist and there is this risk of biases coming into police procedure or are their broader overarching approaches that could more effectively and more generally address these risks in policing for First Nations people?

**Mr Shillito:** That is a big question. There probably is. I have not really turned my mind to it in much depth at this point. I would say that whilst appreciating the need for criminalisation in this context generally for those who are pointedly or placing children particularly at risk by noncompliance, there is cause for that, but generally speaking the approach of criminalisation for those who are not intentionally not compliant but are doing so by way of disadvantage or lack of understanding or lack of other skills or supports is not a helpful one. It brings people back into the criminal justice system who are not trying to break the law. An approach that is more driven by support for compliance, if compliance is the goal for community safety, an approach designed with that at its core would perhaps be more beneficial. I do not think I could speak to it in much more detail than that without getting my head around what that might look like.

**Mr BERKMAN:** Your submission makes fairly clear that notwithstanding the concerns you have raised you do support the amendments proposed in the bill. I guess I am keen to clarify whether if we see the bill proceed without the amendments along the lines of what you have recommended, would you still support the passage of the bill in its current form?

**Mr Shillito:** Yes, broadly. We are supportive of the intent of the bill in that regard so yes is the short answer.

**Mr SKELTON:** My question is in relation to section 15. You say information provided to Corrective Services can be provided to the police. You express your concerns that there are no safeguards that that information is only used for the purpose of offender reporting. Can you give us a bit more detail on that, please?

**Mr Shillito:** Essentially, without parameters around what use could be made of that information, I guess some of the concerns I articulated before around bail considerations and other decisions informed by QPS information may be impacted by the availability of that information. For example, where a reportable offender provides a series of addresses because they are perhaps itinerant and they say, 'Look, you can probably contact me at my uncle's or my aunty's and these are some addresses,' that will be put into QPRIME, the police computer database. Next time another person who resides at one of those addresses is before the court and seeking to apply for bail, a consideration that the police will then turn their mind to is whether that is an appropriate bail address and that could be informed by the fact that a reportable offender has nominated it as an address where he potentially may reside at. There are some flow-on effects from that disclosure that are not, at least on the face of the bill, going to be sequestered from what other use that information could be put to. It could obviously impact on the reportable offender themselves in the event of re-offending of a like or a completely unrelated nature in a similar vein, particularly if, for instance, they say they will be at one of these addresses, police go looking for them and they are not at any of them and the reliability of that person. A lot of our experience of people who find themselves in that situation, reportable offenders who come back for breaches, are in exactly that position of living out of a car or itinerant to some extent particularly because they do not have a great support network at that point in time. That I guess is the concern: as to where that information goes after it is provided to QPS.

**Mr BENNETT:** I will go back to proposed section 54A and the conversations around the recommendations and some other things. My question is about the reporting and the obligations on police to engage with First Nations people. Is there not more prevalence for liaison type officers to be involved in the process, or should we be looking to embed more First Nations custodial police officers into the process? We see them a lot. When our committee travels around we see a lot of interaction with those liaison type officers. Are there positive outcomes from that?

**Mr Shillito:** We do not see it a lot from our experience.

**Mr BENNETT:** You do not see it a lot?

**Mr Shillito:** Very infrequently would I hear from a client that they sat down with a community—I cannot remember what their official designation is now—

**Mr SKELTON:** Police liaison officer.

**Mr Shillito:**—with a police liaison officer or similar. Typically, I think it is found more in remote communities or regional communities but it is still not a common experience. I am not aware of them being leveraged in connection with this in particular. As to the reliability of those anecdotal versions that we get from our clients—when they are picked up and they say, 'I didn't understand,' we might ask them, 'When was it explained to you?'—I cannot speak to how reliable their recollections are.

**Mr BENNETT:** With the issues being so prevalent—the representation of First Nations in the process—are they offered communication assistance or your services or like services in the first instance?

**Mr Shillito:** When their obligations are explained?

**Mr BENNETT:** Once police are starting to communicate.

**Mr Shillito:** Say the police officer wanted to speak to them in relation to a potential breach of their obligations, if they would question them in that regard we would like the QPS to be contacting us. Our experience is that that is very infrequent. We have a 24-hour hotline and by way of simple example for youth in custody, legislatively they are meant to contact us. I could not give you a statistic, but it is an extremely low rate at which we are receiving those sorts of phone calls. I do not remember the last time one of our staff has talked to me about a phone call in that context.

**Mr MADDEN:** In your submission you highlight the importance of communicating reporting obligations—that area—to Aboriginal and Torres Strait Islander offenders in culturally appropriate terms. I am asking this as a former lawyer with 25 years of doing appearances in the Ipswich Magistrates Court and the Toogoolawah Magistrates Court but not for Indigenous people because we have an ATSIC office in Ipswich. With regard to culturally appropriate terms, are we talking about terms like 'on country' and 'aunt' and 'uncle', or are we talking about simplicity as we understand the complexity of the legal language and literacy as well—the lack of literacy on the part of a lot of clients? Are you talking about actual terminology like 'on country' or 'aunt' and 'uncle', or are we talking about simplicity in terms of the offender understanding what the reporting obligations are?

**Mr Shillito:** It is more the latter and a little of the former in the sense that particularly in larger regional areas there is less of that reliance on language examples that you have given. Broadly—and I am speaking in generalisations—there would be more understanding of legal language. However,

to an extent the use of that can be very helpful if it makes a person aware. For instance, 'So you will be staying with your aunty and anybody else,' that sort of more casual type of conversation might assist them to absorb that information better. Broadly speaking, it is pitched at an appropriate level, having assessed as per our recommendation their capacity, but with a simplicity of language to ensure it is better understood.

**Mr MADDEN:** I think it is an excellent submission. I completely understand the importance of that given the nature of the clients you are representing.

**CHAIR:** It being 11.04 am, that concludes our hearing this morning. On behalf of the committee I would like to thank you particularly for all the work that you do with many of our most vulnerable Queenslanders. We do support you and certainly acknowledge the great work you do. On behalf of our committee I also thank all of the witnesses who appeared this morning and who have participated in our hearing, particularly to all of those submitters. We have received your submissions and have very much appreciated the diligence, the commitment and your knowledge as we continue to deliberate on the bill. I would like to take this opportunity to thank all of those who have engaged generally with our inquiry. I wish you a good morning. That concludes our public hearing associated with this bill.

**The committee adjourned at 11.05 am.**