Legal Affairs and Community Safety Committee Briefing Note

For the Legal Affairs and Community Safety Committee inquiry into the Criminal Law Amendment Bill 2016.

Background and Policy Intent

- The key purposes of the Criminal Law Amendment Bill (the Bill) are to:
  - ensure that a person who commits murder cannot rely on an unwanted sexual advance, other than in circumstances of an exceptional character, as a basis for the partial defence of provocation which, if successfully raised, reduces murder to manslaughter; and
  - make a number of miscellaneous criminal law related amendments, arising from the lapsed Justice and Other Legislation Amendment Bill 2014 and from stakeholder consultation, to improve the operation and delivery of Queensland's criminal and related laws.

Exclusion of unwanted sexual advance as basis for killing on provocation

- During the 2015 State general election campaign the Queensland Government committed to amending section 304 of the Criminal Code (Killing on provocation) to exclude an unwanted non-violent sexual advance being able to establish a partial defence of provocation in the case of murder. The Bill amends section 304 of the Criminal Code to implement this commitment.
- The proposed amendment addresses community criticism that section 304 could be relied upon by a man who has killed in response to an unwanted homosexual advance from the deceased (sometimes referred to as a 'gay-panic' defence).
- Section 304 was itself amended in 2011[1] as a consequence of Queensland Law Reform Commission (QLRC) recommendations in its 2008 report, *A review of the excuse of accident and the defence of provocation.* The 2011 amendments implemented some of the QLRC's recommendations to address the provision's bias and flaws, specifically by providing that:
  - other than in circumstances of an extreme and exceptional character, sudden provocation cannot be based on words alone (section 304(2)) [While not specifically dealing with the issue of unwanted sexual advances, the amendment to exclude 'words alone' applies to sexual propositions where there is no physical contact.];
  - other than in circumstances of an extreme and exceptional character, sudden provocation cannot be based on anything done by the deceased's choice about a relationship (e.g. end the relationship (section 304(3)); and
  - reversing the onus of proof to a defendant seeking to rely on the partial defence (section 304(7)).
- However, the partial defence of provocation continued to be the subject of criticism on the basis that it could be relied upon in the context of an unwanted homosexual advance from the deceased.

[1] *Criminal Code and Other Legislation Amendment Act 2011. Relevant provisions commenced 4 April 2011.*

- In November 2011, under the former Labor Government, an expert committee (the Committee) was tasked with reviewing section 304 and its application to the circumstances of a homosexual advance from the deceased. The Committee was chaired by the Honourable John Jerrard, former judge of the Queensland Court of Appeal (the Chair).
- In January 2012, the Committee provided its report, *Special committee report on the partial defence of provocation and a non-violent sexual advance* (**Attachment 1**) to the then Attorney-General. The proposed amendment accords with the recommendations of the Chair.
- The previous Labor Government subsequently announced its intention to give effect to the Chair's recommendation. However, with the change of government in 2012, the reform was not progressed by the Liberal National Party (LNP) Government.
- *Jurisdictional comparison.* Western Australia, Victoria and Tasmania have all abolished the partial defence of provocation for murder, however, in those jurisdictions the offence of murder does not carry mandatory life imprisonment (although a presumptive life sentence applies in Western Australia). The Australian Capital Territory (ACT) and Northern Territory (NT) have enacted provisions excluding non-violent sexual advances alone from forming the basis of a defence of provocation (section 13 *Crimes Act 1900* (ACT); section 158 Criminal Code (NT)). In 2014, New South Wales (NSW) abolished the partial defence of provocation replacing it with a more limited partial defence of 'extreme provocation'. The NSW amendments exclude a non-violent sexual advance of the deceased to the accused from constituting extreme provocation (section 23(3) *Crimes Act 1900* (NSW)).

Other criminal law related proposals

- On 26 November 2014, the Justice and Other Legislation Amendment Bill 2014 (the lapsed Bill) was introduced to Parliament by the former LNP Government and referred to the former Legal Affairs and Community Safety Committee. The Justice and Other Legislation Amendment Bill 2014 lapsed as a result of Parliament being prorogued on 6 January 2015.
- The lapsed Bill contained miscellaneous amendments to various statutes within the justice portfolio and a number of the criminal law amendments are contained in the Bill.
- Amendments to the criminal laws of Queensland are required from time to time to ensure they operate effectively and as intended. A number of matters for amendment were identified, both by review and through consultation with stakeholders which are also contained in the Bill.

Amendments in the Bill

- The various amendments in the Bill are discussed in further detail below.

Bail Act 1980

- Police powers to grant bail - The Bill (clause 3) amends the language of the *Bail Act 1980*, section 7 (Power of police officer to grant bail) to overcome potential confusion and inconsistency with its interpretation.

- Amended section 7 will require the watch-house manager or officer-in-charge to investigate the question of bail. If satisfied the person may be granted bail, the officer must either grant bail or issue a notice to appear to the person. This will ensure that the granting of bail is given prompt and due consideration when a person is charged and in police custody.

- Clarify the process on forfeiture of cash bail - The Bill (clause 4) amends the Bail Act to clarify that on the non-appearance of a person released on 'police cash bail' in court, the deposit of money is to be forfeited and the court cannot issue a warrant of apprehension for failing to appear.

- New section 150A of the *Justices Act 1886* (clause 62) will enable a justice to end a complaint where police cash bail was granted under section 14 of the Bail Act. The option to end a complaint will ensure the complaint is formally completed within the justice system. The complaint will not appear on any criminal history as there has not been any finding of guilt, however a record of the complaint is recorded on the Queensland Police Service computer system QPRIME. The new provision recognises that police cash bail is predominantly issued in relation to minor offending that may not warrant criminal sanction.

Criminal Code

- Public officers interested in contracts - The Bill (clause 8) amends section 89 of the Criminal Code to clarify that public service officers can be appropriately authorised to provide services in their private capacity. This is often necessary in rural and remote areas.

- The Bill creates an exception to section 89 (Public officers interested in contracts) for public officers who acquire or hold a private interest made on account of their employment, having first disclosed to, and obtained the authorisation of, the chief executive of the relevant department.

- Misconduct with regard to corpses - The Bill (clause 9) increases the maximum penalty (from two years to five years imprisonment) for an offence under section 236(b) of the Code (renumbered as 235(2)), where a person improperly or indecently interferes with, or offers any indignity to, a dead human body or human remains. The offence is redefined as a crime. Clause 70 of the Bill adds the section 236(b) offence to schedule 1 of the *Penalties and Sentences Act 1992* (PSA), which lists the offences for the serious violent offence (SVO) regime.

- Interfering with a corpse is serious criminal conduct. A person who has had a role in the death of another person stands to gain a considerable benefit from destroying, weakening or contaminating any evidence, if a body is disposed of. The offence in section 236(b) is often charged in conjunction with a murder and/or manslaughter charge where there is evidence that the accused person interfered with the body after death, for example, in disposing or hiding the body in some way.

- In those cases where the court orders that imprisonment for this offence is to be served cumulatively with a sentence for a related offence, such as manslaughter, the combined period of imprisonment will be relevant for the purpose of the serious violent offence

regime. The effect of this is if the combined sentence is imprisonment for 10 years or more the offender is automatically required to serve a minimum non-parole period of 80% of the imprisonment imposed.

- Exclusion of unwanted sexual advance as basis for defence of killing on provocation – The Bill (clause 10) amends section 304 (Killing on provocation) to exclude an unwanted sexual advance from the ambit of the partial defence, other than in circumstances of an exceptional character.

- A person who is otherwise guilty of murder may instead be convicted of manslaughter, if the jury decides that the murder was committed while the accused was provoked. This partial defence is found in section 304 of the Criminal Code and applies where a person does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for the person's passion to cool.

- Under the terms of section 304 of the Criminal Code, the issue of killing on provocation is only considered by the jury if satisfied the prosecution has proved beyond reasonable doubt the elements of murder. The successful application of provocation operates to reduce the criminal responsibility of the defendant to manslaughter; therefore avoiding the punishment of mandatory life imprisonment for murder. The maximum penalty for manslaughter is life imprisonment (section 310 of the Criminal Code).

- Consistent with the amendments made to section 304 in 2011 to restrict its operation in certain contexts, the Bill amends section 304 to expressly exclude an unwanted sexual advance to the person from being sudden provocation, unless in circumstances of an exceptional character.

- Amendment is also made to the existing provisos in subsections 304(2) and (3) to omit the words 'a most extreme and'. As amended, the provisos will require 'circumstances of an exceptional character' rather than 'circumstances of a most extreme and exceptional character'. This accords with the recommendations of the Chair of the Committee that this was warranted for consistency, to remove any potential ambiguity and given that such an amendment would not have the effect of lowering the threshold.

- Further detail about the proposed amendment can be found in the accompanying Explanatory Notes, particularly under the notes on provisions section for clause 10 of the Bill.

Criminal Proceeds Confiscations Act 2002 (CPCA) (Clauses 13-23)

- Dealings with property that breach Supreme Court orders- In the *State of Queensland v Bank of Queensland & Brett Raymond Stevens* [2013] QCA 225 (the Stevens decision), the Court of Appeal examined the CPCA, section 52 (contravention of a restraining order). Because a financial institution failed to freeze accounts as required by a Supreme Court restraining order, over $300,000 of restrained funds were electronically transferred out of an account and the State could not confiscate them.

- The Stevens decision highlighted that section 52 does not result in all dealings with restrained property being void and unenforceable, or provide any sanction against

financial institutions contravening a restraining order through negligence as opposed to intentional conduct.

- The wording of section 52 is repeated in sections 93ZT and 143 of the CPCA (for breaches of restraining orders) and in sections 60, 93ZZH and 171 (for breaches of forfeiture orders). The Bill amends these sections to ensure that all contraventions of restraining orders and forfeiture orders are prohibited, whether intentional or otherwise. However, the current defence in these provisions for a person to show that they had no notice of, or reason to suspect, a restraining or forfeiture order applying to the relevant property will remain, for the protection of those people acting in good faith. The Bill will:

  - add, as an exception to the defence, land over which a caveat in relation to the relevant order is registered under the *Land Title Act 1994*;
  - recognise that the offence provision does not prevent alternative prosecution and punishment for contempt of court or for another offence;
  - expand the scope of the subsection which voids a dealing with property in breach of an order. A dealing will be void unless it is in favour of a person who did not know and could not be expected to have known of the relevant order, who acted in good faith and provided sufficient consideration for the dealing; and
  - apply the expanded voiding provision whether or not any person is convicted of an offence in relation to the relevant order.

- Maximum financial penalties will also be increased: from the current 350 penalty units; to 2,500 (for a financial institution) or 1,000 penalty units (for all other persons), or (in each case) the value of the restrained or forfeited property that is the subject of the breach (whichever is the greater amount). The proposed increased penalties are more consistent with penalties in other Australian jurisdictions and match the penalty provided in the CPCA for failure by a financial institution to comply with a notice (section 249E).

- Including voluntary provision of information by financial institutions with respect to the Serious Drug Offender Confiscation Order Scheme (SDOCO) - Section 249 of the CPCA enables financial institutions to voluntarily and lawfully provide information to police officers and, in more constrained circumstances, to Crime and Corruption Commission (CCC) officers. The *Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013* (the 2013 CPCA Amending Act) inserted the new chapter 2A SDOCO scheme into the CPCA. The SDOCO scheme is administrated by the CCC. Section 249(3) does not contemplate chapter 2A. The proposed amendment will make it clear that information under section 249 includes the provision of information to CCC investigators with respect to chapter 2A matters.

- Clarifying Parliament's original intention with respect to section 93ZZB of the CPCA - Section 93ZZB of the CPCA sets out the circumstances in which the Supreme Court must make a SDOCO. The proposed amendment will clarify and strengthen the original intention of the provision by:

- providing an example demonstrating that a conviction for a single qualifying criminal offence cannot be used as the basis for a court making a second confiscation order against an offender; and
- confirming that the section does not limit the value of property that may be forfeited to the State under a SDOCO.

***Director of Public Prosecutions Act 1984* (DPP Act)**

- Enabling delegation - The Bill (clause 25) amends the DPP Act to enable the Director of Public Prosecutions to delegate the Director's functions and powers to an appropriately qualified person.
- The primary purpose of the amendment is to provide the Commonwealth Director Public Prosecutions (CDPP) with jurisdiction to appear on State offences in the Magistrates Court. Although existing arrangements allow the CDPP to prosecute cases involving both State and Commonwealth offences in the superior courts (for example when an offender is charged with both Commonwealth and State offences arising out of the same course of conduct) there is no comparable provision for the Magistrates Courts. This amendment will allow the Director to delegate his or her functions and powers to the CDPP to prosecute State charges in Magistrates Courts when appropriate.

Drugs Misuse Act 1986 (DMA)

- Updating the evidentiary provision providing for drug analysts' certificates - Section 128 of the DMA is an evidentiary provision setting out the requirements and the admissibility of a Drug Analyst Certificate (certificate).
- The Bill (clause 27) amends the provision to bring it into line with current scientific and operational practices of analysis, which have evolved as a result of scientific advancement and the increase in automation since the introduction of the provision in 1986.
- The amendment allows an analyst to review the results of all of the testing processes contained in the laboratory records and use this information to appropriately complete their analysis of the exhibit and certify the results.
- The Bill includes a transitional provision (clause 28) to ensure that all drug analyst certificates previously issued are valid and able to be used in current and future proceedings for drug offences. This will avoid any need to reissue evidentiary certificates already in existence. The provision also removes any doubt as to the admissibility of certificates on which past prosecutions have been based.

Evidence Act 1977

- Reframing the requirements for DNA analysts giving evidence in the Magistrates Court DNA evidentiary certificates -The Bill (clause 42) amends section 95A of the *Evidence Act 1977* (Evidence Act) which provides for the use of a DNA evidentiary certificate (certificate), signed by a DNA analyst in criminal proceedings. The certificate is used to address internal laboratory continuity and thereby obviate the need to call all persons involved in the continuity and testing processes that produce a DNA

profile, given that these persons are unlikely to give contentious evidence. A certificate cannot cover crucial evidentiary issues such as the comparison of profiles.

- The amendment to section 95A will remove the mandatory requirement for a party seeking to rely on the certificate to call the DNA analyst to give evidence in court. Instead, the DNA analyst will only be required on notice by a party. However, the court will have discretion to waive that notice requirement and further, to extend or shorten any period mentioned in the section.

- The amendment will also clarify that relevant provisions in section 95A do not apply to committal hearings. This will resolve a tension currently existing between section 95A, requiring the attendance of the DNA analyst in every instance, and the Justices Act which governs committal proceedings and requires them to be conducted "on the papers" via use of tendered written statements only, with witnesses called only in limited circumstances and with the court's leave.

Pre-recorded evidence related matters – ability to close the court; use of a soundtrack and destruction of certain pre-recordings.

- The *Evidence Act 1977* was amended by the *Evidence (Protection of Children) Amendment Act 2003* which aimed to improve the treatment of child witnesses by the criminal justice system. As part of the reforms Divisions 4A (Evidence of affected children) and 4B (Dealing with a recording) were introduced. Section 21AA sets out the purpose of Division 4A: to preserve, to the greatest extent practicable, the integrity of the affected child's evidence and to require, wherever practicable, that an affected child's evidence be taken in an environment that limits the distress and trauma that might otherwise be experienced by the child when giving evidence.

- Division 4A of the Evidence Act establishes a system of special measures for the taking of an *affected child's* (i.e. a child who is a witness in certain stipulated proceeding and who is not a defendant) evidence, including the pre-recording of evidence at preliminary hearings (under subdivision 3).

- Section 21A(2) of the Evidence Act also contains a range of similar provisions that apply for a *special witness* (a special witness includes a child under 16 years to the extent division 4A does not apply, and certain other vulnerable persons), including the ability to pre-record evidence under section 21A(2)(e).

- The pre-recording is then played to the jury at the trial and the recording is as admissible as if the evidence was given orally in the proceeding. The recording is also admissible in certain other related proceedings (e.g. appeal, retrial, or in a civil proceeding arising from the commission of the relevant offence).

- Usable soundtrack. Currently where the images from the video-tape recording are not able to be played due to a technical glitch, but the audio soundtrack contained on the videotape recording can be produced, there is no ability to use only the soundtrack and instead the affected child or special witness must be recalled to give pre-recorded evidence again, incurring additional distress. The proposed amendments in the Bill in clause 36 overcomes this situation by inserting a new division into the Evidence Act

to allow the court, if satisfied it is in the interests of justice, to order that a usable soundtrack may be presented in circumstances where a moving image cannot be produced but there is a usable soundtrack. The amendments also provide for the admissibility of the usable soundtrack consistent with the provisions applicable to video recordings.

- Exclusion of public. The Bill amends the Evidence Act to exclude the public from a courtroom while certain pre-recorded evidence of a special witness (clause 31) or an affected child witness (clause 34) is presented to the court. The proposed amendments extend the existing ability of the court in sections 21A and 21AU to order the exclusion of the public to the situation where pre-recorded evidence of an affected child or special witness is being played at the trial. This removes any doubt that the ability to exclude the public also applies to the playing of pre-recorded evidence during the trial. There are inherent sensitivities about the evidence which do not dissipate because of pre-recording (such as the nature of the evidence).

- Destruction of recordings. The Bill (clause 41) also amends the Evidence Act to include a power for the destruction of certain pre-recordings. The Evidence Act, Division 4B already allows for the presiding judicial officer to make certain orders and directions about the pre-recorded evidence including its copying, safekeeping and editing. As original recordings cannot be edited in any way, copies are often made and edited to omit potentially inadmissible material under judicial order (these are the lawfully edited copy of the recordings). Noting the pre-recording system commenced in 2004 the storage of video-taped recordings, particularly the old (and multiple) VHS tapes originally used requires ongoing storage management for the Queensland Courts Service. The Bill will allow the heads of jurisdiction to make a practice direction specifying a minimum retention period for original and copies of pre-recorded evidence or class of recordings and permit presiding judicial officers to make an order allowing for the destruction at a date after the minimum retention period set out in the practice direction.

- The Bill amends the Evidence Act to update and modernise provisions to reflect current practices of the court, such as recording systems used and terminology changes.

Jury Act 1995

- Minor amendments modernising the courts ability to use technology regarding jury selection processes - The Bill (clauses 45 – 51) amends the *Jury Act 1995* to modernise aspects of jury selection processes by providing the option to:
  - send a notice to prospective jurors and for prospective jurors to complete relevant questionnaires as to eligibility and excusal forms via electronic means, such as email;
  - send to a person selected for jury service a summons by electronic means, such as email; and
  - randomly select jurors using electronic means via a computer program. This is an alternative to the traditional method of drawing jury cards from a spinning barrel.

- The Queensland Courts Service within the Department currently has a QJury Project which is reviewing business processes for a replacement juror administration system, to replace the existing Queensland Juries Administration System (QJAS). These amendments in the Bill will assist with the operation of a new jury administration and management system, by enabling the use of technology reflecting contemporary communication methods and expectations. However, the existing methods (sending letters etc.) of communication are preserved, acknowledging that not everyone in the community engages with electronic communication

Justices Act 1886

- Allowing for admissions of fact in summary trials for simple offences or breaches of duty - The Bill (clause 61) amends the Justices Act to provide for the admission of facts in the hearing of simple offences and breaches of duty as sufficient proof of the fact without other evidence.

- This amendment is modelled on section 644 of the Criminal Code which allows for the admission of facts in proceedings before justices dealing summarily with an indictable offence.

- Extending registry committals - The Bill (clause 55) amends the Justices Act to expand the scope of registry committals to include persons in custody.

- The amendments will provide for an automatic extension of the Court order remanding a person into custody. This approach is similar to the procedure that currently occurs in relation to bail under a registry committal (an automatic continuation of the defendant's bail order taken to have been granted by the court to which the defendant is committed for trial or sentence (section 34BA Bail Act)).

- Joinder of trials - The Bill (clause 53) amends the Justices Act to provide a legislative authority to order the joinder of trials. The provision will provide a Magistrate with consistent legislative powers to those given to Judges in the District and Supreme Court.

- Enabling a defendant to enter a plea in bulk in the Magistrates Court (Criminal Code and *Justices Act 1886*)- The Bill (clause 60) amends section 145 of the *Justices Act 1886* (Justices Act) and section 552I of the Criminal Code to allow for bulk arraignments in the Magistrates Court for both simple offences and indictable offences being dealt with summarily. Bulk arraignments are already provided for in the District and Supreme Courts by section 597C of the Criminal Code.

- The proposed amendment will allow a legally represented defendant to enter a plea of guilty in bulk if the court is satisfied, after hearing submissions from a legal practitioner, that the defendant: is aware of the substance of each of the charges before the court; has obtained legal advice in relation to each of the charges before the court; and consents to the bulk arraignment process.

- Limiting the availability of the process to legally represented defendants only, strikes a balance between greater efficiency in court processes and minimising the risk of a

miscarriage of justice because the defendant misunderstands the charge they are pleading to.

***Penalties and Sentences Act 1992* (PSA)**

- Allowing the Police Commissioner to issue a pre-sentence custody certificate in certain circumstances - Section 159A(10) of the PSA currently requires a pre-sentence custody certificate to be signed by the chief executive (corrective services) or an authorised corrective services officer. However, pre-sentence custody can occur in a watch-house under the responsibility of the Queensland Police Service (QPS). The amendment in clause 68 will allow the Police Commissioner (or his or her delegate) to issue a pre-sentence custody certificate (noting that section 4.10 of the *Police Service Administration Act 1990* allows the Commissioner to delegate powers conferred under any Act to certain persons).

- Allowing for a warrant to be issued to enforce a failure to sign a recognisance - When sentencing an offender, Part 3 of the PSA allows the court to make a release order if the offender enters into a recognisance with or without a surety. This process involves the offender signing paperwork to enter into the recognisance. There is no provision in the PSA or the Justices Act enabling the court to issue a warrant to arrest a person who fails to enter into a recognisance order before leaving the court precinct.

- Amendments to the PSA (clause 66) will provide the court with a tiered process to bring offenders, who are sentenced to a recognisance and fail to enter into the recognisance, back before the court to enter into the order or be resentenced.

- The new process will require the proper officer of the court to send out a notice to the offender requiring them to attend a nominated court registry on or before a nominated date in order to enter into the recognisance. If the offender fails to comply with the notice, the court may issue a warrant directed at all police officers to arrest the offender and bring the offender back before the court or a court of like jurisdiction.

- The offender, once arrested on the warrant, may be immediately released on bail and required to reappear before the court. The court before which the offender is required to reappear may affirm the original order or may resentence the offender for the original offence.

Recording of Evidence Act 1962

- Permitting destruction of Magistrates Court proceeding recordings as authorised by the archivist (*Recording of Evidence Act 1962*) (REA) - Section 11A of the REA regulates the retention and destruction of master recordings (a disc, tape or other thing containing the complete recording of a legal proceeding). Generally, these cannot be destroyed within the time allowed for any appeal or application for rehearing or review (or while such a proceeding is on foot) and not before the recording has been transcribed.

- Section 11(6)(b) of the REA permits destruction of certain Magistrates Court recordings without transcription, but separating these out is labour intensive and can be physically impossible.

- The Bill (clause 72) will permit a Magistrates Court master recording to be destroyed without transcription if authorised by the State Archivist under section 26 of the *Public Records Act 2002*, which permits archivist authorisation if the registrar or other responsible court officer has applied for, or consented to, the disposal.

- In practice, the archivist gives a standing authority through the Courts Sector Retention and Disposal Schedule, Queensland Disposal Authority Number 705 (QDAN 705). The authority is not engaged until after a minimum retention period expires (reflecting the existing REA) and it requires public authority Chief Executive Officer (or authorised delegate's) authorisation.

- Queensland Courts Services (QCS) intends to develop a policy requiring consultation between the Principal Registrar and Chief Magistrate's office regarding destruction. QCS and Queensland State Archives intend to adopt a 12-year retention period for Magistrates Court master recordings and update QDAN 705 post amendment. The amendment will assist in the management of court archives.

***Telecommunications Interception Act 2009* (TIA)**

- The Bill (clause 74) amends the TIA to recognise a 2011 amendment to section 66 of the Commonwealth *Telecommunications (Interception and Access) Act 1979* which allows the chief officer to appoint an 'authorising officer' to issue authorisations. This amendment implements recommendation 29 of the Parliamentary Crime and Corruption Committee Report No 97, *Review of the Crime and Corruption Commission.*

- TIA section 14 sets out documents regarding warrants issued that must be kept in each eligible authority's records. Section 14(h) requires each eligible authority to keep each authorisation by the chief officer under section 66(2) of the Commonwealth Act.

- However, section 14(h) of the TIA does not contemplate authorisations made by an 'authorising officer' as permitted by the Commonwealth Act. The Bill will amend section 14 to require an eligible authority to keep a written record of an authorising officer's appointment and any authorisations they issue under the TIA.

Consultation

- Legal stakeholders including the Aboriginal and Torres Strait Islander Legal Service (ATSILS), Bar Association of Queensland (BAQ), Director of Public Prosecutions (Qld) (DPP), Public Defender of Legal Aid Queensland (LAQ), Lesbian Gay Bisexual Trans Intersex Legal Service Inc, and the Queensland Law Society (QLS) were consulted on draft amendments to section 304 of the Criminal Code. The amendment to section 304 takes account of stakeholder feedback received.

- A consultation draft of miscellaneous general criminal law-related reforms to the Bail Act (section 7), Criminal Code, CPCA, DMA, Evidence Act, Jury Act, Justices Act, PSA (Schedule 1), REA and TIA was provided to: the President of the Court of Appeal, the Chief Justice of Queensland, the Chief Judge of the District Court, the Chief Magistrate, LAQ, the DPP, QLS, BAQ, the Crime and Corruption Commission and ATSILS. Additionally a stand-alone consultation draft of the proposed amendments

to the CPCA was sent to the Australian Bankers' Association and the Customer Owned Banking Association. Stakeholder feedback assisted in informing the development of the amendments.

- Consultation on the amendment to the Bail Act (section 14) to clarify the process on forfeiture of cash bail occurred with the Chief Magistrate.

Fundamental Legislative Principles

- The Fundamental Legislative Principles (FLP) issues in the Bill relate to amendments to the Criminal Code, CPCA, DMA, the Evidence Act and the PSA. These potential breaches are considered justified. The FLP issues and justification are outlined in detail in pages four to seven of the Explanatory Notes to the Bill.

Costs

- Any costs arising from these legislative amendments will be met from existing agency resources.

The Honourable Paul Lucas MP
Attorney-General, Minister for Local Government
and Special Minister of State
PO Box 15009
CITY EAST QLD 4002

Dear ~~Attorney-General~~,

Re: Amendments to section 304 of the Criminal Code

On 9 November 2011 you announced the formation of a committee put together to advise you on possible changes to section 304 of the Criminal Code, regarding representations made to you by a number of stakeholders who held concerns about the use of "non-violent homosexual advances" to establish a defence of provocation in cases of murder. You asked for that committee to report to you by the end of January 2012.

It is convenient to describe some history behind the expression of these concerns. In October 2007 the Department of Justice and Attorney-General (DJAG) published a discussion paper entitled "Audit on defences to homicide: accident and provocation". That report had been commissioned by the then Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland, who had commissioned the audit of homicide trials to ascertain the nature and frequency of the reliance of the excuse of accident in section 23 of the Criminal Code, and on the partial defence to murder of provocation, provided for in section 304 of the Criminal Code. That audit had been precipitated by public comment on three recent cases, those of a defendant Jonathon Little, a defendant Ryan Moody, and a defendant Damien Sebo. Mr Sebo had been acquitted of murder but convicted of manslaughter, in relation to the death of a Taryn Hunt. Mr Sebo's trial caused quite a degree of public discussion of the circumstances in which he had killed Taryn Hunt.

The October 2007 report to the then Attorney, described how an audit had been conducted of trials for the offences of murder and manslaughter which had been finalised between July 2002 and March 2007. In all, 101 defendants had been tried by a jury on a charge of murder, and the audit team analysed 80 of those 101 trials. During that same period 32 defendants were tried by a jury on charges of manslaughter, and the audit team analysed 20 of those 32 trials.

Of the 80 murder trials reviewed, provocation was raised as a defence 25 times. Eight of the defendants in those 25 trials were found not guilty of murder, and four of those were found guilty of manslaughter by the jury. In only two of those 25 cases in which provocation was raised, it was the only defence left to the jury. One of those

involved the man Sebo, convicted of manslaughter. Those figures do not suggest an extensive over use of the defence of provocation.

On 2 April 2008 the then Attorney-General asked the Queensland Law Reform Commission (QLRC) to review the defence of accident and the partial defence of provocation. That Commission presented its' report dated September 2008, and it was tabled in the Parliament on 1 October 2008. The QLRC report recommended some changes to the drafting to the defence of accident, and some significant changes to the defence of provocation. One was to reverse the onus of proof, and to recommend that it should be on the defence to establish the defence of provocation, on the balance of probabilities, rather than on the prosecution to negative it beyond reasonable doubt (as was then the present law). More significantly for present purposes, the QLRC recommended (in paragraph 21.79 at page 479 of its report number 64, dated September 2008) that section 304 of the Criminal Code be amended to include a provision to the effect that, other than in circumstances of an extreme and exceptional character, the defence of provocation could not be based on words alone or conduct that consisted substantially of words.

That recommendation reflected the statement of the Queensland Court of Appeal in *R v Buttigieg* [1993] 69ACrimR21 at 37, that:

"the use of words alone, no matter how insulting or upsetting, is not regarded as creating a sufficient foundation for this defence to apply to a killing, except perhaps in 'circumstances of the most extreme and exceptional character'.... A confession of adultery, even a sudden confession to a person unprepared for it, is never sufficient without more to sustain this defence ... it is however the combination of circumstances which is to be evaluated."

That recommendation, to exclude the possibility of a defence of provocation to murder based on words alone or conduct consisting substantially of words, was a somewhat controversial one, because, as the report by the QLRC itself observed at paragraph 21.66, there were Queensland cases where provocation had been successfully pleaded, based on words alone. The QLRC report refers in that regard expressly to *R v Sebo, R v Auberson* [1996] QCA321, and *R v Schubring* [2005] 1 QdR515. The QLRC report notes that those cases contained, in the judgements given in the Court of Appeal, no reference to what was considered "extreme and exceptional circumstances" in which the words were spoken, such as to warrant the availability as provocation. The QLRC observed that it was unable to tell whether the authority of *Buttigieg* had simply been overlooked, or whether, when confronted with other authority requiring trial judges to leave the defence to the jury if there was the least doubt that defence was raised on the evidence (as in the High Court judgment *Van Den Hoek v Queen* [1986] 161CLR158), trial judges had decided to leave the defence to the jury rather than risk an appeal on the basis that the decision not to allow the defence was an error.

The then Attorney-General followed the recommendations of the QLRC, and on 4 April 2011 legislation amending the Criminal Code in section 304 commenced, and relevantly added a number of subsections to the existing section 304. The new section 304(2) provided that the plea of provocation allowed for by section 304(1) "does not apply to sudden provocation based on words alone, other than in

circumstances of the most extreme and exceptional character". A new provision of section 304(7) provided that on a charge of murder, it was for the defence to prove that the person charged was liable to be convicted of manslaughter only, on the basis of the defence of provocation.

There have been no trials conducted in Queensland in which the amended provisions have applied, because they only have application to matters in which the offences occurred after 4 April 2011. However, passing those new laws has not satisfied some critics of the previous law, who would like to see the defence of provocation excluded completely, where it is pleaded in a defence to a charge of murder following a response to a homosexual approach by another. On 6 September 2011 two petitions containing a total of 4,682 signatures were tabled in the Parliament, which asked for the Criminal Code to be amended to completely eliminate "non-violent homosexual advance" as the basis for a defence of provocation to murder. At about the same time, a group called the LGBTI Legal Service Inc. (the Lesbian, Gay, Bi-sexual, Trans-intersex Legal Service Inc.) published what was described as a submission for law reform, calling for the removal of the "non-violent homosexual advance defence" from the ambit of the defence of provocation.

The QLRC report did consider, but recommended against, the inclusion of a "non violent sexual advance" as a matter (like "words alone") not capable of giving rise to a defence of provocation. The main reason given was the difficulty in defining what was a "non violent sexual advance".

On 9 November 2011 the formation of this committee was announced, and invitations to participate were issued to a substantial number of entities and individuals. A working group met on 22 December 2011 and again 12 January 2012. Those attending at all times included the Chair, John Jerrard; Shelley Argent, the national spokesperson for, and Queensland President of, the Parents and Friends of Lesbians and Gays (PFLAG); Tony Moynihan, the Director of Public Prosecutions; Debbie Kilroy from the Queensland Law Society Criminal Law Committee; Andrew Hoare, a Barrister, representing the Bar Association of Queensland; Jenny Lang, the Assistant Director-General of the Department, Mark Dixon the Assistant Director, Serious Crime from Legal Aid QLD; and on both days the working group included either the Public Defender John Allen, or his nominee Mr David Shepherd, and a person appearing from the Queensland Council for Civil Liberties. Mr Ross Thompson from the Queensland Homicide Victim Support Group attended for the first meeting and the Director of Strategic Policy sat with the working group, but, like Assistant Director-General Jenny Lang, took no voting part in the proceedings.

The working group received considerable help from the efforts of Jenny Lang and the Director of Strategic Policy. At my request, and with little fuss, I was provided with the sentencing remarks in 110 manslaughter sentencing exercises conducted between April 2005 and October 2011. Where relevant, I was also provided with a copy of the Appeal Court judgment where an appeal was taken, either by the person sentenced or the Attorney-General. Those 110 sentences were a different, but overlapping, group from the persons whose cases had been analysed by DJAG in the October 2007 discussion paper on the defences of accident and provocation. After reading those sentencing remarks, I was satisfied that defendants in

Queensland did not frequently or successfully plead "gay panic", or "non-violent homosexual advance", as a defence to a charge of murder, based on provocation. I found only one unequivocal example, a matter of *R v Peterson and Smith*, who were sentenced on 14 October 2011 in Maryborough circuit court for the offence of manslaughter of Stephen Ward. There was an earlier matter, also in the Maryborough circuit court, namely *R v Meerdink and Pearce*, sentenced on 13 May 2010, for an offence of manslaughter committed on or about 4 July 2008, involving the killing of Wayne Ruks.

The trial of *R v Meerdink and Pearce* had several complicating factors to it. They were both charged with murder, and Mr Pearce pleaded guilty to manslaughter at the start of the trial. That plea was not accepted by the Crown, and he and Mr Meerdink faced the jury on a charge of murder, on which both were found not guilty. The jury found Mr Meerdink guilty of manslaughter, but it appears no verdict was taken in respect of Mr Pearce, who had already pleaded guilty to manslaughter and maintained that plea.

The circumstances of the killing were that on 3 July 2008, at about 9pm, the two defendants had walked past the Post Office Hotel in Maryborough where they met Mr Ruks, who was then very drunk. Both defendants had also been drinking, but were not completely intoxicated, although Mr Meerdink told another passer by that he and Mr Pearce were "having a blinder" and were "pissed". Mr Ruks might have grabbed for a cask of wine that Mr Meerdink was carrying, and the two defendants crossed the road. Mr Ruks followed them. He apparently hoped to obtain some marijuana from Mr Pearce. The three men entered the grounds of St Mary's Church at about 9.15pm that night. The sentencing judge recorded that what occurred thereafter was disputed, and that while Mr Pearce said that Mr Ruks had "touched" him, a CCTV did not show that actually happening, and the judge thought it likely that Mr Ruks had said something foolish to Mr Pearce, to induce Mr Pearce to share marijuana that Mr Pearce had, which Mr Ruks wanted to share, and that Mr Pearce interpreted or misinterpreted what was said as a sexual proposition. Mr Pearce later told a covert police officer who was put in a cell with Mr Pearce after his arrest, that he (Mr Pearce) had been sexually abused as a child and had just "snapped". Mr Pearce described what happened to the undercover officer as Mr Ruks "started all this poofter shit".

Returning to the narrative, the three men had a verbal confrontation, still inside the church grounds, and then Mr Ruks was ordered by Mr Pearce and Mr Meerdink to leave the churchyard and he did, but he returned some three minutes later, and Mr Pearce confronted him again. At about 9.23pm, after some confrontation, Mr Ruks began to run and was chased by the other two into the street, and assaulted. He was punched and kicked for some six minutes.

The learned trial judge found that the jury was not satisfied that either of Mr Pearce and Mr Meerdink intended to kill or cause grievous bodily harm to Mr Ruks, by the punches or kicks that were delivered during that time. However, the judge found that each of them had inflicted kicks of punches and aided the other to do so by presence and implicit encouragement. Towards the conclusion of his sentencing remarks the judge said that he recognised that "you should be sentenced on the basis that neither of you intended to kill or cause grievous bodily harm to the deceased".

That explanation of the verdicts of manslaughter is consistent with the evidence that those men had consumed a good deal of alcohol, and that Mr Pearce had also had some cannabis, and accordingly may have been incapable of forming a coherent intention to kill or do grievous bodily harm. But it was the statements about "this poofter shit" which attracted media attention, however, the learned sentencing judge clearly sentenced on the basis that the verdict of manslaughter reflected a finding of a failure to prove intent, rather than a failure to disprove a provocative act.

The other matter heard in Maryborough (the trial *R v Peterson and Smith*) was conducted, ironically enough, by the judge who currently presides over the QLRC, and who had therefore been a part author of the QLRC report acted on earlier last year by the State Government. In that trial, both Peterson and Smith were convicted, after a trial, Mr Peterson of manslaughter, and Mr Smith of accessory after the fact to manslaughter. Mr Peterson had pleaded guilty to manslaughter at the start of the trial, but that plea was not accepted, and both faced trial, with Mr Peterson accused of murder and Mr Smith of being an accessory to that murder. The facts described in the sentencing remarks of the learned judge disclosed that Mr Ward was hitchhiking on the Bruce Highway at Curra, and was picked up by Mr Peterson and Mr Smith. Mr Ward was an alcoholic and inebriated, and Mr Smith and Mr Peterson had been drinking heavily that day as well, although Mr Smith was driving the vehicle. Mr Smith, the driver, invited Mr Ward to Mr Smith's house for a roast dinner that Mr Smith's wife had prepared for him and Mr Peterson, who was staying with Mr Smith. Mr Peterson did not object to this, and three men arrived at Mr Smith's house at Glenwood. They shared the dinner that Mr Smith's wife had cooked, and then Mr Smith and Mr Peterson invited Mr Ward into the kitchen, where they shared some marijuana with him. By that stage Mr Peterson had drunk a great deal. The learned judge accepted that it was also likely that Mr Peterson had used methyl amphetamine on that day as was his habit to use intravenous methyl amphetamine as well as alcohol. He also has some of the cannabis. Mr Smith then decided to drop Mr Ward at a truck stop on the highway, so he could hitch a ride, perhaps with a truck, further North. Mr Peterson went with them. Mr Smith drove, Mr Peterson was in the passenger seat and Mr Ward sat in the back. There was some conversation about the fact that Mr Ward did not have his bag with him (he had apparently left it at a motel). It being a two door car, when they stopped, Mr Peterson had to get out of the car to let Mr Ward out. Mr Ward at that stage was irritated by the fact that he did not have his bag with him, and he felt that it was somehow the fault of the people he was with, rather than his own. According to Mr Peterson's evidence, which the judge accepted on this point, Mr Ward made a sexual pass at Mr Peterson, trying to grab Mr Peterson on the crotch, and made a remark to him with a sexual connotation. Mr Peterson in evidence said that he "snapped" and began punching Mr Ward to the face and head. He punched him perhaps 20 or 30 times until Mr Ward fell. Mr Smith knew what was happening. Mr Peterson got back in the car and they drove off, leaving Mr Ward there. Mr Peterson's evidence at the trial, given by himself and his mother, was that he had grown up in a household where his father was a violent alcoholic and violent to him, his brothers, and to his mother. He was beaten as a child and suffered setbacks as a child. He was powerless against the situation and he left home when only 12 or 13. He was only a slightly built lad and as a result of his vulnerability, was taken advantage of by older men, being invited home by one who offered him accommodation and food and who after propositioning him in his

home, bashed Mr Peterson and raped him. That situation was repeated on at least one other occasion.

Medical evidence called from a Doctor Arthur, a psychiatrist at the trial, was that as a result of having examined Mr Peterson (after his arrest) Dr Arthur had formed the view that Mr Peterson even then was suffering from post traumatic stress disorder, as well as alcohol addiction and drug addiction, being prone to using alcohol in an extremely excessive way as well as cannabis, heroin and intravenous amphetamine.

The learned sentencing judge remarked, when passing sentence for manslaughter, that Mr Peterson's post traumatic stress disorder impaired his capacity to control his actions, and to know what he was doing. The judge accepted that no doubt Mr Peterson's capacities were substantially impaired, but that that was in no small part in due to his voluntary intoxication, but also accepted the time that he bashed Mr Ward, Mr Peterson had a flashback to what had happened to him as a child. The judge concluded from the jury's verdict of not guilty of murder, and guilty of manslaughter, that the jury were unable to exclude the beyond reasonable doubt that an ordinary person, who had suffered what Mr Peterson had suffered in his childhood abuse, could not have reacted in a way in which Mr Peterson had reacted.

Having driven off leaving Mr Ward by the side of the road, Mr Peterson and Mr Smith realised that he would be found there and they returned, not to give any assistance to Mr Ward, but because they wanted to make sure that they would not be punished for Mr Peterson's assault on Mr Ward. When they returned they found Mr Ward still alive and making noises, and they put him in the tray of the vehicle and drove for perhaps 20 to 30 minutes over very rough bush tracks until they found a very isolated spot, where Mr Ward was unlikely to be found, and left him there. After that they took many steps to avoid detection, and Mr Ward's death was not discovered for many weeks, because of the very isolated spot which his body had been left. Efficient police work brought the police to Mr Smith's doorstep, and there he was found cleaning his car, attempting to get rid of any further evidence.

The sentencing remarks make it unarguable that this was a case of a relatively non violent homosexual approach to Mr Peterson, who reacted with murderous rage. But the evidence and the jury's verdict support the argument that that was because of Mr Peterson's experiences as a child, and ongoing post traumatic stress disorder. If his "flashback" which affected him so powerfully while intoxicated, and affected by drugs, was genuine, then it is difficult for me see why the law should deny him a defence that simply relies on explaining a response which an ordinary person could also have made (that is, an ordinary person who had experienced Mr Peterson's level of upset at recollecting the traumatic events which had happened earlier in his life).

The circumstances of *R v Peterson and Smith* were discussed by the working group, as were those in *R v Meerdink and Pearce*. Shelley Argent, the national spokesperson for the PFLAG, was unsympathetic to Mr Peterson's position, contending that too many people used post traumatic stress disorder, alcohol, and the use of other drugs, as excuses; and that prior sexual abuse should not be seen as an excuse for homicidal assault, because, she contended one in four females and one in six males, on average, are molested before the age of 18 in this country. As

she expressed it in a written submission to the working group, "surely we can't have that many potential murderers in this country".

Mr Mark Thomas, speaking on behalf of the LGBTI Legal Service Inc., contended that the Criminal Code should be amended to provide some words to demonstrate to society that certain types of behaviour were not acceptable, and should reflect that under no circumstances should a non violent sexual advance ever justify killing another. He accepted that there could be difficulty in defining what constituted a "non violent sexual advance", but that the Parliament should not shy away from changing it because it was difficult to describe the desired result. He also remarked how the ACT and the NT have grappled with the same difficulty, and at the second meeting of the working group, (on 12 January 2012), Shelley Argent produced a submission paper (referred to earlier in this report) prepared on behalf of the LGBTI Legal Service Inc., in which that legal service recommended that the Queensland Parliament amend section 304 of the *Criminal Code 1899* (Queensland) by the addition of a subsection 304(9). The wording of that subsection is clearly borrowed from the relevant legislation in the ACT and NT, in which those two Territories legislated (in 2004 and 2006 respectively) to modify their criminal statutes, to provide as follows regarding provocation:

"However, conduct of the deceased consisting of a non violent sexual advance (or advances) toward the accused –

(a) is taken not to be sufficient, by itself, to be conduct which constitutes provocation but

(b) may be taken in to account together with other conduct of the deceased in deciding whether there has been an act or omission establishing provocation"

The LGBTI Legal Service Inc. written submission of October 2011, produced by Shelley Argent, contends for a section 304(9) drafted in similar terms, although Mr Thomas did not expressly argue for that position in the working group. At the first meeting (23 December 2011), he said he was in favour of embedding in section 304 some changes, to go towards solving some of the problems of people with PTSD. He said that when responding to a suggestion that section 304(2) as it currently reads, could be amended to include the words "or non violent sexual advance" after the expression "on words alone" presently appearing in section 304(2). He appeared satisfied that that a person suffering from PTSD, who responded violently to a sexual advance, could fairly argue that that person was in an extreme or exceptional circumstance.

The working party had difficulty with the expression "non violent sexual advance", which is an expression capable of describing both a merely verbal proposition made by one person to another, or some deliberate touching of another's body. The research undertaken by the lawyers between the first and second meetings of the group, both from within and without the Department, did not discover any examples of cases in which the phrase has been considered by the Supreme Courts of either the ACT or the NT. Nor was any assistance as to its meaning found in examining the explanatory notes, or the legislation by which the matter was introduced into the law in those two Territories.

By the end of the deliberations it appeared that the "gay panic" defence was not frequently advanced in Queensland, and there have already been amendments made in 2011 which will make it more difficult to advance an unmeritorious defence based on a violent response to a homosexual overture. However, the possibility of such a response happening raises strong feelings for those who urge a change to the law. Those feelings are well described in the submission of the LGBTI Legal Service Inc. of October 2011, which has as its heading the statement made by Mr Pearce, in *R v Meerdink and Pearce* that "He started all this poofter shit, so I snapped". The written submission contains in its body the statement that in a non violent homosexual advance case, the "narrative fed to the jury is that lethal violence arose naturally enough from the loss of control the killer experienced when his heterosexual male honour was at stake". In fact, that description is not accurate about either of the trials *R v Meerdink and Pearce,* or *R v Peterson and Smith*, for the reasons described.

At the conclusion of deliberations, the members of the working group were equally divided for or against an amendment to change the wording of the current section 304; principally because, it seemed to me, of a lack of evidence of abuse of the potential defence, a view that "non violent sexual advance" was an amorphous concept capable of describing a wide range of conduct, and uncertainty as to the affect of the recent amendments. It was suggested that if the use of more than "words alone" were to be put forward as a reason for refusing a defence of provocation, then the impermissible or permissible conduct should be clearly defined. One suggestion was to use a composite phrase, such as "unwanted sexual advance or other minor touching" in a redrafted section 304(9), with the object being to ensure that conduct amounting to an assault was not a basis for refusing a plea of provocation.

Those suggesting no change included the lawyers appearing as, or representing, Legal Aid QLD, the Queensland Law Society, the Bar Association, the Aboriginal and Torres Strait Islander Legal Service and the Queensland Council for Civil Liberties. Those supporting some amendment to section 304 included the lawyers or persons speaking for the Anti-Discrimination Commission, the LGBTI Legal Service Inc., PFLAG, the Director of Public Prosecutions and myself.

I add that regarding the current drafting of section 304(2), the working group (other than the two DJAG Directors) appeared to accept that the words "a most extreme and" in section 304, wherever they appear, add difficulties, of definition and example, to the requirement that provocation by words alone only apply in circumstances of an exceptional character. The DJAG Directors were anxious that you appreciate that the current terminology, in section 304, denying a defence of provocation based on words alone "other than in circumstances of the most extreme and exceptional character" were explicitly recommended in paragraph 21.37 (page 479) of the QLRC report, in turn citing from the Court of Appeal judgment *R v Buttigieg*.

As to that, the QLRC report also makes the point that the rule in *R v Buttigieg* appears to have been more honoured in the breach than in the observance, referring to the Court of Appeal judgments in *Sebo*, *Auberson*, *Schubring.* The analysis of those three decisions of the Court of Appeal by the QLRC does not record any of the judges of the Court of Appeal remarking adversely about provocation having being

left to the jury in those matters, or any complaint by the prosecution. Two of those were Attorney-General's appeals (on sentence), so the Attorney had an opportunity to raise non compliance, had it been thought proper.

Keeping in mind the concern felt by the PFLAG and the LGBTI Legal Service Inc. about the possibility of homophobic or unsympathetic juries, and the goal of having a Criminal Code which does not condone or encourage violence against the LGBTI community, and in view of the equal division of opinion of the committee, I would, as Chair, support the amendment of section 304 of the Code by an addition of a subsection (9), which reads:

"(9) Subsection (1) does not apply, other than in circumstances of an exceptional character, if the sudden provocation is based on an unwanted sexual advance towards the defendant or other minor touching."

I would also support an amendment omitting from subsections 304(2) and (3), the words 'of a most extreme and', and inserting instead the words 'of an'. In my opinion, such an amendment would not have the effect of lowering the 'bar'. A requirement to establish exceptional circumstances is not easily met but it can be understood by a jury and it can be achieved. To prove that the circumstances are 'most extreme' may be more or less difficult than establishing it is 'exceptional' and if not, it is a tautology. However, I agree that for consistency, all subsections should have the same test.

I particularly express my thanks for the work done by Assistant Director-General Jenny Lang, Director of Strategic Policy Louise Shephard, and Dr Cate Banks, the facilitator and Minute keeper. They uncomplainingly provided me with everything I asked of them, and arranged meetings of the working group members at short notice, and efficiently.

I remain,
yours faithfully,

JA Jerrard BA,LLB, LLM, QC.