

LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:

Mr PS Russo MP—Chair
Ms SL Bolton MP
Ms JM Bush MP
Mrs LJ Gerber MP (virtual)
Mr JE Hunt MP (virtual)
Mr AC Powell MP

Staff present:

Ms R Easten—Committee Secretary
Ms M Telford—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE POLICE LEGISLATION (EFFICIENCIES AND EFFECTIVENESS) AMENDMENT BILL 2021

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 15 OCTOBER 2021

Brisbane

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The committee met at 12.10 pm.

CHAIR: Good afternoon. I declare open the public hearing for the Legal Affairs and Safety Committee's inquiry into the Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today, and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share.

On 16 September 2021, the Hon. Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, introduced the Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021 into the parliament and referred it to the Legal Affairs and Safety Committee for examination.

My name is Peter Russo, member for Toohey and chair of the committee. The other committee members here with me today are: Ms Sandy Bolton, member for Noosa; Ms Jonty Bush, member for Cooper; and Mr Andrew Powell, member for Glass House. Mrs Laura Gerber, member for Currumbin and deputy chair, and Mr Jason Hunt, member for Caloundra, are attending via videoconference today.

The purpose of today is to hear evidence from stakeholders who made submissions as part of the committee's inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. You have previously been provided with a copy of instructions to witnesses, so we will take those as read.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to or excluded from the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media, and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobiles phones off or to silent mode. The program for today has been published on the committee's webpage, and there are hard copies available from committee staff.

PARK, Mr Graham, President, Shooters Union Queensland (via videoconference)

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

Mr Park: Thank you very much for giving me the opportunity. The Shooters Union will confine ourselves to commenting only on the sections of this legislation that address the Weapons Act itself because that is our area of interest and expertise.

Our overall objections are really rooted in the lack of consultation on these amendments which has led, we believe, to poorly worded legislation that can be—and should already have been, to be honest—fixed so easily because there is not overall great argument about it. We suggest that the Weapons Act portions of this bill be sent back to the police minister's advisory committee for discussion and approval before they resubmit it as final legislation. Rather than go through our fairly short submission—I assume everyone has read it—I would rather leave time for questions by your members.

Mrs GERBER: What would be your comments in relation to the proposed bill as it relates to the Weapons Act? If it is sent back to the police minister for consultation, what would you be saying?

Mr Park: There are several points that relate to it. The first is I think section 35, which allows for the extension of the period of temporary storage of a firearm from three months to six months. We have absolutely no argument with that. It will not disadvantage licence holders. In fact, it may even be a good thing in certain circumstances. However, we are deeply concerned that the reason this is being introduced is that the Weapons Licensing Branch are so far behind in the processing of licensing. They are literally months behind any other state in Australia. You can get licence applications processed

anywhere from two to 12 weeks around the country. By their own statements, the weapons branch are not even beginning to look at processing an application until at least 20 weeks after it is submitted. Our only concern is that, by extending that period, it may allow or facilitate a further slowing of the process. That is our only concern in that area—not the actual extension, which we think could have been handled in consultation.

The other area was the evidentiary provisions, which is section 163. We do not believe it is needed at all. The traditional position is that that has been handled with outside consultation and then working with the commissioner. We believe that there is simply not the expertise within the weapons branch to cover all of those. That is not criticism; that is a fact. It is a very complex area. It is very technical. The use of outside consultants from different areas is traditional for a reason. It did not happen for any one group's or another's advantage. It happened to get an even-handed result. We do not believe it is needed. In fact, the federal government's amnesty program is there for this reason, which is allowing referral to that. If that were addressed, it would give a consistent approach around the country. We do not see the need for it.

Then we move into the amnesty provisions, of which there are a number around that. The issue with that more relates to industry people such as firearms dealers, of which we are a user group. However, within that, I have been at meetings at both the federal and state level on these amnesties. Queensland was held up as the model of the most effective amnesty ever held in Australia. It was agreed to largely follow that model as a national approach going forward. Queensland, for whatever reason, at the last minute decided to change the legislation and the concept behind it. Then on this draft or this version it has not even consulted at all.

There are several things in it that will cause problems that are probably better addressed by an industry group such as the firearms dealers or SIFA, to be honest. It comes back to that lack of simply sitting around and working something out. In this case there was agreement at the police minister's advisory council. Then one person from the policy group decided to change what everyone, including the Police Commissioner and the police minister, indicated was their preference moving forward as well as the entire advisory council. Those are the areas of concern.

Mrs GERBER: Just to clarify, part of your submission is that some of the proposed amendments in this bill may not have been necessary if there had been adequate consultation prior to—

Mr Park: Correct.

Mr POWELL: I too understand what you are asking—that this be pulled and to go back to the drawing board. Could that happen, though, concurrently with this committee's consideration of the bill? Is there time for the two bodies you refer to—the Queensland Police Service firearms advisory committee and the minister's forum—to potentially consider these amendments concurrently with our consideration so that either we or the minister himself could bring amendments when the bill is actually debated?

Mr Park: I think that is highly likely. They are not major issues. In the scheme of things, it is a matter of getting more effective and efficient legislation that will work as intended and not be accidentally misused or not as effective as the government or the user groups would like it to be. Yes, I think it could probably be addressed pretty quickly and easily.

Ms BOLTON: What would you say to anybody in the community reading the four recommendations in your submission, if they looked at that and thought it was either a delaying tactic in the process or trying to circumnavigate making communities safer?

Mr Park: In answer to the first part, we do not want to delay it. As I said in answer to the previous question, we would be quite happy to be part of an advisory council meeting or something sooner rather than later and do it concurrently. I do not see why there needs to be any delay, to be honest, if that was done. It is just that to this point it has not been done. We do not have any mayor objections to what is trying to be accomplished. That is why we would not hold it up.

In answer to the second part, I would suggest that there is very little in there that would possibly have any effect on public safety, other than the amnesty. We have actually encouraged that to be sped up rather than slowed down. It is probably four years since I was on the first federal committee about it. I think it has taken far too long, rather than the other way around.

CHAIR: There being no further questions for Mr Park, thank you.

Mr Park: Thank you very much. I appreciate the committee's attention to this. Thank you very much for your time.

VOSS, Mr David, Policy and Research Manager, Shooting Industry Foundation Australia (via videoconference)

WALSH, Mr James, Executive Officer, Shooting Industry Foundation Australia (via videoconference)

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

Mr Walsh: Firstly, I would like to thank the committee for the opportunity to appear today. SIFA's members and stakeholders rely on regulatory certainty, and our primary interest is in pursuing best practice regulation for the Australian shooting industry that is also nationally consistent.

Our main interest today is with Queensland's firearms amnesty conditions. If the purpose of a firearms amnesty is to increase public safety by removing illicit and unregistered firearms from the community then the priority for governments must be to make the facilitation of this as easy as possible, rather than adding conditions that hinder this process and make people think twice about surrendering firearms.

SIFA has long been an advocate for a national firearms amnesty. Our research that we have provided to the committee shows that for an amnesty to be successful it requires the support and inclusion of the trusted licensed firearms dealer network. Previous amnesties have shown that 65 per cent of firearms are surrendered to a licensed dealer rather than to law enforcement.

In this regard, questions remain as to why the Queensland government ignored their previously successful amnesty to implement one that has placed unnecessary and onerous conditions around the surrender of illegal and illicit firearms and an amnesty that also seeks to disenfranchise Queensland's licensed firearms dealers, so much so that it expects them to act as a free courier service for the Queensland police to deliver firearms for no commercial return.

It is our opinion that when governments implement regulation to facilitate a firearms amnesty it is vital that they forgo philosophical and emotive contentions that may lead to the development of ineffective regulation, which is what has happened in this instance. They must remain solely focused on the purpose of the initiatives and the desired outcomes. I welcome the opportunity to answer any questions that you have. I thank you very much again for the opportunity to appear today.

Mr POWELL: Gentlemen, thank you for appearing today. I appreciate that time is short. My read of your submission is that you are not opposed to any of the amendments necessarily to that part of the bill that you have an interest in, but it is more those comments that you were making around the broader amnesty and departing from what you understood was a nationally consistent approach. Your ask of us as a committee is not so much to amend anything that is in the bill but to draw the attention of the police minister back to some of those agreed previous commitments; is that correct?

Mr Walsh: It is correct. Specifically around consultation, SIFA entered into consultation with the minister. We made many representations, backed by evidence, as to the preferred amnesty model. I sat in consultation with the firearms ministerial advisory council and advised the minister that the previous model was the preferred model. I have to say that there was agreement on that and then at the last minute that changed.

I have preliminary figures here from the Queensland amnesty. The evidence seems to stack up in that for the first 15 weeks of the Queensland amnesty a total of 1,443 firearms were surrendered. In the first eight weeks of the New South Wales firearms amnesty, 2,644 firearms were surrendered. So in eight weeks they got 2,644 and in 15 weeks we got 1,443. To my mind, that is purely because the Queensland government went against the preferred amnesty model that is proven.

Ms BOLTON: I note your concerns with section 163 in relation to the technical office's approved officers. Can you advise what qualifications or experience you feel the minimum standard should be?

Mr Voss: There are no formal qualifications for firearms technical people in Australia. I make the general observation, though, that most of the people working in this space come to the space from a tool-making or metalworking background. That does not necessarily translate into an in-depth knowledge of the way firearms are constructed and how they work.

CHAIR: That concludes this session. Thank you for your evidence and your written submission.

DE SARAM, Ms Binari, Manager and Solicitor, Legal Policy, Queensland Law Society

ROGERS, Mr Dan, Chair, Human Rights and Public Law Committee, Queensland Law Society

SHEARER, Ms Elizabeth, President, Queensland Law Society

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

Ms Shearer: Thank you, Chair and committee, for inviting us to attend. In opening I acknowledge the traditional owners of the land on which this meeting is taking place, the Turrbal and Jagera peoples, and pay deep respect to elders past, present and emerging.

The submission that we have given you addresses proposed amendments to section 154A of the Police Powers and Responsibilities Act, which is the section that expands the circumstances when a court can grant access for a seized digital device. Our view is that any expansion to compel people to unlock storage systems should be approached with caution. While we acknowledge that there will be appropriate circumstances in which these powers should be exercised, our cautionary view is that to compel an individual to unlock a digital device reflects—our view arises because digital devices are the gateway to so much information that is held by that person but also by other people accessible through that gateway. It is with those competing interests in mind that we submit there should be some appropriate safeguards. I will hand over to Dan to briefly expand on our position regarding the access orders and additional safeguards.

Mr Rogers: As a starting point, the society fully understands that the police have a really tough job with competing demands and they need the powers to do that job. As you have just heard and as we would all well understand, our mobile phones contain an enormous amount of personal, confidential and private information and an access order allows a police officer to obtain all of that information. We can understand that in certain circumstances that is necessary in order to investigate serious criminality, but in the absence of proper safeguards there is a risk that that balance is not being struck and that the police power is too broad.

The example the police gave, which is a good example of when an access order might be needed after a phone is seized, is when someone is, say, filming inappropriately or the invasion of someone's privacy and the police want access to that phone so they seize it. Then they need an access order to get the image or the film that might have been occurring. That is entirely understandable and we do not oppose that kind of extension of the power in that situation. However, at that point the police do not just have access to the person's recent video or image files; they have access to everything. If they choose, they can download all of the text messages and search years of communications with people and look for drug terms or look for anything else that might not be the subject of the investigation originally. It is a really wide and broad power and there should be appropriate measures in place in order to ensure that power is being used appropriately.

For example, if there is to be that invasion of privacy, some of the safeguards that we recommend would include that an application to a magistrate or a judge needs to specify what within the phone is sought as opposed to a broad access power. Secondly, at that point the defendant or the suspect is already aware that their phone is in the police's possession. There is no reason that person should not have a right to be heard in that application before a court so that they can ensure the order that is granted is appropriately framed and not that broad access power. Thirdly, when the police actually access the phone it is very easy for the police to do a short report swearing as to what they actually accessed. That would give the community confidence that the police have not abused the power for ulterior purposes, and that can be filed at the court. If those things were done, the view of the society is that this significant invasion of privacy is appropriately balanced with the necessity for the police to investigate these kinds of crimes.

Mrs GERBER: It is my view that what you have said is consistent with principles already in place in relation to search warrants in that those sorts of safeguards have been implemented in relation to prior search warrants and that with moving into the digital space what you have just said would not be inconsistent with safeguards that are being put in place—for instance, for a physical search with police obtaining a warrant from a magistrate to go into a premise and physically search it. They cannot just search for everything; they have to indicate to the magistrate what they are looking for. I want to understand from you that it is a consistent approach in the digital space to what is already in the physical space.

Mr Rogers: My view is that what is proposed here is an extension of the way in which police powers and applications for warrants currently exist. My day job is a criminal defence lawyer. You are absolutely right: warrants contain information about what the police can search and what the suspected offence is. That is designed to frame the police exercise of that power when they go into a home and search a device. An access order does not ordinarily contain those parameters, or if there are parameters at all they are very broadly framed. What we are advocating is that with any access order that is granted by a magistrate, firstly, the defendant should have an opportunity to be heard in order to make submissions about the scope of what can be accessed and, secondly, an order ultimately should be directed towards the offence for which the police had a reasonable suspicion to originally obtain the device pursuant to their lawful power to search.

Mr POWELL: Excuse my ignorance, but would what you are proposing require legislative amendment or is there some other way to achieve the outcome you are looking for?

Mr Rogers: My view is that it should be a legislative amendment to the bill. Of course, there is the option of the insertion of policies into the police *Operational Procedures Manual*, but in the society's view that does not go far enough. There would be a simple fix in terms of a legislative framework listing those safeguards to be inserted into the bill. If it is of assistance to the committee, we are happy to provide a supplementary submission setting out what that might look like.

Mr POWELL: I would certainly welcome that if Mr Chair is happy for us to consider your subsequent submission at a later date.

CHAIR: I do not know whether the president is happy for us to create more work, but that would be very much appreciated if you could do that. The committee would definitely welcome that.

Ms BOLTON: I have a very quick question because I am unfamiliar with the process. Are you saying that, if an incident was occurring and on that phone was information or footage needed immediately by the police, they would have to go through a process like currently, including getting a search warrant, to access that information? If these safeguards were to come into play—obviously with some crimes, for example a kidnapping, they would need that information straightaway—would it elongate that time frame?

Mr Rogers: That is a good question. My view is that it would not. Upon seizing a device—and if this bill is passed that will not change—the police have to go to a magistrate or a judge in order to obtain the order of the court to access that device. Those applications are usually heard within one to two days. I understand that the example you gave would mean that a defendant would not be able to prolong that process, particularly if there is a risk to public safety, and we certainly are not advocating that.

Ms BUSH: Dan, you have given a few recommendations and I was not sure if they were all captured in your submission. Is your submission an exhaustive list of what you would be putting forward as some amendments?

Mr Rogers: A couple that I have mentioned today are an extension of the broader safeguards that we suggested; hence, I appreciate you taking the invitation to receive a supplementary submission, which would only be about a page long and just list those.

Ms BUSH: I have not looked cross-jurisdictionally at this either, but if you have any information around that it would be useful as well, subject to the chair's and the president's okay.

Mrs GERBER: That is a very good point, member for Cooper. If you can make a comparison where this has been done in other legislation and in other jurisdictions, that would be very helpful.

CHAIR: That concludes this public hearing. Thank you very much to all of the witnesses who have participated so far. Thank you to our Hansard reporters. A transcript of the proceeding will be available on the committee's parliamentary webpage in due course. Dan, are you able to provide that information to the secretariat by midday on Tuesday, 19 October? If there are any difficulties with the time line, could you communicate with the secretariat, please? I declare closed the public hearing for the committee's inquiry into the Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021.

The committee adjourned at 12.43 pm.