LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr JP Lister MP (via teleconference)
Mr SSJ Andrew MP (via teleconference)
Mrs LJ Gerber MP (via teleconference)
Mrs MF McMahon MP
Ms CP McMillan MP (via teleconference)

Staff present:

Ms R Easten (Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE CORRECTIVE SERVICES AND OTHER LEGISLATION AMENDMENT BILL 2020

TRANSCRIPT OF PROCEEDINGS

MONDAY, 11 MAY 2020

Brisbane

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The committee met at 2.32 pm.

CHAIR: Good afternoon. I declare open the public hearing for the committee's inquiry into the Corrective Services and Other Legislation Amendment Bill 2020. My name is Peter Russo. I am the member for Toohey and chair of the committee. With me here today are James Lister, member for Southern Downs and deputy chair; Melissa McMahon, member for Macalister; Corrine McMillan, member for Mansfield; Stephen Andrew, member for Mirani; and Laura Gerber, member for Currumbin.

On 17 March 2020 the Hon. Mark Ryan, Minister for Police and Minister for Corrective Services, introduced the Corrective Services and Other Legislation Amendment Bill 2020. The bill was referred to the Legal Affairs and Community Safety Committee for examination. The purpose of the hearing today is to hear evidence from stakeholders to assist the committee with its examination of the bill. Only the committee and invited witnesses may participate. Witnesses are not required to give evidence under oath but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to 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. The program for today is available on the committee's webpage. I ask members and witnesses to turn their mobile phones to silent so as not to interfere with the broadcast. I now welcome representatives from the Queensland Human Rights Commission.

COSTELLO, Mr Sean, Principal Lawyer, Queensland Human Rights Commission (via teleconference)

McDOUGALL, Mr Scott, Commissioner, Queensland Human Rights Commission (via teleconference)

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

Mr McDougall: Good afternoon, committee. I refer to our submission dated 22 April 2020. On page 8 of our submission we concluded by making a number of recommendations. I want to touch upon two of these in my opening remarks. First, we recommended the removal of the blanket prohibition on people convicted of certain disqualifying offences ever being accommodated in low-security facilities. The committee may be aware that last year the commission released the *Women in prison* consultation report. The report noted that this prohibition was implemented as a matter of policy following the escape of some men from low-security facilities. However, the findings of our report suggest that the use of this arbitrary policy is not necessarily conducive to the best management of good order within the prison system, discriminates against many women and older prisoners who present minimal societal risk, and is not necessarily in the best interests of community safety. For example, a number of corrective services staff who were interviewed by the deputy commissioner expressed the view that '"lifers" should be placed in low security prisons, as they assist with stability, culture, and grounding the population'. This approach effectively denies those who are in the best position to judge what is in the best interests of the good order of the prison the management tool of leveraging against that stability that a lifer can bring to a low-security environment.

Further, the effect of this policy is that these offenders are ultimately released back into society directly from the harsh reality of high-security settings. Community safety would be better served by their having an opportunity to acclimatise to conditions closer to what they will experience upon their release. My view, which I might add is supported by recommendation No. 58 of the Sofronoff review, is that enshrining this problematic policy into law is a retrograde step in the management of Queensland's prisons.

The second recommendation I raise is our suggestion that an amendment be made to require that all emergency declarations made under section 268 be published online or via gazettal. In our view, this would be consistent with Queensland Corrective Services' stated commitment to the highest standards of transparency and accountability.

Mrs McMAHON: You identified in your submission three specific areas of concern. Can you elaborate on your concerns around the alcohol and drug testing of staff, noting that it is a step that addresses corruption risks?

Mr Costello: As our submission refers to, obviously in Taskforce Flaxton the CCC identified that it is a significant corruption risk. In our submission we note that we are supportive of the policy in principle and the need for this sort of testing of staff. In our submission we just note that in some of the explanatory material, and I think during evidence to the committee, Queensland Corrective Services did note that generally it would be looking for the least restrictive option of testing staff but, as the legislation is written, more invasive types of testing, for example blood testing, could be used in the first instance. We are just suggesting that a more human rights, a more proportional, approach might be just to have those more invasive tests used only where absolutely necessary and where less invasive testing may not be possible.

Mrs McMAHON: The other matter you addressed in your report concerned restrictions on certain offenders being accommodated in low-custody facilities. It does identify those three classes of prisoner. In the commission's opinion, would they be considered the high-end cases in terms of length of imprisonment? Can you comment on how regularly or frequently those types of prisoners may find themselves eligible for the low-risk facilities?

Mr Costello: That might be a question better put to Corrective Services, but our submission is that, as much as possible—as Corrective Services say they do—each prisoner's accommodation should be judged on a case-by-case basis. As you allude to, it may be that the three groups of prisoners identified in the bill are those most likely to be serving longer terms, but this change would in some ways prevent that case-by-case assessment of what is going to be in the best interests of community safety, in the best interests of the good order and security of the prison and in the best interests of that detainee if there is not flexibility to really assess all detainees, including those in these groups, for what might be the best accommodation option for them at any one time. This includes the point that Mr McDougall made in the opening statement and that Prisoners Legal Service made in its submission about what might also assist reintegration into the community.

Mr McDougall: The prohibition really discriminates against women. There are far more women who are eligible for low security than there are men. I add older prisoners into that category as well.

Mrs GERBER: In your submission you mention the impacts of the proposed restrictions on rehabilitation and reintegration opportunities for prisoners. Can you explain why prisoners convicted of serious sexual offences, convicted of murder or serving a life sentence cannot receive rehabilitation or those reintegration opportunities in a secure facility? This is also bearing in mind community standards that demand that these kinds of serious offenders be punished accordingly and ordinary Queenslanders may view a transfer to a low-security facility as a lack of punishment?

Mr McDougall: In my experience—my experience goes back to being an articled clerk visiting jails, spending a fair bit of time in prisons and observing the relationship between prisoners who are serving life sentences and other prison officers—you could really get a sense of the role that lifers did play in creating some stability inside the prison. Another thing I have really come to learn about prisons is that rehabilitation programs only work when there is an orderly setting in which the prison conditions are not overcrowded and where there is a level of calmness and stability so that people can actually properly engage in the program. It is much harder to achieve that sort of setting in a high-security environment; it is far easier to do that in a low-security environment. We have to remember that these people are ultimately, in most cases, going to be released back into the community. It is far better for the community to have people coming out of prison who have had an opportunity to acclimatise back into society.

CHAIR: In your submission at the bottom of page 7, paragraph 32, you talk about the emergency declaration powers. Can you expand on your concerns about there being no requirement in the legislation for the QCS to publish its emergency declarations?

Mr Costello: As QCS referred to in its response to submissions before the committee, we should make due note of the fact that now on its publication scheme under the Right to Information Act those three-day declarations made under section 268 are being routinely published and the most recent one is there. We are grateful for that. That just assists us, other oversight agencies and the broader community to get a sense of the level of restrictions particularly in response to the COVID crisis which is occurring in prisons at the moment. We made the observation in our submission that the Chief Health Officer, in her directions made in response to a whole range of issues that are occurring in the community, is required to publish on a website or via gazette those directions. Whilst

Corrections are doing it now voluntarily, and we are very grateful for that, we were making the observation that for the sake of transparency it would be very useful for that to continue and perhaps for that to be reflected in the legislation.

CHAIR: Thank you. There being no further questions, I bring this part of the proceedings to a close. Thank for your attendance and thank you for your written submission.

HUNTER, Mr Jeff, Bar Association of Queensland (via teleconference)

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

Mr Hunter: Thank you. On behalf of the Bar Association, I thank the committee for the opportunity to make submissions about this important bill. There are, as the committee will have gathered from our submission, only a small number of areas in respect of which we seek to make any comment.

We support the introduction of new section 173A, which recognises the power imbalance between inmates and staff. We support the idea that the maintenance of a relationship in those circumstances ought to be criminalised. We do, though, make the point that it is not unheard of—and I can certainly recall from my days as a crown prosecutor in the 1990s—that prison staff are charged with offences of rape and sexual assault involving inmates. We suggest that, whilst this may on occasions be less serious offending—and we give examples in our submission—there may be occasions when this sort of offending borders on an offence of rape or sexual assault. For that reason, we submit respectfully that the offence ought to be made one that is potentially able to be heard on indictment. That would then enable the prosecution to charge it as an alternative to an offence of rape or sexual assault and that would then avoid the risk of an offender escaping punishment if they were fortunate enough to avoid getting convicted of the more serious offences. The offence could still be dealt with summarily; we respectfully suggest that it should be, though, at the prosecution election.

In relation to proposed section 114, the process, as it presently stands, requires a referral to the commissioner where there is conduct that amounts to a breach of discipline or an offence. We suggest that if it is no longer going to be mandatory for the conduct to be referred to the commissioner—if there is a discretion—then the prisoner ought to have an, admittedly brief, opportunity to at least make their position clear as to whether or not there ought to be a referral.

Lastly, in relation to the amendments to section 294, we make what we respectfully submit is the obvious point that if an incident has to involve the appointment of an external inspector, why on earth should it be the case that the external investigator should not be appointed in the case of suspected misconduct or corruption? The position under the provision as amended will not require the appointment of an external investigator in respect of misconduct or corruption, but if there was an incident as defined in the act and that involved something falling short of misconduct or corruption there would be that external oversight. We respectfully submit that that is an important matter that needs to be addressed. Lastly, we do not wish to add anything to what we have said in writing about proposed section 188. Those are the submissions that we wish to make.

Mrs GERBER: From the outset I say that it is good to hear your voice again, Jeff. For those listening, as a federal prosecutor with the Commonwealth DPP, I have briefed Jeff and then also briefed Mr Hunter in relation to disciplinary proceedings with the Office of the Health Ombudsman. Rest assured that will not stop me from asking some poignant questions of you, Mr Hunter. Can you tell me whether the Bar Association of Queensland shares the Queensland Law Society's concerns about the breadth of the new offence relating to inmates having relations with staff members and offenders, in particular the definition of 'inmate relationship' which includes other physical expressions of affection?

Mr Hunter: That was not a feature of the legislation that caught our eye. When we were first informed of the provision in a general sense, before we saw the bill itself, there was a concern that it might expose inmates to prosecution, but we were pleased to see that the provision does not, at least directly, criminalise the conduct of an inmate other than perhaps as a party to an offence. I can say that that is not a matter that caused the Bar Association concern on our review.

Mrs GERBER: Do you think it is possible that Queensland Corrective Services staff may have unfair allegations raised against them, or even be convicted of behaviour which they would not reasonably have been suspected to have committed in light of that former question that I have asked?

Mr Hunter: Presumably there would need to be some evidence for them to be convicted. I suppose it is always possible that an inmate might make an unfounded allegation, but, as I say, an assessment of their creditworthiness or otherwise will depend upon the sort of evidence that is available. Presumably there would be, one would expect in a case like this, something more than just the inmate's word. One would imagine a trial judge giving pretty careful directions to a jury if the case consisted entirely of the say-so of a prisoner.

Mrs McMAHON: My question is in relation to the prohibition of intimate relations and specifically the concern about the offence being a summary offence. Ordinarily, I understand, the DPP guidelines indicate that where there are two offences, one being indictable and the other being a simple offence,

the lower charge is preferred except in particular circumstances. Do you feel that in this case, on the concerns that you raised, those circumstances would result, in the example you provided, in the preferring of the higher offence, the indictable offence of rape?

Mr Hunter: I understand what the guideline says, but if you have a case where there is evidence from a prisoner, for example, that various things occurred without consent but there is perhaps room for the possibility at least that a jury might not be persuaded of that beyond reasonable doubt, it would nonetheless be proper for the director to bring proceedings for the more serious charge, as long as the test for the bringing of the prosecution was satisfied—that is, are there reasonable prospects of success and is it in the public interest? The concern that we have is that, in the event that a jury was not satisfied beyond reasonable doubt that the more serious offence had been committed, there is no lesser alternative available on the indictment so the offender who had committed an offence pursuant to section 173A would escape punishment because presumably by that time the limitation period would have expired to bring the summary charge. If it were able to be charged on indictment as an alternative then there would be no risk that a staff member who had engaged in conduct that a jury found fell short of rape but was nonetheless an intimate relationship was not punished.

CHAIR: Mr Hunter, in your opening statement you referred to the appointment of inspectors. Have you had an opportunity to look at the Queensland Corrective Services' response?

Mr Hunter: I have not, regrettably. Time has not allowed me to do that. Is there a matter that the association has overlooked in that respect?

CHAIR: No. I think they may have addressed some of the concerns about the independence of inspectors. Is my understanding correct that Queensland Corrective Services still has oversight and has the ability to refer things to Professional Standards and can refer any allegations to the Queensland police and to the Corruption and Crime Commission, in line with the existing process?

Mr Hunter: We understand that to be the case, but we simply make the point that it seems anomalous that if what occurs is an incident—that is a death, serious injury, escape or riot or other event involving prisoners—that the chief executive determines requires investigation, that has to have an external inspector as one of the people appointed to conduct the investigation but if the allegation involves misconduct or corruption it can be dealt with internally. We simply make the point that those two situations side by side do not seem to sit terribly well together.

CHAIR: Thank you. There being no further questions, that brings to a conclusion this part of the hearing. We thank you for your attendance and we thank you for your written submissions.

Mr Hunter: Thanks, Mr Chairman. Thank you to the committee. Good afternoon.

KILROY, Ms Debbie, Chief Executive Officer, Sisters Inside (via teleconference)

STADLER, Ms Hannah, Policy Officer, Sisters Inside (via teleconference)

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

Ms Kilroy: Before I speak this afternoon, I would like to acknowledge the traditional owners of the land we are occupying at the moment, Meanjin, and pay my respects to elders past and present. Thank you for the opportunity to provide further information to the committee. We are here to respond to questions that you may have.

As you may be aware, Sisters Inside is an independent, non-government organisation which exists to advocate for the human rights of women and girls in the criminal justice system, and we do so alongside those women. Fundamentally, what that means is there is a group of women still today inside prison that make up part of our management committee in decisions that we make. We are very much a grassroots organisation that works alongside criminalised and imprisoned women and girls.

At the hearing we can provide unique insight into the experience of girls and women who are criminalised and imprisoned. The majority of women in prison come from a socially and economically marginalised background and have suffered substantial trauma due to violence and abuse. Some 98 per cent of women in prison have experienced violence and 89 per cent of women in prison in this jurisdiction alone have experienced sexual assault and/or rape. Women are the fastest growing prison population in Queensland. In particular, Aboriginal and Torres Strait Islander women are vastly over-represented and make up at least 35 per cent of women in our prison system. The average term a woman will serve in Queensland prisons is 3.9 months. The Queensland Productivity Commission uncovered that in their report that was released in January this year.

We are talking about small numbers of women when we look at restricting women who have been convicted of murder or who are serving a life sentence from being able to go to a low-security prison for gradual release processes that are fundamental to be released into the community so that they can continue on as a person in our community who has served their time and has undertaken their punishment.

If we release people from a maximum-security prison or a secure prison, as it is called here in Queensland, with a garbage bag at the front gate, we are setting up that person to fail and setting up the community. Fundamentally, we support gradual release and that everyone should be dealt with on an individual basis—not where there is a knee-jerk reaction because a man committed an offence some years ago and then we see legislation wanting to be changed because one man has committed another horrific crime because he was in a low-security prison and has left there. We need to look at the context from a gendered analysis lens for women in relation to this new section 68A. We are happy to take questions.

CHAIR: James or Laura, do you have a question?

Mr LISTER: Mr Chair, I have no questions. I thank Ms Kilroy for her appearance and I look forward to seeing her again at some stage.

Mrs GERBER: I do not have a question. I echo the sentiments of my colleague and thank Debbie for her appearance today.

Mrs McMAHON: Thank you very much, Ms Kilroy, for appearing before us today. I wish you recovery in your post COVID-19 time.

Ms Kilroy: Thank you.

Mrs McMAHON: My question is in relation to your submissions surrounding section 340, 'Serious assaults'. In your submission you recommend that psychosocial and cognitive disabilities be explicitly taken into account when charging or sentencing a person under section 340. Could you enlighten the committee of instances where you are aware that female inmates suffering from such disabilities have been charged with serious assaults and how they have played out in terms of court proceedings, findings of guilt and subsequent punishment?

Ms Kilroy: Yes, certainly. We initially had the Human Rights Watch report a couple of years ago that identified very clearly the trauma and the abuse for both men and women but particularly women. There was one woman in the case study whom I know quite well. She has spent nearly three years in solitary confinement, on and off, because of her mental health issues and she also has a brain injury. She gets charged regularly with serious assaults under this specific section. The reason

is that she has no human contact with anybody. Not all but many prison officers will actually stir her up, if you like, while she is in solitary confinement to get a response. It could be an instruction to stand away from the door or stand in the corner of the cell or whatever it is, but, because her cognitive functioning is not at the level of mine or yours, she does not respond or she refuses to take on the direction. Then we will see six to eight prison officers come into her solitary confinement cell to hold her down and cut her clothes off to put her into a suicide gown. The only response she has then is to spit out or try to bite those who are trying to cut the clothes off her because she has been the victim of horrific sexual violence many times throughout her life. Then she is charged with the criminal offence.

My law firm that is separate to Sisters Inside has represented her over the years. She continues to be sentenced to further terms of imprisonment, to be served on top of the prison term already imposed. Then she is doubly punished by being kept in solitary confinement again for months and months on end.

As we said in our submission, if prison officers are concerned about being spat on or having faeces thrown at them, then they need to wear the PPE clothing and not to put it on the person who is freaking out because of the triggering of the horrific violence she has experienced and then reacting to the response that prison officers engage in.

The Queensland Sentencing Advisory Council is undertaking a term of reference from the Attorney-General with regard to section 340 and serious assaults. I declare a conflict of interest here: I am also a member of the council. The council has undertaken rigorous research in regard to this. I believe it would be in the best interests to wait for that final report to be tabled by the Attorney in relation to section 340 before any decisions are made in regard to this bill and this particular section—because of the rigorous research, because of the stakeholders that are engaged in that and the number of times stakeholders have had the opportunity to provide submissions. A report was released last week for stakeholders to provide more written submissions and then a final report is due later this year. I think it would be prudent for this section to be not taken any further until that report by QSAC is tabled. That will clearly document the reality of not only what happens to individuals who are in prison but also what happens in court and the outcomes in court.

The preliminary report states very clearly, by going through hundreds of court records, that for people who are charged usually their matters are finalised in the Magistrates Court, where the average sentence is seven months imprisonment. For the offences that are indictable, that go up to the District Court, the average prison term sentenced there is 1.2 months. I suggest strongly that we wait for the Queensland Sentencing Advisory Council report to be tabled before this matter is taken any further in regard to this bill.

CHAIR: I have a question in relation to amendments to section 311A dealing with amounts received from prisoners in particular cases. I note your submission in relation to concerns if the funds have been received from a person who has been released from a corrective services facility within a year. You state that there is no reasonable justification for this and that it discriminates. In the last paragraph you refer to comments made by Chief Superintendent Humphreys. Are you able to expand on your submission?

Ms Kilroy: Certainly. Our concerns are particularly for Aboriginal and Torres Strait Islander prisoners. When we look inside our prisons we see the mass incarceration of our First Nation people. In South-East Queensland it is probably around 30 per cent. The further north you go, in our prisons in North Queensland it is up to 80 per cent and 90 per cent. Aboriginal and Torres Strait Islander people are related very closely. They come from specific communities into our prisons. When you state that it would be unlawful to deposit money by someone who has been released from prison in the last 12 months into the account of a family member who is a serving prisoner, it discriminates against them because that could be the only source of financial support they have. It is really clear.

This section, I believe, is about trying to stop the sale of drugs inside the prison. If Corrective Services think someone is selling drugs in prison or doing something illegal, they can follow the same course as all of us—that is, report it to the Queensland Police Service so that it is investigated. Corrective Services also has the criminal investigation unit internally to which they could make the complaint. I do not see why this blanket law needs to be implemented because it will have a discriminatory impact for Aboriginal and Torres Strait Islander people.

I know of mothers and daughters who are in prison now. The daughter could be released earlier than the mother, or vice versa, and then she cannot assist her mother by putting money into her account to make phone calls to her or her children or to buy, for that matter, hygienic cleansing materials—soap, for example—during COVID-19 when the prison is locked down. This will not allow

them to participate in those phone calls and have money at their disposal to be able to live inside the prison. You have to buy everything yourself inside prison in order to survive. They are relying on family members.

Ms Stadler: Our position is that there is no need to introduce this because QCS already has the ability to refer suspicious payments to the Queensland Police Service to investigate. If the Queensland Police Service finds that there is something suspicious about that payment, they are able to deny that payment and ban that donor. My second issue is that it is written very broadly. It gives the prison really broad discretion to deny payments. They need to state in the bill that the discretion will only be used where there is credible intelligence advice that the money is in fact illicit or probably illicit. Currently there does not need to be a reason for them to deny.

CHAIR: There being no further questions, I conclude this part of the hearing. Thank you for attending, Debbie and Hannah, and also for your written submissions.

Proceedings suspended from 3.13 pm to 3.30 pm.

CLEAVER, Mr Jade, Firearm Dealers Association—Queensland Inc. (via teleconference)

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

Mr Cleaver: Our points have been drafted by members of the Firearm Dealers Association from the state of Queensland. As a whole, we think there are some wording issues in the current legislation that could be addressed a lot better and that have encapsulated a few things that are currently not regulated which the government will have to pay attention to.

Going to the first issue that we have, which is clause 62, amendment of section 67, we propose that airsoft be included along with gel blasters in the same setting, the reason being that the actions of both these firearms are very similar. In recent times we have seen the airsoft committee at the Firearms Advisory Forum under Minister Mark Ryan and we feel that it would be beneficial to encapsulate both sports at once while regulating gel blasters.

The next point I will go on to, which is a very important point, is the insertion of section 67 which will regulate deactivated firearms in category A, B or C. Currently the categories of deactivated firearms are not regulated. We ask the government whether they are going to have an amnesty period with the new regulation because there are a lot of these firearms out in the community already that are in the possession of avid collectors or people who want to possess them and hang them on the walls, as they can do? What public notices are going to be issued once it is regulated to inform the public that they now have to comply with a new piece of legislation, a new set of rules, because currently the A, B and C deactivated firearms are not regulated at all by the act.

Clause 63, the amnesty declaration, is something that the Firearm Dealers Association fully supports and has been pushing for the past 3½ years while I have been involved in it and I am sure much longer before then. I will bring light to the last two amnesties in Queensland that were a huge success, run by the Queensland Police Service. The large success of these amnesties was due to giving people the ability to hand in firearms anonymously. This allowed people in the public, if they found grandad's firearm in the shed at home, to hand it in anonymously, without giving their name or any ID, and the firearm would be registered and then onsold or destroyed. The current clause that is being proposed does allow people to hand in firearms anonymously to a dealer but then requires them to be handed on to the Queensland Police Service. This would not work, from what we can see, in the real application of the legislation. You would find that dealers would just refer people to Queensland police to hand in unregistered firearms if they did not wish to give their name and then, from what we have seen in the past, you would not get the firearms registered. As I said before, the last two amnesties that were run in Queensland have been hugely successful and they were both based around anonymously handing in an unregistered firearm at a local dealer. This section does support all the previous amnesty key features but does not support that last key feature which I think is crucial.

We have also put an additional proposal. We would like to see, if possible, the removal of the word 'primarily' in the definition of primary producer. In recent times we have seen a lot of farmers out west take on two jobs. A lot of primary producers now are not singly employed by their farm but are also employed in town at a local real estate, or they might have a butcher service they do as well. The Weapons Act as it is written excludes them from gaining the tools to do their normal primary production activities. The Weapons Act has the word 'primarily', so a primary producer must be primarily engaged in primary production, which in today's climate is not the case for most primary producers. We have recently seen primary producers, because of this wording, being excluded from being able to purchase ammunition and firearms under the current COVID-19 restrictions. The removal of this word would clean up the Weapons Act and bring it in line with the ATO act, where a person can have as many jobs as they like but they are still a primary producer.

Our final point goes to section 71, where it says a licensed dealer or licensed armourer must, for each transaction involving a weapon, enter immediately in the weapons register the particulars prescribed by regulation. The word 'immediately' in legislation is very messy. While it is everybody's intention to enter it immediately, sometimes it is not practical. What we have to remember is that firearms dealers are dealing with items that must remain secured at all times. An armourer might do a production run of 20 or 30 firearms, or even five firearms, and then go and update his register. The Firearm Dealers Association requests that the words be changed to ‘as soon as practicable'. That is all we have on that.

Mr LISTER: Mr Cleaver, thank you very much for your appearance representing the Firearm Dealers Association of Queensland. I take an interest in your submission and in particular the part relating to gel blasters. Just before the hearing reconvened I was on the phone to Shane, who is the

proprietor of Tactical Warfare Gel Blasters in Warwick. He made five brief points to me which I would like to put to you and ask for your response on, if you do not mind. He said that there are tens of thousands of users of gel blasters in Queensland and that the proposals in the bill, which effectively make it illegal to have gel blasters unless you are a member of a club, will make his small business unviable. He said that the laws are already strong enough in that they provide for offences such as going armed in public to cause fear and so forth, that people currently use knives, syringes, mattocks and whatever else to rob service stations and so forth without needing replica firearms and, lastly, that country users in particular, which he obviously serves, do not need clubs because everybody has land on which they run around to have fun with these things. Can I put those comments to you and ask for your view? Are the proposals in this bill relating to gel blasters a repeat of Labor's closure of gun shops and their restrictions that you mentioned before with COVID-19?

Mr Cleaver: In relation to gel blasters it is very hard for me to comment, especially on the questions you have asked. What you have to understand is that the dealers association represents licensed firearms dealers. I can only think of two shops—licensed firearm dealers—that sell gel blasters as a side item. I am not versed in the current sporting requirements for gel blasters; nor do I know what their sales are to what demographic. It is very hard for me to comment on that area of the market because the dealers association sees them as toys. They are not firearms. The questions you ask I cannot really answer. Even as a shop ourselves, Cleaver Holdings do not sell them. We sell—excuse the pun—real firearms, not toy guns. The questions are hard for me to answer.

The dealers association has not been actively following the issues in the public space because it does not relate to our industry. Our industry is to do with real guns. It is hard for me to give an educated opinion on the gel blasters as a whole because we do not trade in them. I do not know the shooting demographic or the sales demographic of gel blasters because we have not researched it at all, either as a business, from Cleaver Holdings' point of view, or as an industry from the Firearm Dealers Association standpoint. I do not know what impact it would even have on the clientele because we do not service that clientele. It is a series of questions that we could not really give an educated answer to.

Mr ANDREW: I would just like to state for the record that I am a licensed weapons dealer.

CHAIR: Thank you.

Mr ANDREW: Mr Cleaver, given the information you just gave about the amnesties and how successful they were, do you think the effectiveness of the situation for the people who found grandad's gun in the shed or under an old tarp somewhere could be diminished by handing in a weapon that was unregistered directly to the police? Do you think that is going to hamper ongoing amnesties?

Mr Cleaver: It would hamper the provisions of the amnesty. I think you would you see less firearms handed in from the community if people could not do it anonymously to a dealer. Basically, the regulation points out that they can do it anonymously but the item must be handed over to the state. What you would see is a lot of dealers saying, 'Well, if you are not going to give us your details, just take it straight down the police station.' For the dealer handling that item there are handling costs, staff costs and registration, transport to the local police station, then queueing up with the firearm. It will probably take two to three hours out of a staff member's daily duties to go and hand in a firearm. You would see dealers recommend people to go directly to the police station and hand it in. In all previous research that we have seen, that does not happen. Even if it is regulated that they are exempt from prosecution you will see very few firearms presented at police stations.

The other thing is to take the registration process of those firearms away from general duties police officers. Our staff here—I can talk particularly about our store and a few others, and I am sure you would agree as well, Steve—are versed in clearing and making safe a wide variety of firearms because we handle them every day. We know how they work. We know how they function.

Mr ANDREW: Absolutely.

Mr Cleaver: A general duties police officer is not versed with the same knowledge that we have. The Firearm Dealers Association does not want to put the burden on the Queensland Police Service, and I am sure that the Queensland Police Service does not want the burden of having to clear a firearm that a gentleman walks into the police station with. Is that something that we really want anyway—people queueing up to pay a fine at the police station while the next person in line has a shotgun to hand in? The dealer has to hand it in anyway, so the dealer has just sent them to the police station to go and hand it in. It is not something that the public or the police want to see. I am not a police officer so I cannot talk for them, but I do not think they would want to see that at police stations. They do not want an elderly gentleman bringing into the foyer a double-barrelled shotgun to hand in because he found it at home in his deceased father's estate.

If you have a look at the two Queensland amnesties, the records do not reflect that there are more unregistered guns in Queensland than any other state. They just show that the core principle of being able to hand in guns anonymously to a dealer and the dealer taking those guns, destroying them, passing them out for commercial value and recouping some of those costs is hugely successful.

Mr ANDREW: The dealer actually takes the responsibility, too.

Mr Cleaver: That is correct; the dealer takes the responsibility. It still leaves police with all avenues to investigate. I have mentioned this before at different ministerial levels: even if the gun is handed in to a dealer anonymously, the police still have all the dealer's CCTV footage, they can still interview a dealer if there is something wrong with the gun from a criminal aspect—and that is what the government is worried about—and they can still investigate how that firearm was handed in. The person who handed it in may be exempt from prosecution, but if they can still do their research, if need be, if it is handed in through a dealership, I do not see any gain from making it mandatory that if a firearm is handed in to a dealer anonymously it has to be handed in to the police. I see only the negative; I cannot see any positive side to it. The law enforcement can still do their own research through the dealership. They can still gain the dealer's CCTV footage to see who handed in the firearm. They can still investigate it. I do not see a real issue there as to why these guns that are handed in anonymously have to go to the police station and through the Queensland Police Service registration process.

CHAIR: That brings to a conclusion this part of the hearing. I thank you for your attendance and I also thank you for your written submission.

SUNTER, Mr James, President, Queensland Living History Federation (via teleconference)

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

Mr Sunter: Thanks for your time. We have laid out what it is that we do—our activities—in our submission. Much of what we do is for our own enjoyment, but it is not simply a recreational hobby. As we spelled out, we are part of public events that are important to the broader community. The point I want to make is that with our members we talk in terms of having a social licence to operate. We know that we are carrying firearms and replicas into public places and public events and we know that to be able to do that we need to operate to high standards of behaviour that meet community expectations. For example, we are involved in Anzac Day ceremonies and do educational events in schools. We are a deliberately incorporated association with clear rules and standards.

In our submission, we have not taken a position on the regulation of gel blasters specifically or the regulation of that specific activity. Our interest is in replicas in the re-enactment context. In fact, we would have preferred that gel blasters as items had been dealt with separate to the broad category of replicas.

Our overall point would be that there was insufficient consultation. The legislation was prepared primarily to cover gel blasters but with a wider net cast to cover replicas generally. We think that has led to unforeseen consequences and not all scenarios involving replicas have been contemplated. In covering some scenarios, the legislation creates a great deal of uncertainty for the scenarios that were not contemplated.

The regulations to implement the proposed changes are integral to the legislative scheme and should have been released for consultation, along with the bill. There is an existing consultation forum for stakeholders through the minister's office. We have asked that you recommend that occur before the bill goes back to the House.

The main points we would highlight are that in dealing with the use of gel blasters with an 'out of sight, out of mind' policy, there has been a disparity created for re-enactors. I would like to elaborate on the QPS response to our submission that was forwarded to us last week on the effect of what would be the new section 67 or (3C) in the bill. I am happy to do that now or I am happy to do that in the course of taking questions.

CHAIR: It is okay for you to do that now, if that suits you, James.

Mr Sunter: The QPS response to our submission is that the legislation cannot cover all examples and refers back to the general catchall that the new specific clauses do not limit what may be a reasonable excuse under subsection (1). Subsection (1) creates the general provision of a reasonable excuse. The new legislation then sets out a number of specific examples and then there is a kind of catchall at the end that says that those specific examples do not rule out other reasonable excuses.

In the response that came to us from the QPS they also say that something could be determined later by the courts to be a reasonable excuse. The response from the QPS also envisages that, in our situation, re-enactors could be considered to have a reasonable excuse under subsection (1) regardless. The example of particular concern to us is the example that provides a reasonable excuse for associations doing recreational activities as long as it is not in public. As our submission has made clear, a lot of what we do is, in fact, in public and that is, in fact, the point. Our view is that a court would be likely to consider that that catchall subsection would apply to other different scenarios that are not contemplated by this specific example, such as the public one.

What we do as an association undertaking recreational activities is specifically contemplated in that subsection. It specifically says that activities that cannot be done in public is a reasonable excuse. Our belief is that for an attending officer or the courts, their starting point would be that we do not have a reasonable excuse for the activities that we do, so we do not want it left to the courts and we do not want it left to an officer attending an event. In their response, the QPS says that they already envisage that what we do would be a reasonable excuse. If that is the case, we would really rather it is spelled out now, rather than leaving that to a later court decision or the interpretation of an attending officer at an event.

The activities that we do, we do them regularly, often annually. They are not one-off events that can be captured by a catchall provision. We need to be able to make arrangements with venue organisers and insurers ahead of time. We cannot say to them that we know that the legislation specifically says that it is a reasonable excuse to do what we do as long as it is not in public but we

reckon we will be good to go. We just will not get insurance coverage for that kind of thing. A similar circumstance applies to the provision dealing with permanently inoperable category A, B and C weapons. I hope that is clear. I am happy to take questions.

Mr LISTER: Thanks, Mr Sunter, for your comprehensive submission and for your appearance today. If you were listening before you would know that I asked the representative from the Queensland Firearm Dealers Association about gel blasters. Obviously that has a similarity to your situation. One of my constituents who runs a gel blaster shop made the observation that there are already laws that enable police to apprehend and charge people who use a firearm or a replica, for that matter, for the purpose of scaring people. I think the charge is going armed in public with intent to cause fear. Would you argue that the law as it stands, therefore, would be adequate and that these innovations concerning replica firearms, gel blasters and so forth are unnecessary and impinge unduly on the rights of law-abiding people?

Mr Sunter: Do you mind if I mute for a brief moment while I check with the people who are with me before I respond?

Mr LISTER: Sure.

Mr Sunter: Sorry for the pause. I do not want to respond in the context of gel blasters. For re-enactors it is a slightly different scenario. Much of what we do is already regulated with a set of constraints that are a bit hit and miss for us. In the context of re-enactors, the measure is not something we are outright opposed to, except insofar as we seem to come a cropper on the basis that, in seeking to regulate gel blasters, there has been a probably unintended but negative effect on re-enactors in that much of what we do is in public and with the measure as drafted, unless it picks up the recommendation that we have made that there be a specific provision dealing with re-enactors, there is a negative impact for us.

Mr LISTER: Specifically in the context of replica firearms, which is your province, the question still stands. Would you say that the current laws appear to be adequate and that the provisions of the bill concerning the management and regulation of replica firearms are therefore unnecessary and unduly burden law-abiding people?

Mr Sunter: On balance I think we would say it is not necessary.

Mrs McMAHON: In relation to your first recommendation, the introduction of a class of licence for re-enactors via regulation, are you aware of any other jurisdictions within Australia that have a specific category for re-enactors in their weapons licensing regime?

Mr Sunter: No, there is not. Obviously each state has its own scheme. In the Queensland situation the difficulty for us is that we tend to fall between a couple of stools. In the existing regulatory scheme there is no easy fit for us. Our suggestion has been that it would actually be easier to administer and regulate the things we do if there was a regulation that had that form of licence.

CHAIR: That brings to a conclusion this part of the hearing. We thank you for your attendance and for your written submission.

Mr Sunter: Thanks for your time.

YATRAS, Mr Kirk, Vice President, Firearm Owners United (via teleconference)

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

Mr Yatras: I would like to thank the committee for the opportunity to present today on behalf of Firearm Owners United, of which I am the vice-president. Our organisation operates nationwide to advocate for the shooting community as a purely volunteer driven not-for-profit with a diverse membership ranging from sporting shooters, hunters, primary producers, professional pest controllers, armourers, security guards and dealers.

Our primary concern with this bill is the restrictions on possession of deactivated category A, B and C firearms. Previously the devices have been relatively unregulated. We believe there is likely a significant but entirely unknown number in the community. It seems that deactivated firearms are being grouped together with concerns nearly entirely driven by the recent proliferation of gel ball blasters.

I note that the police in their response to our point on this seemingly incidental capture of deactivated A, B, C firearms indicated their desire to have a legislative approach that focuses on the appearance of such replica firearms to the exclusion of the function. We believe this approach is fundamentally mistaken. These gel ball blasters have proliferated within the community not inherently because of their appearance—realistic toy guns have long been available—but instead because of

their innovative function in firing small gel pellets. To ignore the police callout that seems to be driving this and to relate to the use of these items for their intended recreational use, albeit unfortunately in public places and alarm members of the public, misses the fundamental nature of what is occurring. People within the community seem to understand that going out in public with a deactivated shotgun or something similar is not a wise course of action. However, when that is applied to what is instead sold to them as a toy, their perception does seem to change.

As a secondary concern we question the necessity of the proposed level of restriction of gel ball blasters. We believe that, instead of criminalising possession without reasonable excuse generally, they could be dealt with by restricting possession in a public place without reasonable excuse, bringing them in under section 57 of the Weapons Act. I note that the police in their response to this matter did state that there are already pre-existing offences that capture the use of replica firearms in a public place, and that is true. However, our understanding is that presently the toy gel ball blasters are not replica firearms in law and, as such, some of those offences do not apply. I believe going armed to cause fear would still apply but the more clearly laid out offence under the Weapons Act does not. We believe that with clear laws that capture these items restricting their use in a public place, the problem that is currently being experienced can be resolved but without a requirement to retroactively prohibit possession of previously legally held toys or deactivated firearms.

Furthermore, we note from a response to the Living History Foundation submission on the request for further explicit exemptions that the QPS refers to the courts to interpret reasonable excuse. Our contention with this is that, in our view, when the courts engage in statutory construction of firearms legislation they tend to take a very strict approach in line with the stated objectives of the act. Thus when exemptions for what is a reasonable excuse are not explicitly spelled out, courts in this space become reluctant to find such excuses. Furthermore, the community we represent is very focused on compliance with the legislation. Whilst grey areas that require a court's interpretation are sometimes inevitable, they create significant angst for our members. As such, we would like to see a more detailed list of reasonable excuses to provide guidance for the court and the community we represent. I would now like to open myself to questions from the committee.

CHAIR: James, do you have a question?

Mr LISTER: I do not, but can I just say thank you for your submission and your appearance. You have answered all of my questions for me already.

CHAIR: Steve?

Mr ANDREW: I would have to say the same thing. He has laid it out very clearly so there is nothing really to question.

Mrs McMAHON: Thank you very much for dialling in this afternoon. I was wondering if you could outline to the committee and for the benefit of those listening to the broadcast who probably do not spend as much time around weapons, particularly deactivated firearms, what purpose deactivated firearms serve and how people utilise them? Is it something that generally occurs in a public place?

Mr Yatras: To answer the last part of that, generally they are not used in a public place. From our look at the information that is publicly available on police call-outs, they do not seem to relate to deactivated firearms generally. I know that the living history guys with their re-enactments do use them in a public place, but that is really the exception to the rule. Otherwise people tend to keep them out of the public eye, for fairly obvious reasons.

From an industry standpoint, the use of deactivated firearms creates a way for dealers to basically dispose of guns. Whilst they might aesthetically be relatively okay looking, functionally the barrels are rusted out and the bolts are broken. These guns are not very good. They deactivate them: they weld up the action and they remove the internal components. They effectively destroy any collectability for firearm collectors. They do create something that was once a firearm that people can hang on the wall of a bar or put on the mantelpiece or something like that. Some people do like collecting them for whatever reason, but there are not that many people in the community who collect them. They mostly seem to be used as decorative objects, to be honest.

Mrs McMAHON: How does the average layperson in the street differentiate between a deactivated firearm and an activated or actual firearm?

Mr Yatras: Obviously a deactivated firearm, if it is done reasonably well, will be fairly difficult for a layperson in the street who is confronted with one to differentiate from an actual firearm. We do not see this occurring particularly often. Obviously if someone was confronted with one it might give them a bit of a scare. Other than its use as a club, it is not particularly capable of inflicting any damage

or injury. Obviously it is not a great thing, but you cannot really do much with them. The permanent deactivation standards are very brutal. They very much deal with their ability to be reactivated or anything like that.

Mrs GERBER: In the explanatory notes the key justification for regulating the gel blaster industry is an increasing incidence. I want to get your view in relation to the regulation of the gel blaster industry. Do you think it is necessary to regulate gel blasters to alleviate safety concerns, or do you think it possibly could be addressed through education campaigns—educating people around the use of gel blasters et cetera?

Mr Yatras: Certainly. That was a point we made in our submission, that we believe an education campaign could achieve the policy objective. It is certainly worth giving a good go before we start regulating these items. People have been charged with unlawful possession under the Weapons Act in New South Wales. People are unaware of the legislation because they do not pay much attention. It ruins lives, honestly. It creates a huge number of problems for people. Maybe they will get off fairly lightly from the courts, but it causes huge amounts of angst for those people. We really believe this should be a last option and an education campaign should be given a good go first.

CHAIR: There being no other questions, I would like to thank you for your attendance and your written submission.

GRANTHAM, Professor Ross, Shooters Union Queensland (via teleconference)

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

Prof. Grantham: What I would like to focus on in my statement—and it is in addition to the written submission—is the underlying regulatory policy and why, in our view, the proposals in the current bill are misguided and largely unjustifiable. Replicas, by definition, are not firearms or weapons and, as such, they do not in our view engage the underlying objectives of the Weapons Act, which of course is to prevent the misuse of weapons. In a very broad sense, we regulate firearms because firearms can hurt people. Replicas do not; they cannot, unless you use them as a club. Therefore, the regulatory concern has to focus on their appearance, and I think that is acknowledged in the response to the submission at pages 18 and 19. If that is the basis for dealing with replica firearms then in our view that gives rise to at least three major concerns.

As we outlined in our submission, the bill does not contain a definition of replica firearm; that is to come later, according to the explanatory memorandum. In our view, there are serious reasons to doubt that a definition can be devised for replica firearms that does not involve significant regulatory overreach. To focus on appearance means that the line between a replica that ought to be regulated and a child's toy, for example, becomes very fine and, in our view, highly unstable. Just to illustrate, is that line to be drawn on the basis of the shape of the thing in question? If so, how do we stop a piece of wood, an umbrella or even in one case a bassoon, all of which resemble a rifle from a distance, from being included in the definition of replica? Equally, is it based on colour? What in particular stops a nerf gun—and a nerf gun, though not initiated, is just a child's toy that fires a little foam dart—from being a replica? Is it simply the fact that nerf guns tend to be built in very bright colours, reds and yellows, and not in black as typically for a firearm? If I have a nerf gun that otherwise resembles a firearm—a handgun, for example—and I paint it black, does that thereby turn it into a replica?

As a more concrete example, what do we do about something like the outdoor hunter bolt action classic rifle with real gun sounds and realistic bolt action functions suitable for ages five and above currently available from Mr Toys Toyworld for $24.99? Its shape, its colour, its design and its size all mimic a real rifle but it is undoubtedly and indisputably a toy. Do we really want toys to be regulated by the Weapons Act? We think that any set of rules which effectively criminalises a child's toy, let alone a bassoon, would rightly be regarded by the public as both wholly inappropriate and patently ridiculous.

The second concern we have is that there is not, in our view, a regulatory gap that needs to be filled. As the response to the submissions notes at page 20, the law has for a long time made it an offence to go about in public causing fear and alarm. Those offences exist; the police currently enforce them. The comment in the response, again at page 20, that new laws are needed because the current laws are not preventing such conduct is not, in our view, an argument for an additional offence which really addresses the same species of conduct. Australian lawmakers have long recognised that the solution to noncompliance with a legal rule is not another legal rule to the same effect. If the existing legal rule makes conduct—here, going about causing fear in public—an offence, introducing another rule to the same effect has nothing to achieve in the desired policy outcome. To add one law upon another law is an application of Einstein's maxim that insanity is doing the same thing over and over again but expecting a different result.

The third point is that the policy considerations which seem to underlie the provisions in the bill as they relate to the Weapons Act and replica firearms seem to be about the convenience of resourcing the police. As the response to the submissions notes at page 25, there are call-outs by frightened members of the public who mistake something for a firearm and this is a drain on police resources. Accepting that, the question is whether convenience is a sufficient justification for regulating within the Weapons Act scheme things that are not weapons but which are essentially toys. We do not think there is such a justification. The underlying justification of the Weapons Act scheme for the intrusion into personal liberties in limiting access to firearms is on the basis that firearms are dangerous and may hurt people. That justification cannot extend to replica firearms. Indeed, in a sense the concern with replica firearms is a concern with a different species of conduct or misconduct. Fundamentally that is public nuisance, and in our view it should be dealt with as such.

In summary, our view is that with regard to replica and toy guns, insofar as they have led to concerns from the public, the solution lies not in seeking to regulate them and bring them within the quasi-criminal rules of the Weapons Act but in educating the public and the owners of these toys and replica guns about what is and is not appropriate in public behaviour. Mr Chair, that concludes my opening submission.

Mr LISTER: Professor Grantham, thank you for your appearance today and for your submission. I was very interested to hear what you had to say and your submission. Would you agree with me if I said it would appear that, through an absence of practical benefits, the government is grasping at straws in an attempt to get rid of gel blasters?

Prof. Grantham: It would seem that there is a concern with gel blasters, and that concern seems to be to do with appearance. The effect of the regulatory scheme that is being proposed in the bill would, I think, kill the gel blaster industry, yes.

Mr LISTER: None of the police with whom I am acquainted have expressed to me a concern that resources are being squandered by false call-outs because of gel blasters. Do you agree with my suggestion that that is also an absurd proposition?

Prof. Grantham: I am not familiar with the number of call-outs the police have faced. I am aware that not many of the call-outs have resulted in charges being laid, which suggests that an offence has not been committed—or at least not a serious enough offence to warrant charges. Again I come back to the point I made: police convenience is not, in my view, sufficient justification for regulating so heavily things like gel blasters, replica firearms and children's toys.

CHAIR: Is there anyone else on the line who would like to ask the professor a question?

Mr ANDREW: Thank you for your submission, Professor, and thanks to the Shooters Union also for the submission.

CHAIR: I take it there are no further questions. I would like to thank you for your submission and your appearance. I will now close the hearing. I would like to thank all of the witnesses who appeared today. Thank you to the secretariat staff and to Hansard. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare this public hearing for the committee's inquiry into the Corrective Services and Other Legislation Amendment Bill 2020 closed.

The committee adjourned at 4.21 pm.