LEGAL AFFAIRS, POLICE, CORRECTIVE SERVICES AND EMERGENCY SERVICES COMMITTEE

Members present:

Hon. D.M. Wells MP (Acting Chair)
Mr J-P. H. Langbroek MP
Mrs J.M. Attwood MP
Mr J.P. Bleijie MP
Mrs B.M. Kiernan MP

Staff present:

Ms A. Powell (Research Director)
Ms A. Honeyman (Principal Research Officer)

PUBLIC MEETING ON THE POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2011

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 12 OCTOBER 2011

Brisbane

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Committee met at 10.38 am

ADAMS, Ms Karen, Manager, Policy Unit, Queensland Police Service

BARNETT, Deputy Commissioner Ross, Deputy Commissioner (Specialist Operations), Queensland Police Service

CHAN, Senior Sergeant Rachael, Senior Legislation Officer, Legislation Development Unit, Queensland Police Service

ACTING CHAIR: Good morning. I declare this public meeting of the Legal Affairs, Police, Corrective Services and Emergency Services Committee open. I think most people were here when I gave my little speech introducing the members of the committee. I will give you the quick version: Betty Kiernan, the member for Mount Isa; John-Paul Langbroek, the member for Surfers Paradise; Jarrod Bleijie, the member for Kawana; and Julie Attwood, the member for Mount Ommaney. Also, to my immediate right is Amanda Powell, who is from the secretariat of the committee. My name is Dean Wells. I am the member for Murrumba and acting chair of the committee in the absence of Barbara Stone, who is unwell.

We have had an earlier hearing on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011. At that hearing we were briefed by departmental and police officials and by a large number individuals and groups. Very kindly, the suggestions that were made by those groups were offered up and we sent them with some questions to the police. The police were also present at the hearing the last time. So what we are now doing is considering some of the suggestions that were made by some of those groups.

We have correspondence from the Police Service, which we have made public. Now we are going to invite the police delegation, if they would be kind enough, to address any remarks that they wish to make to us. Then we have some questions and those questions are going to be about their response to some of the things that were said by some of the groups that addressed us at the hearing last week. Deputy Commissioner, would you like to start?

Deputy Commissioner Barnett: With the indulgence of the committee, I would like to make some opening comments. We have placed before the committee a range of proposed amendments which would result in increased police powers. The Queensland Police Service considers that these changes are modest and incremental in scope and do not represent a significant restriction of the freedoms currently enjoyed by Queenslanders.

The QPS genuinely believes that the adoption of the proposed amendments enhances the safety and security of the whole community and the safety of and legal protection for our officers. The community entrusts in its Police Service a responsibility to provide the safest possible environments while maintaining the fine balance with individual rights and freedoms.

The legislative reform process is constant and seeks to address in a timely way those issues—most unforeseen at the time of drafting—that arise after laws have been enacted and practically applied. I believe we have a responsibility to our police officers and to the community to bring forward proposals that will address and remedy deficiencies in the existing PPRA that have been identified when putting the current laws into practice.

The pat-down search for alcohol and the extension of the noise abatement direction powers are examples of practical issues that need resolution to allow us to provide a greater level of safety, peace and amenity for the community. In essence, we propose that these new powers necessarily expand the toolbox available to police officers when presented with front-line policing situations.

We recognise the genuinely held concerns that have been expressed by other agencies and advocates on a range of issues. In the consultation process, including the face-to-face PPRA review committee, many groups had opposing views and clearly articulated their concerns and challenged us to make our case for change. These discussions resulted in a number of proposals being withdrawn at that stage. I believe this indicates that the QPS has been genuine in its consultation and responsive to concerns raised about the rationale for, and scope of, proposed changes.

It has been suggested in submissions to the committee that the granting of some of these additional powers—most notably the pat-down search provisions—presents a risk of potential abuse by some police and threatens to damage the relationships between police and young people and vulnerable groups. It is

my respectful submission to the committee that doing nothing presents a greater risk to the safety of the young and vulnerable in our society. Police are at the front line and confront 24/7, with unrivalled clarity, the social pressures and environmental factors which threaten the safety of our young people and the wider community.

We would not be seeking this amendment if the experience of police did not show that young people who consume alcohol are significantly more at risk of becoming reckless to potential harm, perpetrators of crime, public nuisances, or victims of serious crimes themselves. This risk increases exponentially the younger the child and the greater the level of intoxication. We are not the 'fun police', but we are about preventing harm and reducing crime by all reasonable means. Having to respond to a serious accident or crime involving a young person that could have been prevented through early intervention is a bad outcome for everyone involved. The young person, their family, the police and the wider community all lose.

The granting of a power to all police invariably carries the risk of abuse by the few. If we allow the spectre of possible isolated abuse to override the benefits of considered reform, then the safety and security of the majority is needlessly and unfairly compromised. The introduction of the taser is a recent example of how the QPS has balanced these competing considerations. For example, while police have been provided with tasers, they are not often used and our statistics show that the mere presentation of a taser de-escalates many violent and potentially violent situations and reduces the need to use more lethal force.

As with any police power, any perceived misuse can be the subject of complaint, investigation, disciplinary action and change of policy or legislation if warranted. The existing safeguards contained in the PPRA minimise the risk of abuse of the powers sought to be introduced by this bill. The risks are further mitigated through the QPS's commitment to professionalism and ethical behaviour through effective policy and procedures, ongoing training and development of police officers and strong supervision and performance management. The modern QPS has demonstrated that, while some officers occasionally do not live up to our high standards, we can be trusted to appropriately use the powers that are granted by the community through the parliament.

I would like to share with the committee some of the more relevant statistics identified in the Queensland Police Service's community satisfaction with police 2010-11 report. The level of general satisfaction with policing among the Queensland community in 2010-11 is as follows: 63 per cent of persons surveyed aged between 25 and 29 years were satisfied and 64.9 per cent of 30- to 34-year-olds were satisfied. Respondents aged between 15 and 17, or over 35 years, were significantly more satisfied than those age between 25 and 34. Seventy-five per cent of respondents aged between 20 and 24 were satisfied with the police. Seventy-one per cent of survey respondents who identified themselves as Aboriginal and/or Torres Strait Islander were either satisfied or very satisfied in general with police.

With regard to victims of crime and their satisfaction with the service provided by police, the crime victim survey revealed that there was no statistically significant difference between the satisfaction of victims who spoke only English at home, being 74.8 per cent, with victims who spoke a language other than English at home, being 70.3 per cent. Over 85 per cent of persons surveyed agreed that the police perform their job professionally, and over 74 per cent of persons viewed that police treat people fairly and equally.

I would now like to provide a response to some of the issues raised in the public hearings of 4 October—in particular, the issues that the QPS can revisit. Two issues raised by the Queensland Law Society can be addressed. With clause 20, the definition of 'ancillary conduct', the QPS supports that the clause be amended to take into consideration the effects of the 'supply dangerous drugs' sections of the Drugs Misuse Act.

The Queensland Law Society also raised the issue of what it called the 'referral of suspects and defendants to police referred solicitors'. While there is no evidence from the society of an existing problem, the QPS is working with the society for the provision of a regional lawyer list. The new list and process will be operational in early 2012. The Law Society will also undertake to provide updates to those lists as required.

The Crime and Misconduct Commission raised issues with clauses 19 and 28 of the bill. The QPS agrees that the bill could be amended so that the changes proposed only apply to the QPS, as the CMC and the Australian Crime Commission also use the provisions of the PPRA for surveillance device warrants.

The QPS will also implement a policy requiring the recording in QPRIME of the circumstances where a person is excluded under the new provision of clause 86.

The QPS also supports change to clause 40 that was suggested by the Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service Inc. The QPS will pursue that the bill be amended to refer to Aboriginal person instead of Aborigine.

In closing, can I provide the committee with some independent support for the maturity and professionalism of your police department with this quote from Mr Terry O'Gorman at the recent *Courier-Mail* law and order forum. Mr O'Gorman was a member of the PPRA review committee which considered these amendments and, as you know, has been and continues to be a strident critic of aspects of Police Service behaviour and practice. In that context, I believe these comments are significant—

Certainly in the 35 years that I've been a criminal defence lawyer, I have seen professionalisation of the Queensland Police Service that has gone from almost one extreme to the other.

Can I say that the police service we have now is vastly different from when I grew up in the seventies.

While there are still some problems, the Queensland police of 2011 is radically different and much better than the Queensland police of 1976.

And I suspect that is part of the reason why Queensland police have such a high clear-up rate because there's a saying that a police commissioner from the seventies in the UK said—you have policing by consent—if you've got community with you, you'll get as a police service, vital pieces of information.

So there's been great improvement and we're all better for it.

ACTING CHAIR: Thank you very much, Deputy Commissioner. May I on behalf of the committee thank you for the spirit in which you have entered into the process that we are involved in. Your willingness to recommend changes that arise out of the public airing of the views of a large number of interest groups is very much appreciated. Can I also say that, with very little time, you did give us a document which contained very detailed responses to a large number of the issues that concerned us. Some issues remain that we think would be worthwhile discussing with you. So I will ask my colleagues to begin.

Mrs ATTWOOD: From our public hearing last time, we as a committee felt that there were a lot of respondents who were concerned about the issue of homelessness and people who were subject to police scrutiny who were homeless. Is there any sort of training provided by police in dealing with homeless persons or vulnerable people, particularly those people with a mental illness?

Deputy Commissioner Barnett: Yes. I can probably provide you with some more detailed information, but we do provide specific training to first-year constables and other police about dealing with people who may have a mental illness. We also have a procedure under our operational procedures manual that deals specifically with homeless people. I can go through that with you if you like. It is not overly long.

Mrs ATTWOOD: Okay.

Deputy Commissioner Barnett: The procedure states—

Officers who come in contact with a homeless or destitute person should:

(i) refer that person to an agency for assistance, so that emergency accommodation and resources can be provided, and if asked, supply their name, rank, and station/establishment to the homeless or destitute person;

(ii) record particulars of any assistance provided, and when assistance is offered and declined by the person, record in that officer's activity log ... or official police notebook the names of the agencies referred to and any other assistance offered;

(iii) if the person has been acting unlawfully, consider initiating a prosecution under the relevant statute;

(iv) if the person is a child consider s. 5.4: 'Children—General Information' of this Manual; and

(v) ensure the homeless or destitute person is not recorded as a missing person on the Service computer system. If the person is recorded as a missing person, see ... 'Responsibility of officers who locate a missing person' of this Manual.

There are also references to some other sections: 'Circumstances which constitute a special need', 'Special physical, intellectual or health needs' and 'Victims of crime' in the same OPM.

Mrs ATTWOOD: They are very detailed. Thank you.

Mr BLEIJIE: Deputy Commissioner, I have two issues I want to raise with you. On page 5 of 11 of your submission—this is in relation to the Law Society and the issue of referrals—you mention in your report that you are now working with the Law Society and that in the beginning of 2012 we will probably have a regional list in place.

Deputy Commissioner Barnett: Yes.

Mr BLEIJIE: I questioned the Law Society at the last hearing in relation to this issue because it was a fairly substantial issue in their report. I asked about evidence, but there was no evidence. I note you say in your report that there has been one complaint—a recent complaint. But, between the hearing and now, things seem to have progressed with a plan. Was that plan already in existence? What I am trying to ask is: was this an issue for the Queensland Police Service or just for the Law Society?

Deputy Commissioner Barnett: It was an issue that was raised in the PPRA review consultation process by the Law Society. It is an issue of significant concern to them, obviously. We are working with them, as we have indicated. The practical solution is to have an online regional lawyer list that the police can simply refer the suspect to and to ask him or her to make a choice from that list. That is a transparent and easy solution for us. The problem has been in the past the difficulty in getting an updated and current electronic list from the society, but we are agreeing to work together. That is really the only impediment to that happening. In terms of the size of the problem, as I have indicated in our submission, there has only been one complaint made to us in the last three years.

Mr BLEIJIE: So it is not a systemic problem.

Deputy Commissioner Barnett: Not that has come to our attention, no.

Mr BLEIJIE: Based on the complaints.

Deputy Commissioner Barnett: No.

Mr BLEIJIE: That is good. The second issue I want to raise is about the pat-down searches. I talked a lot in the last hearing about pat-down searches of juveniles and minors. I talked about societal problems that I believe have created the problem that we have now with alcohol violence. I was supportive in my comments in relation to that but I am always open to discussion. What concerns me though is the response on page 6 to the committee's question: 'What alternatives to the pat-down search were considered and why these were not considered adequate?' The response says—

During the deliberations of the PPRA Review Committee alternatives to the current proposed amendment were considered. An undertaking of confidentiality was given to all PPRA Committee members to enable free and robust discussion.

I am not after who was on that committee and what their individual contribution to the committee was, but, in the process of determination for this committee, I think it is worthwhile looking at the alternatives that were considered. I know that the committee has the power to probably eventually find out, but I open it to you to tell us about these alternatives today.

Mrs ATTWOOD: Can I also add that it is noted that in other states they do not have those pat-down powers. So why are they necessary in Queensland?

Deputy Commissioner Barnett: Sure. I will address the second issue first and I will come back to the first question. Whilst we are cognisant and we always look at interstate and international comparatives whenever we are considering any sort of legislative reforms, we are nonetheless not bound by them. We believe that, for the reasons I have outlined, this is an essential part of the tool kit that officers should have. Ideally, we agree with the proposals that have been put forward by other advocates and other groups that it would be preferable if this situation did not exist and that early intervention and education made this issue a nonevent for police. But, sadly, that is not the case.

We have to deal with the reality that when we come across these young people—vulnerable young people in public spaces unsupervised, with the potential for things to go bad—we want to have an option, and preferably a preventative option. We do not want to be dealing with kids who are grossly intoxicated. If they have alcohol, we would prefer to get them at the very start of that journey so that we can take it off them and prevent them from exposing themselves to that risk. That is our preferred position. Our ultimate preferred position is that they are not there in the first place, because the life education they get from their parents, from their schools, from other community groups is more effective. But, unless and until that happens, 24/7 our police around the state have to deal with the reality of what they find in public places. I hope I answered your question.

In relation to the first question, we did give those people attending the committee a broad undertaking that those discussions that we conducted within the committee environment would remain confidential. But I could potentially give you this much scope: there were, of course, a range of views, given the nature of the people who were represented there. A lot of those views have been replicated by those people in their submissions to the committee. I do not think there would be any great secret there. On the continuum of no action through to our proposed action, there were a range of agencies that had a range of views about things that should or should not be done from nothing to our position. I do not know if I can assist the committee any further or be any more specific without breaching the undertaking that we gave.

Mr BLEIJIE: I am after specifics, because this committee has to determine one way or another whether we recommend that that provision is supported or not. It is very hard to make that determination. This bill was drafted on the basis that there were a range of options. This was the option that was chosen. It is very hard for the committee to determine anything else when we do not know the background to those other options or alternatives.

Deputy Commissioner Barnett: I have just been reminded that the undertaking that was given was actually given by the minister at our first meeting. So I am hesitant, as you would appreciate, to breach that undertaking that was given. Perhaps I could rephrase my response. I hope it will make it clearer.

What we propose is at one end of the continuum—at the extreme end you might say. The other agencies that were represented had divergent views to ours and they were at the other end of the continuum. They did not see the need for this power. In fact, their general view, if I could share it, was that effectively they saw no need for this change, did not support it and thought that the status quo should remain. Their view was that alternative early intervention, education and other strategies were the way to go and that this action and increased police power was not warranted and not suitable. I am not sure if I can aid the committee any further without breaching the confidentiality agreement that was given by the minister.

Mrs KIERNAN: Deputy Commissioner, from your response that you have given this morning and after hearing your opening statement, I think sitting here we can have every confidence, particularly in senior officers. My question is going to be directed to the pat-down powers, particularly to young people. This is giving to officers and young probationary officers who get out to my part of the world, in many instances working without very senior officers, an extra arsenal in their tool kit. I heard what you said about homeless people, having an almost descriptive approach to homeless people. Do we have the same

afforded to vulnerable young people? I still have a concern that young people—good kids—can get swept up in this. I appreciate doing nothing is a high risk. I understand that. Who do we class as vulnerable and at-risk young people? Secondly, what are we going to do to ensure that our most junior officers are equipped to enact this if they have this power in the tool kit?

Deputy Commissioner Barnett: In a general sense can I say we have a very strong focus in this department on ethics and professionalism. It is drummed into officers repeatedly at every level. They understand that there is strong oversight and accountability of every single thing that they do. When they are out on patrol they are on show. There is CCTV and people with mobile phones that can record things. They are being regularly recorded going about their daily business. They accept that and they understand it. So they know they are under scrutiny.

They know that there is no reluctance on behalf of the community, and indeed our own members, to report misconduct or breach of discipline when they see it. Over a quarter of all complaints made against police are made by other police. So I hope that gives the committee some confidence that no-one in the ranks turns a blind eye to misconduct or breaches of discipline. There is a strong self-reporting culture within the department—as I say, over a quarter of all complaints.

Our officers understand, and the commissioner is relentless in pushing this message and we do it at every level, that they as representatives of this department are held to a higher standard than general members of the community. That is very clear. It is also clear that not every member of this department upholds those standards. We accept that. As I said in my opening statement, there is a risk that any power might be misused on occasions by an officer. That will be situational. I cannot sit before the committee and give you a guarantee that will not happen. That would be naive. What I can say is that, with respect to the proposed power, I remind the committee that the officer must have a reasonable suspicion that the young person has alcohol in their possession. This is not an arbitrary, mandatory, in-all-occasions power to be used. The officer must be able to demonstrate to a senior officer or, if a complaint is made, how they formed that requisite reasonable belief before they can exercise the power that we are recommending the committee consider giving us. So it is not just a case of walking in and saying to any young person in any public place, 'I am going to pat you down.' The officer must have a reasonable suspicion. There is a threshold test to be applied before we even get into this space

In respect of very junior officers, anyone in their first 12 months before their probation is confirmed is always paired with a senior officer, a field training officer 24/7, and there is no exception to that rule. So the committee can have confidence that officers, at least in their first 12 months, are paired with an experienced officer. Once their probation is confirmed, of course, that regime ceases to apply but certainly that is the case with very junior officers.

Mrs KIERNAN: I can fully appreciate, Deputy Commissioner, those ethics and accountability. I am sorry I find some humour in your comment about CCTV. That might be good for city folk but I do not find a lot of CCTV out my way, and I have a pretty big patch of Queensland. What training are we going to do, particularly in dealing with young people? They are not only vulnerable but also volatile. They can go off like firecrackers. I do not want to see young police officers particularly being assaulted because they are not equipped to deal with young people. I guess if we are going to put something in place not only for the protection of the public and the young people and the broader community—I get all of that—but also for the protection of particularly young officers who do not necessarily have that supervision that might be available in city stations when they are actually out on the beat in a pretty isolated area—

Deputy Commissioner Barnett: I totally accept and understand your point. Perhaps I can put an alternative view. Under the current arrangements, if those young police officers meet young people in public places and they form a view that they may be in possession of alcohol, if the young person denies that or refuses a power to search, which is their current right, then the officer is frustrated and unable to take that matter any further. The police officer leaves that scene. The young people continue to drink unsupervised. Then the range of things that could possibly happen, as I indicated in my opening statement, take their natural course. That is the current situation.

In my respectful view, I do not think doing nothing is in the best interests of those young people. We would like to intervene very early to stop that young person going and doing something stupid—planking in some place, falling off hurting themselves, ending up lying on the road and getting run over, being the subject of serious crime, committing a serious crime. All of these things, sadly, are a reality. We would like to be given what we think is a reasonable power to try to break that cycle early if we can, but I understand the point you are making that it is situational.

Mrs KIERNAN: Thank you.

Mrs ATTWOOD: Deputy Commissioner, I have a follow-on question from that in relation to what you are saying about being able to demonstrate that somebody has alcohol, particularly in relation to young children. Is that required to be reported upon after the event—how the police officer made that determination that the child in front of them had alcohol before they were pat down?

Deputy Commissioner Barnett: What would happen is that, if this power was used, there would be a record made on QPRIME about the circumstances, the fact that the power was used. All of those things are auditable like any police action—use of a taser, pursuits; anything like that. It is open to the supervisor at any time to check on those occurrences.

Mrs ATTWOOD: But they do not have to document the reasoning behind the suspicion?

Deputy Commissioner Barnett: I cannot say that they would necessarily unless we were to put some procedures in place possibly to outline the rationale for their reasonable suspicion. But as with any other police action, if there is any complaint made about their conduct then there will be a full investigation and all of those things will be very carefully examined. They will have to explain the rationale for exercising that power.

Mrs ATTWOOD: The next question is what is the difference between frisking someone and a pat-down? Or are there different terminologies?

Deputy Commissioner Barnett: The term 'frisking' is used exclusively in relation to the major events legislation only. So designated major events like Indy and some of those have their own unique terminology and that is where the term 'frisk search' comes in. It is only in that legislation.

Mrs ATTWOOD: Is it the same thing? Does it mean the same action?

Deputy Commissioner Barnett: What it says is a frisk is a pat-down search of a person and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person. So it is a little bit more than a pat-down search.

Mrs ATTWOOD: So you can actually search somebody's baggage or whatever under a frisk search?

Deputy Commissioner Barnett: Under a frisk search, yes. It is just a different terminology for a special piece of legislation.

Mrs ATTWOOD: Thank you.

Mr LANGBROEK: Deputy Commissioner, this is about this pat-down search again. You mentioned that serving officers have obviously reported back that there are minors who at times they suspect have alcohol but they cannot see it and obviously those minors are aware of their own rights—that they do not have to hand it over. I would have thought that most minors apprehended by a police officer who are asked if they have alcohol and would they hand it over would not realise that they do not have to hand it over; they would. But, obviously, serving officers are saying there are incidents where minors say, 'No, I do not have any.' It is there but it is not obvious and that is why this power is being recommended.

Deputy Commissioner Barnett: That is true. It would be fair to say that for people in this age group there is a spectrum of knowledge of the law and their rights. Some are very savvy about the legal position they find themselves in. Some are compliant, as you have indicated, but there are a proportion who are aware of the law, often if they have had previous contact with the police particularly. They are aware of their rights and responsibilities. Some just have a generally negative and antagonistic attitude to authority, including the police, so that any request for anything voluntary is met with a no. In the absence of that consent, the police are powerless. That is the situation that we are trying to remedy here in the best interests of those young people, whether they agree with it or see it necessarily as a different issue.

Mrs ATTWOOD: Deputy Commissioner, you mentioned before that the reason for the powers is to get them early with alcohol so that you do not have to get them later under a worsening influence of alcohol. A lot of the people who we talked to at the hearing last said that there was no evidence to suggest that those proposed powers would reduce under-age drinking. Have you evidence to suggest that it would reduce under-age drinking?

Deputy Commissioner Barnett: I think there are a couple of possible responses. The first is just dealing with each situation as it occurs. If we can intervene early enough in that particular time and place we have prevented future harm, we believe, and the other is that when it becomes more widely known that police have this power then that is going to influence the thinking of people. If they think, 'If we go down to the park and get some grog, if the police come they will have the power to pat us down and find that alcohol,' that may modify their behaviour. They may then decide that is no longer a clever thing to do or their ability to get away with it will be quickly curtailed. That would have a preventative aspect, yes.

Mr BLEIJIE: Deputy Commissioner, was the PPRA review committee the first time that police have looked at the patting down of minors from a policy position? Was it in the PPRA review or had it been considered before?

Deputy Commissioner Barnett: That is beyond my corporate knowledge, I must confess. Before this committee convened, I was not part of the previous PPRA review process. It occurs every five years so I was not part of the previous process. I am unable to assist the committee with that.

Mr BLEIJIE: I am just trying to assist you with the issue I had earlier about the alternatives that you were unable to speak about because the minister has given a confidentiality agreement. I am suggesting that, if there was a previous review, perhaps we could look at the alternatives that were discussed in that. On the other hand, if you are unable to give the committee that information today, can we get feedback from you as to whether you can put that formal request in to the minister's office to have that information released? I think that will then assist the committee to determine what we can do next about it. I think we need that information. I do not think it is any secret that I am making that point. If we are going to be totally upfront with our report about this, we need all the evidence for the basis of this pat-down search.

Deputy Commissioner Barnett: We are more than happy to make that approach to the minister's office.

Mr BLEIJIE: Thank you.

Deputy Commissioner Barnett: We will come back to the committee with a response.

ACTING CHAIR: With respect to clause 39—that is the one which requires the police to let people know their rights to telephone calls and the like—it delimits the capacity of police to refer a defendant to a particular lawyer. Proposed subsection (5) states—

A police officer must not do or say anything with the intention of—

...

(b) persuading a relevant person to arrange for a particular lawyer to be present.

'A relevant person' is a person who has been charged with an indictable offence in the context of their having an examination. The point that the Law Society made was that that passage does not go far enough. It should not merely apply to a relevant person but to any person at all because they believe that the appearance of independence is compromised if a particular defendant is referred to a particular solicitor. They make the point that the appearance of impartiality, the appearance of independence, is as important as the independence itself. What I would like to put to you is the possibility of going that extra short distance that the Law Society is asking for there and expanding proposed subsection 5(b) to include not just 'a relevant person' but 'a defendant' at any stage of the proceedings.

Deputy Commissioner Barnett: I am not sure I understand the fine distinction. As a general rule, the section deals with the relationship between the police officer and the person who is being interviewed or is about to be charged. If that person is a legally competent adult, we deal with that person directly rather than any other third party. I am not sure that I understand the fine distinction being made by the Law Society.

ACTING CHAIR: Somebody is charged and then they have to be told that they have the right to telephone to speak to a friend. They have to be told that they have a right to have a lawyer. If the police officer reasonably suspects that the relevant person does not understand the advice, they have to explain it again until they do. Then if they say, 'We haven't got a lawyer but we'd like one,' the police officer can give them a list. This section says—and the Law Society says it is correct to go that far—that the police officer must not say or do anything with the intention of dissuading the relevant person from obtaining legal advice or persuading a relevant person to arrange for a particular lawyer to be present. 'A relevant person' is a person who is charged with an indictable offence at a particular stage of the proceeding. The Law Society wants to change that so that it says, 'A police officer cannot do anything or say anything with the intention of persuading a defendant to arrange for a particular lawyer to be present.' What they want to do is avoid the appearance of a cosy relationship between prosecution and defence. They want to avoid the appearance that there are questions that the defence counsel just might not ask.

Deputy Commissioner Barnett: If I am understanding you correctly, you are talking about changing the terminology from 'a relevant person' to 'a defendant'. Is that it?

ACTING CHAIR: In respect of subsection 5(b), yes.

Deputy Commissioner Barnett: I am not sure if I understand how that changes the intent or the mechanics of how that safeguard would work. Essentially, we are talking about the same person, if I am understanding you correctly. A person charged with an indictable offence or a defendant is essentially the same class of person, unless I am missing something.

ACTING CHAIR: The definition of 'relevant person' is not any defendant; it is only at the stage where the person is going to be—

Deputy Commissioner Barnett: From the definition that I have under section 415 of the act, the definition of 'a relevant person' is wider than a defendant. 'A relevant person' is someone who has been questioned as a suspect whereas 'a defendant' is someone who has been charged. As it is framed at the moment, the terminology of 'relevant person' is actually wider and more inclusive.

ACTING CHAIR: Section 415 states—

... if the person is in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an indictable offence.

(2) However, this part does not apply to a person only if the police officer is exercising any of the following powers—

(a) power conferred under any Act or law to detain the person for a search;

(b) power conferred under any Act to require the person to give information or answer questions.

So it is confined to indictable offences. Forgive me if I am wrong here, but it seems to be time relevant. It is not clear to me that a relevant person would be somebody who had already been charged and who had been sent away. It seems to me by this definition—and I may be wrong here—that it would be perfectly legal for a police officer to say to a defendant, 'Go and see Bill Bloggs. He will be the solicitor to help you.'

Deputy Commissioner Barnett: I struggle to see how anybody could become a defendant without first being a suspect and being questioned. One normally precedes the other—maybe not in all cases.

ACTING CHAIR: I take your point.

Deputy Commissioner Barnett: The other relevant consideration you may want to consider is that the way that section 415 is framed—the scope of it—there is the potential for the suspect to engage legal advice and support during the search process and up to and including and throughout the interview, whereas at the defendant stage they have already been arrested. So the opportunity for a legal practitioner to provide advice and support has passed.

ACTING CHAIR: Yes, I recant my simplistic suggestion that we should substitute the term 'defendant'. I was obviously wrong there. If you have a look at the transcript of the conversation we had with the Law Society and correlate that with the formal submissions there, at one point I asked the Law Society, 'Is it your proposition that the present drafting of that particular subsection enables it to be said that there is an appearance of a conflict of interest that could occur which, with a small change in drafting, would be avoided?', and they said yes. I am just simply asking if you could have a look at that rather detailed and technical point.

Deputy Commissioner Barnett: Yes, we will certainly have a look at that out of session and provide a response.

ACTING CHAIR: Thank you very much indeed. With respect to the domestic violence issue, the search powers and the power to exclude the occupier, you advised us that this is the most dangerous job that police officers do; it is where most casualties occur. Obviously, that moves us very significantly. The CMC made a suggestion that a record should be made of the use of the exclusion power. I wonder if you could give some thought to that one.

Deputy Commissioner Barnett: With respect, I think we covered that in my previous comment. We have given an undertaking that we will implement a policy requiring the recording in QPRIME of the circumstances where a person is excluded under the provisions.

ACTING CHAIR: I thought you did. I just wanted to make that perfectly clear.

Mrs ATTWOOD: Could I just go back to noise control. One of the submissions stated that four days was not long enough for an abatement period where the noise is regular and on the weekend. Could you make any comment on that?

Deputy Commissioner Barnett: Ninety-six hours was selected as a period when we reviewed repeat calls for service—where the police have had to go back after an initial 24-hour direction was given. On review of those repeat calls for service, the number of times and the period between complaints, we found that 96 hours was a reasonable period that would address the majority of those repeat calls for service. However, we do recognise that there are going to be circumstances in which 96 hours is not going to be long enough. We think that will address the majority of concerns.

ACTING CHAIR: With respect to the pat-down powers—not the pat-down powers relating to juveniles but the other ones—you made the point in the correspondence to us that, for the safety of officers as well as members of the public, it is desirable to know whether people have weapons or tools on them before they get into a police vehicle. That seems to be a very compelling argument to me. It would be helpful for the purposes of our report if you had any statistical information like, for example, that in half a dozen cases in the last indicative period police found people in the police car who had been placed under arrest who had weapons or tools in their pockets.

Deputy Commissioner Barnett: We can certainly undertake that work. Can I just say anecdotally that it is not an infrequent occurrence that, after a person has been transported to the watch-house or placed in the vehicle, officers will find drugs and other weapons secreted in the back of police vehicles that have clearly been put there by suspects. I would also suggest to the committee that at the moment we have a gap between when the person is taken into custody and when they get to the watch-house. When they get to the watch-house they are searched as a matter of course for officers' safety, and all manner of drugs, weapons and whatever are seized. I think it would be fair to say that giving us this interim power just steps us ahead of the search process at the watch-house. Any time that we find somebody at the watch-house with contraband—and acknowledging that, with the use of this power, not everybody who will be patted down will go to the watch-house; that is not an automatic thing. The point I was making is that the number of times that we search people at the watch-house and we find these sorts of implements on them indicates that it is not an infrequent occurrence for police. We will certainly find what anecdotal and statistical evidence we can to put before the committee that would assist in your deliberations.

ACTING CHAIR: Thank you very much, honourable members. On behalf of the committee, may I thank you for the spirit in which you have approached this. We have approached it with an open mind as a genuine inquiry. You have engaged in assisting us in a democratic and very helpful spirit. We thank you very much indeed.

Deputy Commissioner Barnett: Thank you to the committee.

Committee adjourned at 11.31 am