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
Mr C.J. Foley MP

Staff present:

Ms A. Powell (Research Director)
Ms A. Honeyman (Principal Research Officer)
Mr P. Rogers (Principal Research Officer)

EXAMINATION OF THE POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 4 OCTOBER 2011

Brisbane

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Committee met at 11.14 am

ACTING CHAIR: I declare the public meeting of the examination of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 open. Thank you very much for your interest and for your attendance here today. I would like to acknowledge the traditional owners of the land upon which we meet, their elders past and present, the custodians of the sacred lands of our state.

The Legal Affairs, Police, Corrective Services and Emergency Services Committee is a statutory committee of the Queensland parliament and as such represents the parliament. It is an all-party committee which attempts to adopt a non-partisan approach in its inquiries. There are some preliminary things that need to be said. First I would like to introduce the members of the committee present today. On my left is John-Paul Langbroek, deputy chair and member for Surfers Paradise. Further to my left is Mr Chris Foley, member for Maryborough. Further to my left is Ms Julie Attwood, member for Mount Ommaney. To my far right is Mr Jarrod Bleijie, member for Kawana, a position in which he finds himself increasingly comfortable. Also we have members of the secretariat whose names are all Amanda. I am Dean Wells. I am the member for Murrumba and acting chair of the committee. Barbara Stone, who is the chair of the committee, is unable to attend due to illness.

On 25 August 2011 the Police Powers and Responsibilities and Other Legislation Amendment Bill was introduced into the parliament and was subsequently referred to the committee for examination and report on the issues. The committee is required to report to the House by 11 November 2011. The committee has advised the public of the examination by advertising in the media and on the committee's website and also by writing directly to a number of individuals and organisations. I stress that the committee is undertaking an examination process on behalf of the parliament and has as yet made no recommendations, nor put forward any proposals. The committee is being assisted in its examination of the bill by advisers from the Queensland Police Service.

The committee's proceedings are lawful proceedings and are subject to the standing rules and orders of the Queensland parliament. I ask all people present to turn their mobiles off or to put them on silent. In the unlikely event of the need to evacuate, please follow staff directions. Members of the public are reminded that they are here to observe the hearing and may not interrupt the hearing. In accordance with standing order 298, any person admitted to this hearing may be excluded at the discretion of the chair or by order of the committee. Representatives of the media may attend and they may record the hearing. We have today issued some guidelines for the media. These are similar to the guidelines with which they are already familiar for the recording of parliament.

Although the committee is not swearing witnesses, I should remind witnesses that these hearings are a formal process of the parliament and should be respected as such. There is a furphy which is put around by some people that it is permissible to lie to parliament. It is not. It is a breach of the privilege of parliament and a contempt of the parliament and very severe penalties can accrue to either a member or a member of the public who deliberately misleads the parliament.

I also remind witnesses that Hansard will be making a recording of the proceedings. I ask that you please identify yourself when you first speak and speak directly and at a reasonable pace for the benefit of Hansard. Your words will be recorded for posterity or for such members of posterity as may have nothing better to do than to read your words and ours.

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

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

FRIEDMAN, Mr Paul, Director, Office of the Commissioner, Queensland Police Service

ACTING CHAIR: First we will be briefed on some particular aspects of the bill by advisers from the Queensland Police Service. May I welcome Mr Ross Barnett, Deputy Commissioner, Specialist Operations; Mr Paul Friedman, Director, Office of the Commissioner; and Senior Sergeant Rachael Chan, Senior Legislation Officer, Legislation Development Unit. Good morning. Thank you very much for coming here today. Before speaking, please identify yourselves for the benefit of Hansard and speak clearly for Hansard. Deputy Commissioner, would you care to begin?

Deputy Commissioner Barnett: Good morning. Thank you, Mr Chair. If I may, I would just like to brief the committee on some of the preparatory work, the consultation that has taken place and some of the key amendments that are being considered. The purpose of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011, hereafter referred to as the bill, is to ensure that the Police

Powers and Responsibilities Act 2000 continues to meet its purposes as described in section 5 of the PPRA—namely, the consolidation and rationalisation of powers and responsibilities that police officers have for investigating offences and enforcing the law; providing powers necessary for effective, modern policing and law enforcement; providing consistency in the nature and extent of the powers and responsibilities of police officers; standardisation of the way the powers and responsibilities of police officers are to be exercised; ensuring fairness to and protecting the rights of persons against whom police officers exercise powers under the PPRA; and enabling the public to better understand the nature and extent of the powers and responsibilities of police officers.

The genesis of the bill being examined here today stems from section 807, the review of the act, which requires the Minister for Police to ensure the operation of the PPRA is regularly reviewed. On 5 May 2007 the then Minister for Police and Corrective Services, the Hon. Judy Spence MP, announced the commencement of the PPRA review and that the review was to be undertaken in three stages. Stage 1 consisted of internal consultation within the Queensland Police Service via a state-wide internal email to all members of the service seeking comment on areas within the PPRA that they considered required legislative reform. The initial terms of reference for stage 1 were assessing the adequacy of safeguards in terms of ensuring the provisions of the PPRA are complied with and whether particular safeguards are overly burdensome or, in fact, necessary; consolidating and simplifying powers, for example, the separate empowerment powers that relate to road hoons, motorbike noise and traffic offences; assessing the benefit of dividing the PPRA into specific purpose designed parts or acts, for example, Police Powers and Responsibilities (Investigative Powers) Act, the Police Powers and Responsibilities (Watch-House Officers) Act or the Police Powers and Responsibilities (Covert Surveillance) Act; and, finally, reviewing the need for additional powers for police officers. Stage 1 was undertaken from 5 May 2007 to 7 December 2009 and resulted in the development of 77 proposals in preparation for deliberation during stage 2.

Stage 2 involved the creation of the PPRA Review Committee to examine the submissions from members of the Queensland Police Service and additional recommendations and proposals from committee members and their organisations. The Minister for Police, Corrective Services and Emergency Services invited key government and non-government stakeholders to be represented on the committee, which was chaired by the honourable Wayne Wendt MP. The committee consisted of representatives from the following organisations: the Queensland Law Society, the Queensland Council for Civil Liberties, the Aboriginal and Torres Strait Islander Legal Service, Legal Aid Queensland, the Crime and Misconduct Commission, the Office of the Director of Public Prosecutions, the Public Interest Monitor, the Department of the Premier and Cabinet, the Department of Justice and Attorney-General, the Department of Communities, the Queensland Police Service, the Queensland Police Union of Employees and the Queensland Police Commissioned Officers Union of Employees. I was also on the committee representing the Queensland Police Service.

The terms of reference for the PPRA Review Committee were further aligned with the objectives of the PPRA whilst remaining consistent with those relevant to stage 1 of the review. The then terms of reference for the review committee were: assessing the current safeguards that ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under the PPRA; consolidating and rationalising provisions containing similar powers and responsibilities of police officers when investigating offences and enforcing the law; ensuring the exercise of the powers and responsibilities of police officers are consistent and standardised; ensuring police officers have all necessary powers for effective, modern policing and law enforcement; and ensuring the community understands the nature and extent of the powers and responsibilities of police officers as provided by the PPRA.

The PPRA Review Committee met on six occasions between 7 December 2009 and 17 June 2010 inclusive. Following the committee's consideration of the QPS proposals, those proposals were separated into three categories: supported proposals were those which had unanimous support from the committee; unresolved proposals were those which failed to achieve unanimous support; or withdrawn proposals, which were those the Queensland Police Service identified as not requiring legislative reform, having the ability to be resolved through alternative policy forums, or should not be pursued due to insufficient supporting evidence. Submissions made by committee members were considered, discussed and recommended for the consideration of the Minister for Police and the government.

Stage 3 involved public consultation. The community, including community organisations, was invited to provide submissions. Consultation was conducted from 5 April 2010 to 17 May 2010. The public consultation paper was published on the Queensland Police Service website over this time. Hard copies of the consultation paper were also available from any police station in Queensland. The Minister for Police also made a media release calling for submissions from the public on the review of the PPRA. Both the public consultation paper and the minister's media release identified the terms of reference for the review, which were identical to the terms of reference for the PPRA Review Committee. The public consultation paper identified that the PPRA review would not consider submissions relating to any matters which were under review by the Crime and Misconduct Commission. At that time, the Crime and Misconduct Commission was undertaking reviews of Queensland police move-on powers, off-road motorbike noise laws and provisions relating to evading police officers.

There were 46 public submissions received as a result of the public consultation stage. All submissions received were placed before the PPRA Review Committee for discussion. Where issues were considered more suitable to other government departments, those matters were referred to the other

department for action. Where issues raised did not require legislative reform, those proposals were forwarded to relevant internal Queensland Police Service units for consideration. The results of the committee's deliberations and recommendations were subsequently reported to the minister and the government.

Upon completion of the review, a consultation draft bill was developed and released for further consultation with members of the PPRA committee and for general public consultation. The consultation draft bill was accompanied by a clause-by-clause summary to assist members of the community with their interpretation of the clauses. The consultation draft bill was posted on the Queensland Police Service internet website inviting public comment. The minister, via a media release, provided an overview of and called for public submissions in relation to the consultation draft bill. The public consultation was undertaken for a six-week period from 28 March to 6 May 2011. Twenty public submissions were received as a result of this consultation process.

During the development of the bill, intragovernment consultation was also conducted with the following departments: the Department of the Premier and Cabinet; the Department of Justice and Attorney-General; the Department of Communities; the Department of Community Safety; Queensland Treasury; Queensland Health; and the Department of Transport and Main Roads.

The bill is divided into six parts. Part 2 creates new police powers and introduces appropriate safeguards for police officers to follow when exercising powers under the PPRA. Part 2 of the bill also relocates sections of the Police Powers and Responsibilities Regulation 2000, including schedule 10, the responsibilities code, into the PPRA. This consolidates police powers and establishes safeguards, facilitating greater understanding by both police officers and the Queensland community of the nature and extent of the powers and responsibilities police officers have for investigating offences and enforcing the law.

Part 3 reorganises the remaining sections of the regulation, again with a view to creating more user-friendly legislation. Parts 4 and 5 make amendments to the Evidence Act 1977 and the State Penalties Enforcement Act 1999 respectively. The amendments in both parts are consequential and support the amendments contained in part 2 of the bill to ensure the policy is able to be achieved. Part 6 of the bill contains minor and consequential amendments. These amendments do not create a policy shift but, for example, reflect current drafting practices.

I will now deal with some key amendments as contained in the bill. The first is the pat-down search of persons detained under sections 50 to 52. Clause 6 inserts a new section 52A—'Power to conduct pat-down search for ss 50-52'—into the PPRA and provides the power for a police officer to conduct a pat-down search of a person who is detained under those three sections, section 50 dealing with a breach of the peace, section 51 prevention of riot and section 52 prevention of offences generally as well as searching their personal property.

A pat-down search is limited to items that can ordinarily be used to cause harm to any person, including the detaining officers, or to effect escape. Clause 102, amendment of schedule 6, inserts a definition for a pat-down which 'means a search of a person conducted by quickly running the hands over the person's outer garments'. A police officer may take and retain anything while a person is detained and must return the thing upon release unless the item may provide evidence of the commission of an offence.

Clause 88 explicitly excludes the application of section 629 to the new section 52A, thereby ensuring that a police officer is not authorised to require the person to remove clothing. The general safeguards relating to searches of persons contained in the PPRA still apply, and they include causing minimal embarrassment and taking reasonable care to protect the dignity of the person, having a police officer provide their name, rank and station to the person, and entering the details of the search in the register of enforcement acts.

The next amendment is the pat-down search of juveniles for liquor. Clause 8 of the bill inserts new sections 53C and 53D. New section 53C provides a police officer with the power to conduct a pat-down search of a minor and a search of personal property in the possession of the minor in circumstances where the police officer reasonably suspects the minor to be in possession of liquor in contravention of section 157 of the Liquor Act. By its definition, a pat-down search is limited to a police officer quickly running the officer's hands over the person's outer garments.

Clause 88 again explicitly excludes the application of section 629 to this new section, thereby ensuring that a police officer is not authorised to require the minor to remove clothing. The general safeguards relating to the search of persons contained in the PPRA apply, and I have just gone through those so I will not repeat them, in the interests of brevity.

In accordance with section 11 of the Youth Justice Act—a police officer to consider alternatives to proceeding against a child—before commencing proceedings for an offence for the possession of liquor a police officer would have to first consider whether in all the circumstances it would be more appropriate to take no formal action or administer a caution. Additionally, pursuant to section 157 of the Liquor Act, a minor does not commit an offence under subsection (2) in circumstances where the minor consumes or possesses liquor in a public place which has been declared by local government as a designated area where the public may consume liquor and the minor is under the supervision of a responsible adult.

The next amendment is the removal of rights under a security interest. Clause 12 of the bill is an amendment of section 118, which is the sale of motor vehicles not recovered after impoundment. This clause removes the right of a person to enforce a charge or other security interest registered under the Motor Vehicles and Boats Securities Act by taking possession of a vehicle that is to be sold under section 118. This will enable a sale of the vehicle without the purchaser being concerned that the asset will be repossessed by a security holder. Upon sale of the vehicle, a security provider may receive some payment through the prioritised disbursement of the proceeds of the sale. However, where there are inadequate proceeds to satisfy the full amount outstanding, the owner of the vehicle remains liable for the remaining debt.

The next amendment deals with entering a place to assist animals. Clause 18 of the bill is an amendment of section 147 of the PPRA which deals with powers to provide relief to animals. It qualifies the requirement under subsection (3) for the leaving of a notice when a police officer enters a place to assist an animal who is suffering from a lack of food or water or is entangled. The amendment removes the necessity for the police officer to leave a notice where in all the circumstances it is not reasonably practical to do so. The existing power of entry does not permit entry into a person's home.

The next amendment deals with ancillary conduct by civilian participants. Clauses 20 to 26 seek to amend the PPRA to enable a limited role for the utilisation of a civilian participant in controlled activities. However, that participation is limited to ancillary conduct and does not allow for the civilian participant to undertake criminal activities. Only a police officer of or above the rank of chief superintendent can authorise a civilian participant to engage in ancillary conduct. The ancillary conduct includes only acts that would enable an authorised police officer to commit an offence authorised under a controlled activity authorisation.

The next amendment deals with the expansion of what a surveillance device warrant may authorise. Clause 29 seeks to amend section 332 of the PPRA—what a surveillance warrant authorises—by expanding the powers of what a surveillance device warrant can authorise. Clause 29 allows for the entry of premises for which a surveillance device warrant has been issued for the purposes of the preparation for installation of the authorised surveillance device. The entry to the place is still governed by a warrant issued by a Supreme Court judge subject to the current safeguards of the chapter. Further, the Public Interest Monitor will continue to have involvement in the application process, and a report to the issuer or PIM regarding the warrant will still be required.

Clause 29 allows for the temporary removal of a vehicle for the purpose of installing, maintaining or retrieving a surveillance device or enhancement equipment. This amendment allows for the entry of premises for the purpose of the removal or return of the vehicle.

The next amendment deals with the search and re-search of a person's possessions whilst in custody. Clause 48 of the bill seeks to amend section 443, which deals with police officers searching a person in custody, and provides a police officer with the power to search and re-search anything in the possession of a person to whom chapter 16 of the PPRA applies. The power to search and re-search is limited to reasons of cataloguing and accountability, and to determine the presence of anything that may be taken and retained under the existing subsection (3).

The next amendment deals with child DNA sampling. Clause 62 of the bill inserts new chapter 17, part 5, division 3A. It creates a scheme whereby a police officer may apply to a magistrate for an order to perform a forensic procedure on a child who is not being investigated as a suspect for an offence but where the police officer reasonably suspects the test results will assist investigation by identifying the offender or establishing whether a child DNA sampling offence has been committed. The forensic procedure is limited to the taking of a DNA sample for DNA analysis. A police officer may only make an application when forensic procedure consent cannot be obtained.

This power is tempered with protections to ensure that the wellbeing and safety of the child are preserved. The issue of a DNA sample order is restricted to a child DNA sampling offence only. The DNA sample must be destroyed upon finalisation of the charge to which the sample relates. The DNA sample provides the power for a police officer to enter a place the police officer reasonably suspects the child is located without warrant to search the place for the child. However, prior to entering the place the police officer must give the occupier a copy of the order, tell the person that the police officer is entitled to enter and search the place for the child, and give the person the opportunity to allow the police officer to enter the place unless immediate entry is required to the place.

The next amendment is in relation to noise abatement. Clauses 81 to 84 enhance the ability of police to respond to complaints of excessive noise. Firstly, the amendments provide that a police officer may receive and act upon a complaint of excessive noise from an anonymous complainant. This does not remove the requirement for a complaint to be made prior to a police officer investigating the complaint. It is then upon the police officer being reasonably satisfied that the noise is of the type for which a noise abatement direction may be given and is excessive in the circumstances that the police officer may direct a person to abate the excessive noise. Secondly, the amendments enable police officers, upon determination that an extended noise abatement direction is required, to give an extended noise abatement direction for up to 96 hours. The amendments provide police officers with the same powers to deal with an extended noise abatement direction as they have with the existing 12-hour direction.

The final clause which I want to bring to the committee's attention relates to the expansion of a controlled activity. Clause 101 is the amendment to schedule 5—additional controlled activity offences. It expands schedule 5 of the PPRA to include additional offences of section 77A—a prostitute providing sexual intercourse or oral sex without a prophylactic—of the Prostitution Act as an offence for which controlled activity may be undertaken. The additional offences included in the schedule are limited to the offer and the acceptance of an offer to provide prostitution involving sexual intercourse or oral sex without a prophylactic being used. The inclusion of these offences will provide immunity for a police officer who is authorised to engage in a controlled activity for this offence and only to the extent of the authorisation.

In terms of the fundamental legislative principles, throughout the development of the bill due consideration was given to the fundamental legislative principles as contained in the Legislative Standards Act 1992. Potential breaches of fundamental legislative principles are addressed in pages 2 to 9 of the explanatory notes of the bill and I refer members of the committee to the explanatory notes. I am now happy to answer any questions the committee may have on the bill.

Mr LANGBROEK: Deputy Commissioner, with regard to the pat-down searches of juveniles for liquor, only a couple of years ago following the well-publicised incidents of schoolies, especially in my electorate of Surfers Paradise, we amended the Liquor Act—originally at my instigation, rejected by the government—and we also had to change the Police Powers and Responsibilities Act at the time. Has it come to light that this particular provision about patting down juveniles is something that police on the ground feel will add to their ability to detect liquor, because we did have some significant issues about people consuming alcohol in a public place? Could you avail the committee of any information that you are aware of with regard to that?

Deputy Commissioner Barnett: Yes, thank you. This was an issue that was raised internally by police as part of the consultation process. Police felt this was an area where an expansion of the current powers by police would be beneficial. It is the view of the police that the health and certainly the safety of any young person is going to be diminished by them drinking unsupervised in a public place. The greater the level of intoxication, the greater the level of safety will be diminished by that activity. It is the experience of the police that young people drinking unsupervised in public places are at significant risk for a couple of reasons. Firstly, greater levels of intoxication are likely to lead them to engage in behaviour which is risky or dangerous which they would probably not otherwise do if they were not engaged in drinking. Depending on their level of intoxication, it also puts them at a greater risk of being the subject of some sort of predatory attack. For those reasons, this is an area of the law in which we think it is important that police be given an enhanced power, to reduce the incidence of young people engaging in risky behaviour.

Mr LANGBROEK: Were there anecdotal incidents of young people who did not have the alcohol on public display who obviously had it on their body and under the provisions currently in the Police Powers and Responsibilities Act police were unable to do anything about it? I have seen police make them pour alcohol out if they can see them holding it, but if a young person has it stashed somewhere on their body police are powerless, unless we make this change to the provision; is that correct?

Deputy Commissioner Barnett: That is the case. As the law presently stands, there is no ability for a police officer who reasonably suspects that a young person has liquor in their possession to be able to conduct a pat-down search or a search of any baggage that they might be carrying to determine whether, in fact, they are carrying or consuming liquor.

ACTING CHAIR: Is this additional power not a two-edged sword? Does it not put police at risk of having increased complaints about inappropriate touching of these young people?

Deputy Commissioner Barnett: I guess any contact that the police have with any member of the public at any time raises with it a risk of that person making a complaint. All of the normal safeguards will apply and wherever possible obviously this pat-down search—and that is all it will be; there will be no removal of clothing—would be done by an officer of the same gender as the subject child. But we think that the risk to the young person is such by engaging in that activity that it is important that police are given the power to undertake this activity.

ACTING CHAIR: The standard operational procedure of using an officer of the same gender would of course go a considerable part of the way to solving the problem. Presumably it would also be a standard operational procedure that the police officer conducting the pat-down search would not be alone.

Deputy Commissioner Barnett: Of course that would be highly desirable, but of course there are some circumstances in the more rural and remote parts of the state where officers do occasionally, through circumstances, have to work on their own. It is, of course, preferable that we have two or more officers together in absolutely every interaction that we have with members of the public, but there are going to be some operational circumstances where that is not going to be possible.

Mr BLEIJIE: Deputy Commissioner, just following on from the member for Surfers Paradise with respect to the pat-down for juveniles, I have a situation that has been reported with a local park near a school with 12- to 16-year-olds. We know that in the local Sunshine Coast community there was the consumption of alcohol. What would happen in this situation? The police would arrive and is the intention to do whatever they can to take the alcohol away from the situation? Is that an element to the pat-down?

Deputy Commissioner Barnett: Yes. The intention for us is we want this to be as preventive as possible. We would like to be able to stop drinking before it starts. That is really the focus of it. So if we get complaints from members of the public or information from other sources or the officers themselves

through interaction with the young people and they form a reasonable suspicion that they have alcohol in their possession or have been drinking, then we would like them to be able to exercise this power for the benefit of the young people. We want to enhance the safety and wellbeing and security of these young people, and we think that that is jeopardised if they are going to be drinking unsupervised in public places.

Mr BLEIJIE: In that situation I was referring to, they were drinking cask wine and it was reported to the police. What happens after the alcohol is taken? Is there a reporting mechanism that goes to their parents or their adult guardians in terms of what was found? I presume that if you are doing the pat-down you also have the right to search backpacks—

Deputy Commissioner Barnett: Yes, that is correct.

Mr BLEIJIE:—and whatever else they have with them in their possession at the time. So what happens after that? Do they just sort of get the alcohol taken and then you leave them in the park, or is there a process that you follow after that?

Deputy Commissioner Barnett: Firstly, the option that would be taken on most occasions where possible is that the police would simply tip out the alcohol there and then. This power is supported by the Queensland Early Intervention Pilot Project, which would lead to notification being sent to the parent or guardian of the young person advising them of the circumstances of the intervention by the police. We believe it is important that those people be made aware of the behaviour of the young people so that they can consider using their influence on the young person in being aware of the sort of risky behaviour that they may be indulging in.

Mr FOLEY: With regard to the power to search backpacks and so forth, that already exists, does it not?

Deputy Commissioner Barnett: It does for other types of offences but not specifically for liquor. So we technically or hypothetically could have the situation where we see an adult give a young person what we think is liquor and then that adult leaves and we go to speak to the young person. At the moment, technically, we have no ability to be able to search that backpack to recover the liquor.

Mrs ATTWOOD: Deputy Commissioner, following on from the member for Kawana's question, I just wanted to ask in relation to recording details of those young children's names for the purposes of talking to the parents about their behaviour. Is that information kept for a period and what actually happens to that information about their names and, I presume, their addresses?

Deputy Commissioner Barnett: As with most interactions between police and young people, we would record details of that on our QPRIME system about the circumstances of the young person and the circumstance of the interaction. That is important from an accountability point of view as far as the police department is concerned and, should there be any complaints forthcoming about any aspect of the police interaction, there is a record of that interaction. So that is our standard procedure.

Mrs ATTWOOD: Thank you.

Mr BLEIJIE: Deputy Commissioner, I am looking at pages 14 and 15 of the bill relating to clause 8, which again talks about this pat-down search. You said before that if it is a young girl the pat-down search will be conducted by an officer of the same sex. I cannot see that in there. Is that an operational matter or is it a preferred operational matter? But you are going to get times where that just cannot happen with staffing resources?

Deputy Commissioner Barnett: Yes, it is an internal policy position that we follow wherever possible except in exceptional circumstances where it is not possible. So there are potentially going to be situations where that is not achievable, but that would be very remote and very rare and, wherever possible, we have officers of the same gender attend and conduct the pat-down search.

ACTING CHAIR: It is a standard operational procedure not having the force of law but nevertheless having the force of discretion behind it as well as policy.

Deputy Commissioner Barnett: Yes. We recognise that we do not want to cause undue distress or embarrassment to any young person by having an officer of the opposite gender conduct the search wherever possible. Generally, our gender diversity now is such throughout the department that having an officer of either gender is generally not an issue. If they are not immediately at the scene, there is one that can be summoned fairly quickly.

Mr BLEIJIE: Thank you.

Mrs ATTWOOD: Could that young person be detained until such time as another person of the same gender—a police officer—could be called to the scene to search that person?

Deputy Commissioner Barnett: Under the legislation, yes, the person can be detained for the purpose of the search and, obviously, we would make that as expeditious as possible. But it would obviously be preferable that we have an officer of the same gender. So if that took a little bit of time I think that would be preferable in the circumstances.

Mrs ATTWOOD: Thank you.

Mr LANGBROEK: I have a question about the amendments to the PPRA with regard to the pat-down searches and, in fact, the changes that we had subsequent to changes to the Liquor Act. I note that they were not originally mooted as part of the original review of the act. So that was back in 2007. Deputy

Commissioner, can you advise the committee whether the changes to the PPRA have come about because of the significant publicity about issues involving minors and alcohol in the period between 2007 and now?

Deputy Commissioner Barnett: I cannot advise the committee definitively on that, I am sorry. The issue about juveniles and liquor in public places has been an ongoing issue for police over many years. I think our last statistical review indicated that in excess of 10 per cent of liquor offences are committed by juveniles. So for us it is a significant issue in terms of police resources and, as I have indicated before, for us a greater issue in respect of the health and safety of the young people concerned.

Mr LANGBROEK: Thank you.

Mr FOLEY: I have a quick question on under-age drinking. I am always disturbed to hear about 14-year-olds being dropped off at parties and the parents have a case of beer in the boot or something and hand it to them. Has there been any separate work done in thinking about that from a policing perspective, because if the kid is basically told by the parents, 'It's no big deal. You can go to a party and you can drink,' you can hardly blame the kids then for partaking of the alcohol?

Deputy Commissioner Barnett: In general, in terms of the consumption of alcohol in private places, it is a matter for the supervising adult of the premises to exercise caution and restraint, and that is a matter outside the scope of this amendment.

Mr FOLEY: But in that case the supervising adult is not even there. The person who has supplied the alcohol has usually dropped the kid off and gone.

Deputy Commissioner Barnett: Yes.

Mr LANGBROEK: Deputy Commissioner, that is what we amended a couple of years ago to allow for police, subsequent to a complaint, to be able to investigate whether there were any supervising adults, how much alcohol there was, how much food there was and whether there was likely to be a problem and they could then make a judgement that allowed for practical policing. I think that passed with the support of the whole parliament.

Deputy Commissioner Barnett: There is already a secondary supply provision in the Liquor Act that covers that issue.

Mr FOLEY: You might need to pat the parents down.

Mr LANGBROEK: They certainly have learned a lot now at schoolies, especially that they now know they can be apprehended in the street if they are supplying into the high-rise buildings. Until I got elected in 2004 and subsequently, there was nothing that could be done about the provision of alcohol in a private residence.

Deputy Commissioner Barnett: That is true.

ACTING CHAIR: With regard to the proposal to extinguish the security on a vehicle which is sold, I suppose the purpose of that amendment is so that, if a vehicle is in police custody as a result of the operation of SPER or something like that, is to ensure that the person who purchases the vehicle without knowing that it has a registered lien on it gets a good title. Is that what it is about?

Deputy Commissioner Barnett: That is ensuring that, yes, the purchaser has security of title and that the disposal of vehicles that are impounded and not collected is not unduly delayed.

ACTING CHAIR: Are there a lot of cases where it has come to the attention of police that somebody has been getting an encumbered title when they did not know about the encumbrance, or have there been some cases?

Deputy Commissioner Barnett: There have been some cases, but it is an issue that has been identified as the impoundment process has been developed. It is an impediment that we would like to see removed to, as you have indicated, give the purchasers of these vehicles proper security of title.

ACTING CHAIR: On another matter—I have not been able to find it in the bill—but I understand that there was a proposal to remove the necessity of personally serving certain notices to appear in the Magistrates Court. I am unable to find the section. The briefing that I received was that the requirement to personally serve a notice to appear was going to be replaced by delivery of that notice by mail. I wanted to know whether that is by registered mail or not, because if it is not by registered mail then there are going to be large numbers of cases where the person to whom the notice is addressed is not going to get that notice and then they are not going to turn up at the Magistrates Court and then the police are going to be sent out to arrest that person. That is going to cause the person a great deal of distress that would have been avoidable and at the same time it is going to take the police even more time that they would have saved by sending the letter instead of taking the notice out in the first place. The nub of my question is: is this notice to appear going to be served by registered mail, or is it just by ordinary letter?

Deputy Commissioner Barnett: Thank you, Mr Chairman. For the benefit of the committee, clause 31 seeks to amend section 382. In answer to your question, the postal service must be via registered post.

ACTING CHAIR: I am looking at that now. I thought it might be that one. The Justices Act currently authorises service at an address, either the place of residence or the business, and an address stated on a driver's licence. It will go only to the address. It does not say in the legislation that it has to be registered mail. That would again be a standard operational procedure of the service?

Mr LANGBROEK: It does say so in the explanatory notes, though, Mr Chairman. I think we had a debate recently in a committee about whether explanatory notes explained what the legislation does not.

Deputy Commissioner Barnett: Just to confirm, the explanatory notes do make it clear that the postal service must be via registered post and the Justices Act authorises service to an address stated on a driver's licence or a current certificate of registration for a motor vehicle.

ACTING CHAIR: As long as it is by registered mail. I cannot see in the amending bill any reference to registered mail. The fact that it is in the explanatory notes does not terribly move me. Does anybody have a copy of the Police Powers and Responsibilities Act? I thank Mr Mackenzie for providing us with that. I am happy with that, then. My next question is about the provision of the additional power to enable a police officer to tell a householder that they are not going to attend on a search of premises. I suppose this is to cater for domestic violence cases in circumstances where the householder is thought to be the person who has committed an offence and might present a danger to somebody in the house. Is it to accommodate those circumstances? What we are saying here is that the police go to somebody's house, the householder is sitting outside and the police say, 'You can't come in now.' A fundamental axiom is that a person's home is his castle, and we are going to go against that with this piece of legislation. What is the situation that would justify us doing this?

Deputy Commissioner Barnett: Clause 86 supports police officer safety and the safety of victims of crime or domestic violence. When a police officer enters a property because there is an imminent risk of injury to a person, damaging property or domestic violence at a place, the police officer may search the place. The search of the place is limited to looking for anyone who may be at risk of being injured or subject to an act of domestic violence or for anything that may be or has been used to cause the injury or damage or domestic violence. The occupier of the place may accompany the police during the search. The proposed amendment removes the right of the occupier to accompany the police officer if a police officer reasonably suspects that including the occupier in the search will cause injury to any person. The police officer must warn the occupier of the impending exclusion from the search to allow the occupier to settle down and, therefore, accompany the police officer. If the police officer still suspects that the occupier accompanying the police officer during the search may cause an injury to any person, even after being warned, the occupier may be excluded from the search.

ACTING CHAIR: I think we understand, thank you. What are the circumstances or the kinds of circumstances that have led us to consider that we need this additional power for police?

Deputy Commissioner Barnett: There are DV incidents. That is certainly one example, but there are many occasions when police are involved in the search of a dwelling where there is a threat to their own safety or to the safety of someone else in the house. That is why this proposal is being sought from the committee. It is to enhance officer safety and the safety of people who are the subject of domestic violence or in other circumstances where allowing the occupier of the house to go with the police presents an unacceptable risk of injury to any person.

ACTING CHAIR: Domestic violence call-outs would be some of the most dangerous call-outs that police respond to, wouldn't they?

Deputy Commissioner Barnett: They are. The majority of police who have been killed in the execution of duty have been attending domestic violence situations. That is the No. 1 cause of police deaths.

ACTING CHAIR: Honourable members, are there any further questions at this stage? Deputy Commissioner, thank you very much to you and your colleagues. We greatly appreciate your giving us the time and we apologise for the fact that we started a few minutes late.

Deputy Commissioner Barnett: No problem, thank you.

DE SARAM, Ms Binari, Senior Policy Solicitor, Advocacy, Queensland Law Society

DUNN, Mr Matthew, Policy Solicitor, Queensland Law Society

MACKENZIE, Mr Ken, Member, Criminal Law Committee, Queensland Law Society

Mr Dunn: My name is Matthew Dunn. I am the principal policy solicitor at the Queensland Law Society. I am filling in for Glen Cranny, who could not make it today.

ACTING CHAIR: Welcome, representatives of the Law Society, to our meeting. We have Matthew Dunn representing the Law Society; Ken Mackenzie, a member of the Queensland Law Society Criminal Law Committee; and Ms Binari De Saram, senior policy solicitor in advocacy. Thank you very much for attending. We would be pleased if you would like to speak to your submission and then say anything else that you would like us to know.

Mr Dunn: First of all, I thank the committee very much for the opportunity to come and present to you today and to also give you a copy of the Queensland Law Society's submission. This is an issue on which the Queensland Law Society has been a significant stakeholder through the consultation process with the Queensland Police Service and other stakeholders. It is one that we are very pleased to be able to provide some further comments on, given the nature of the legislation that affects the rights and liberties of Queenslanders so intimately. The majority of the presentation today will be given by Mr Ken Mackenzie, senior criminal law practitioner, member of our Criminal Law Committee and also the Queensland Law Society's representative on the working group formed for consultation on the legislation.

Mr Mackenzie: I would like to add to what Matthew has said on the appreciation of the society for being invited not only to address this committee but also to participate in the review committee process. The society found it an extremely valuable process, and the bill that is now before this committee has benefited substantially from the input of not only the society but also the other stakeholders in that process. It is apparent, upon reading the bill, that it is a considerable improvement on what might otherwise have been presented to the parliament had we not had that opportunity, both in the review committee stage and in commenting on the consultation draft.

Having said that, the society remains opposed and in some cases strongly opposed to various aspects of the bill. I will pick out three examples. It is strongly opposed, firstly, to the continuance of the provision that purports to prevent police officers from referring suspects to particular solicitors or firms of solicitors, but in effect it fails to achieve its object. That provision is simply going to be reproduced by the current bill, relocated from the regulations to the act itself. Secondly, we have concerns about the use of civilians in controlled activities and the risks that poses to the civilians involved, as well as concerns about the actual mechanics by which the proposed provision purports to protect those civilians from criminal liability.

The third point which I think features most strongly on our radar of concerns is the proposal to allow the outsourcing of the forensic testing of evidential material, which is presently required to be done within Queensland government bodies and principally within an arm of Queensland Health, to any outside laboratory that is authorised by the commissioner. Those are the matters that raise some principal concerns for us. Given the questions that were asked earlier, I should note that we also have some objections to the extension of the powers to search, which were referred to as the pat-down search powers in your earlier discussions.

The society's position is also that this bill represents some significant missed opportunities for reform in the area of policing, particularly in adopting best-practice techniques in relation to the identification of suspects. The standard and almost invariable practice of the Queensland Police Service is to identify suspects by showing witnesses a photo board that contains 12 images of those suspects. That is a practice that has attracted judicial criticism for some years and in relation to which there are now, with advancing technology, better and more effective alternatives that are not contemplated by this bill. There would also have been opportunities in this bill to improve the access of suspects in police custody to legal advice, and those opportunities have not been taken up. There is also a missed opportunity to better utilise and manage the electronic capture and recording of evidence at an earlier stage in the investigation. The detail of all of those positions is set out in our written submission. I certainly do not intend to read that to honourable members today.

Some points that I would seek to emphasise are these: that the relationships which the society suspects have developed between certain police officers and certain firms of solicitors have the potential to foster official corruption, to conceal police misconduct and also, from our point of view, to undermine the independence and the effectiveness of the legal profession. The use of civilians in controlled activities, as I mentioned before, represents people being placed in some personal jeopardy being seen to assist in what is almost always later revealed to be an undercover police operation. There are some very complex realities as to how people find themselves in that situation where they are agreeing to assist in a police investigation but perhaps for all sorts of motives—their own self-preservation or a desire to curry favour with the police to avoid criminal charges themselves. It is the society's view that civilians should not be used in that way. There is some scope for the use of civilians in the controlled operations part of the act

which allows a much greater level of planning and scrutiny and supervision of the operation, rather than what is proposed in the controlled activity which would be a much swifter process of recruiting civilian support to try to investigate people.

The practical application of those provisions is going to be, we expect, mostly in relation to drug operations. One concern that we have identified with the bill is that the bill attempts to draw a distinction between a person who commits the act or omission which amounts to the crime, which under the proposal is expected to be the police officer, and a person who simply provides some assistance, some facilitation—what would under the Criminal Code be regarded as aiding and abetting the crime. The proposal under the bill as it stands is that the person who aids and abets would be excused from criminal conduct.

The difficulty with that in relation to the drugs legislation is that the drug offences create extremely broad definitions, particularly of the offences of supply and production where anything done in furtherance of a supply or anything done in furtherance of a production is itself a supply or a production. For example, a civilian participant in a controlled activity who arranged a meeting between a drug supplier and an undercover police officer would themselves be committing the offence of supply. The arrangement of the meeting would itself be the act or omission which created the offence. For that reason the person involved would not be protected by the bill as it is drafted, although they are likely to be advised by the police officers who are perhaps encouraging them to participate in this way that they are protected. That represents a real danger both to the participant but also to the investigation itself, because the investigation is then tainted by any illegal act which is not authorised and there would be scope for the defence to challenge the admission of evidence on that basis.

The society's concerns about the outsourcing of forensic testing of evidence really relate to a lack of detail and a lack of safeguards in the provisions. What is proposed is that the commissioner will be able to authorise a laboratory—and, as we understand it, one that is anywhere in the country—to conduct forensic testing on behalf of the police and that the only safeguard that applies to that is accreditation by what is referred to as the NATA, the National Association of Testing Authorities. It is our view that that is not a sufficient safeguard. When laboratories develop a commercial relationship with the Police Service, there are other factors at play. There are questions about the type of technology which will be used and about the ability of other agencies and particularly defendants to scrutinise the work of a laboratory which might be in Perth under this provision.

I might just mention briefly the missed opportunity in relation to the electronic recording of evidence. It is the society's view that the quality of evidence—particularly of eye witnesses, of people who are closely associated with an offence and indeed of victims of an offence—is best captured by electronically recording an interview between them and the police. That captures the hesitations, the uncertainties, the changes of mind which are otherwise lost as a police officer compiles a written statement, and presently a written statement which is often taken many months after the events that are being described. That is in practice variously recognised by police officers themselves who are taking it upon themselves in the course of their duties to electronically record interactions that they have with suspects and witnesses.

The problem with the present situation is that it is entirely unregulated. Police officers are purchasing the equipment for themselves with their own money, which results in the recording being in many different formats, not always formats that are compatible with Police Service equipment or with equipment that we use in the courts. There is no procedure for the management and retention of that evidence. For example, if a police officer makes a note in their official police notebook, that is an official document. The police officer has to return it when it is finished. The pages are numbered so that things cannot get out of order and so that there cannot be allegations of tampering and things of that nature. If a police officer makes a voice recording on their own digital voice recorder, there is no obligation to keep that recording and there are no protections against the potential misuse of that material.

So I hope I have addressed what are some of the society's main concerns about the bill. There was a matter which came up in the questioning of the assistant commissioner before in relation to the pat-down searches and whether that had to be done by a person of the same gender. There are, in fact by force of law, safeguards in the provisions of the act. Section 624(2) provides—

Unless an immediate search is necessary, the person conducting the search must be either—

(a) a police officer of the same sex as the person to be searched; or

(b) if there is no police officer of the same sex available to search the person—someone acting at the direction of a police officer and of the same sex as the person to be searched ...

So that may answer some of the questions that the committee had earlier about that provision. Unless I can assist further, those are my submissions.

Mr Dunn: Can I just add one further point to what Ken said in relation to clause 12 relating to the sale of motor vehicles if not recovered after an impounding ends, which deals with the extinguishment of a security under the Queensland Motor Vehicles and Boat Securities Act. Members will recall that the Queensland parliament has referred its powers to the Commonwealth in relation to personal property securities law. The section probably should deal with security interests registered under the Commonwealth personal property securities legislation. Then there may have been some interesting and technical constitutional interplay between a state piece of legislation cancelling the effect of a security interest registered under a Commonwealth piece of legislation in that regard. It is possibly not just as simple as cancelling something registered under the Queensland legislation in the circumstances. It may

well have been when the bill was drafted, but I suspect when it gets passed the PPSR hopefully will have commenced, although it has been delayed a little bit, and there might be a different environment in that regard. It is just a point to keep in mind, I think.

ACTING CHAIR: That will add to our interest. Do you have any problem with that proposal?

Mr Dunn: I do not think that necessarily we have a significant problem with the cancellation of the security interests, although I am sure that the holder of the security interest who was not actually a party to any of the activity that caused the vehicle to be impounded might have a few concerns about their security interest being expunged unilaterally without any right to compensation in the circumstances. That certainly is an issue that probably needs some further thought in relation to the bill and also the mechanics of achieving that proposal if that is what the policy intent of the legislation is. It may well also need some investigation in the circumstances.

ACTING CHAIR: Are there any questions from honourable members?

Mr BLEIJIE: Mr Mackenzie, I have a question with respect to the first item in the Law Society's submission. You mentioned it as item No. 1 with reference to the referral of suspects to lawyers. The lawyers who are getting the referred client are obviously members of the society.

Mr Mackenzie: Not necessarily, no, because it is no longer compulsory.

Mr BLEIJIE: Can you go into that a bit deeper? Are there issues of complaint to the society? How do you deal internally with those issues if they did, in fact, come from members? Did you raise it in the consultation phase?

Mr Mackenzie: Yes, we did raise it in the consultation phase. That is the easy question. The answer we are given is that others take the view that the provision is effective and in our view it is not effective, and glaringly not effective. From the point of view of lawyers who may be acting improperly and perhaps not in the best interests of their clients, that has been a very difficult thing for the society to take action on in the absence of complaints from those clients who may not realise that they are not being best served by their solicitors.

The ethics department of the society has taken the view that it would be unethical for solicitors to enter into an arrangement with a police officer for the acceptance of referrals if the police officer is acting improperly in making the referral, because it would be regarded as unprofessional to counsel or procure somebody to act otherwise than in accordance with the rules that apply to their profession. So our interest in making the prohibition on the police referrals on the police officer effective has a flow-on effect to the society's ability to influence the behaviour of the profession, if that makes sense.

Mr BLEIJIE: So how did it come about if you have no complaints? Your submission is the first I have read about it. You have said there are no complaints.

Mr Mackenzie: There are no complaints from clients. There are concerns held by members of the society based upon their observations of things that they see in court and what they hear about the way things are working in the profession and also sometimes in relation to files that come across their desk. For example, I had a brief of evidence come across my desk recently where a person who was not my client had spoken to a solicitor and had then spoken to the police in circumstances where you would wonder why or whether a solicitor had given advice to make that statement. It is not something that you could prove, but it is something which causes us concerns and suspicions.

Mr BLEIJIE: Thank you.

ACTING CHAIR: Are there any further questions from honourable members?

Ms De Saram: I would just like to say that the society is not levelling any accusations, but we are trying to address any loopholes that could lead to improper referrals by creating and working with the Queensland Police Service to create a regional lawyer list that could be provided to defendants upon request or to people in police custody.

Mr LANGBROEK: That then begs the question, Mr Chair, if you want to have a regional lawyer list, is it because there are too many lawyers in the cities to give people a file that would be massive and say, 'Go find a lawyer amongst those'?

Ms De Saram: The list is divided into police districts, and practitioners will be able to tick which exact police station they would be willing to attend. It is not a region-specific issue but we are acting within the whole of the state, so making it a bit more level.

Mr LANGBROEK: I just know that within Queensland Health, for example in my former profession of dentistry, if a child attends the public dental clinic and then is referred to, say, an orthodontist, it is considered inappropriate to recommend a particular orthodontist because that is like the relationship between a solicitor and a potential client. So as I understand it, within Queensland Health there is a list given: 'Here are the orthodontists in this region. You can go find someone there.' It is obviously a similar sort of issue.

Mr FOLEY: *Yellow Pages*.

Mr LANGBROEK: Yes, but some people obviously need some guidance. I do not think anyone is unhappy with some guidance being provided, but they are obviously unhappy with particular recommendations being made.

ACTING CHAIR: Exactly why is it that you think the present section does not do the job?

Mr Mackenzie: The society has set that out in some detail in its submission. The present provision reads—and on its face it looks like it does the job—that a police officer must not do or say anything with the intention of dissuading the relevant person from obtaining legal advice.

ACTING CHAIR: Or persuading a relevant person—

Mr Mackenzie:—to arrange for a particular lawyer to be present, but there are a number of problems with the provision. The first is the reference to the relevant person. A relevant person is only a relevant person if they are in the company of a police officer for the purpose of being questioned in relation to an indictable offence. If they are not there to be questioned by that police officer at that time or if they are not there in relation to an indictable offence then there is nothing to prevent the police officer making the referral. It is inserted as a subsection to section 418A. The first subsection of that section refers to a police officer to whom section 418(1) applies. That subsection applies to a police officer before a police officer starts to question a relevant person. There is an argument that this provision does not apply at all where questioning is not going to start for some time or after it has concluded or after the person has been charged. Anecdotally, the practice of some police officers seems to be to hand over a particular solicitor's business card at the time of charge. That is not prevented by this provision. It does not apply at all while a person is detained for a search rather than detained for questioning and it refers to arranging for a particular lawyer, which does not prevent referrals to a particular firm. It refers to arranging for the lawyer to be present, which does not apply to arranging for the lawyer to provide telephone advice.

ACTING CHAIR: I see all that as a result of your drawing it to my attention. What I still do not see is why that constitutes a problem. It seems to me that the time that you want the police officer not to be able to pick who the solicitor is going to be is the time of the questioning. After the time of the questioning it does not seem to me to matter so much. The abuse that the section is trying to stop is the abuse of the questioning being stage-managed by the police officer so that the evidentiary record is effectively stage-managed by the police officer calling in a tamed solicitor or a pro prosecution solicitor. Afterwards it does not seem to matter so much to me.

Let me put it to you as a hypothetical. It does not matter so much if the police officer refers somebody to a solicitor whom they used to work with when they were in the Police Service before they did their law degree because there is going to be an extended period of time during which the defendant is going to be able to work out whether they can rely on this solicitor or not. It is not like the police are going to refer somebody to a solicitor who they think is going to lose the case. They are not going to refer the defendant to a mate of theirs who they are pretty confident is going to lose most of his cases. That is not what is going to happen. The abuse is what is going to happen during the interrogation, is it not?

Mr Mackenzie: There are certainly concerns about what happens during questioning, but the concerns of the society go beyond what happens during questioning, particularly where, I suppose, during an investigation the proper procedures have not been followed—searches being conducted perhaps unlawfully without a warrant, inducements perhaps being given before the interview was conducted or some other aspect of the police investigation which ought to be considered as a possible challenge by the solicitor who takes on the representation of that client. The society's concern—and, again, it is very difficult to substantiate this—is that the way in which the subsequent defence is conducted by the solicitor is potentially influenced by the referral relationship that solicitor has with the police who were conducting the investigation. It is not a matter of winning or losing, but it is often a question of advice and how the case is conducted and whether a client is advised to pursue a line of defence or to enter a plea of guilty.

ACTING CHAIR: You are saying that if a police officer refers a client to a solicitor then that solicitor is less likely to run the case on the basis that the wrong thing was done during the course of the investigation because he might be beholden to the person who referred the client to him?

Mr Mackenzie: As a one-off referral we would be quite confident in the professionalism of most of our members, but where you have a relationship which develops where a solicitor is dependent perhaps for a very large proportion of their work flowing from a particular source, and that source is a source effectively on the other side of the case, it has the potential to undermine the professionalism on both sides because the police officers may have an expectation that their conduct in the investigation is less likely to be challenged by their former friend.

ACTING CHAIR: I was asking you a leading question there. If your answer had been yes then I would have signed up for your point of view. Can I just run it past you again. The question was: are you saying that if a police officer refers a client to a particular lawyer then there is at least a perception that that particular lawyer is going to be less likely to critique the manner in which the investigation was conducted by the police officer who referred the defendant to him?

Mr Mackenzie: Yes, Mr Chairman, there is that risk.

Mr LANGBROEK: Mr Chairman, it is interesting that in the Law Society's submission the point is made that the minister and the Police Service actually support the principle in the policy and there is even a suggestion as to how this could be clarified by following legislative change in the UK, with an addition that would eliminate the potential for any questions being asked about inappropriate relationships between police and the solicitors to whom they may refer clients.

ACTING CHAIR: There is no doubt that justice not only needs to be done; it has to be seen to be done. What proposal would you put in place to ensure that occurred?

Mr Mackenzie: Well, the first part, in our submission, would be in relation to the location of the provision. If the provision remains in its present location within the act it is confined only to indictable offences and only in relation to people who are detained for questioning in relation to indictable offences. So it could perhaps more appropriately appear in the safeguards section, which is numbered in the 600s in the act, so that it applies to all people who are being investigated by police officers. In the Law Society's submission we quoted an example from the English model, from the Police and Criminal Evidence Code C, Notes for Guidance 6B, which says that an officer must not advise the suspect about any particular firm of solicitors. In the society's view that could be improved somewhat by including reference to any particular lawyer or firm of lawyers so that the provision prevents referrals to both individual solicitors and particular firms of solicitors, and also to both solicitors and barristers, because it is occasionally the case that matters are referred to barristers directly.

Ms De Saram mentioned earlier the regional lawyers list, one of which is proposed to be created for each police district—metropolitan and regional districts. What the society would like to see is the mandated use of that list so that if a person says, 'I would like a lawyer but I don't know who', the police give them that list and they can choose from someone on that list rather than being directed to any particular person. There is in the operational procedures manual at the moment a reference to providing the telephone book. The difficulty with the telephone book is that there are great lists of solicitors in there, many of whom may not conduct any criminal work, and even those who conduct criminal work may not be inclined to attend police stations in the area. The regional lawyers list has the advantage of providing suspects with the people who want to do that work and being able to choose from the people who are available.

Mr BLEIJIE: The flip-side is the real estate market. Lawyers continually receive referrals from real estate agents. There are some real estate firms who have on their precedent the law firm to which they are going to refer and then convince the client to refer them. If not, they will cross it out and they can choose their own client. I am just conscious of the fact that there is no complaint yet the submission is so targeted for this particular referral basis, if in fact that is happening. As I said, real estate agents continually refer and there is the issue of wondering whether the lawyer is acting in your best interests, knowing that there are a bunch of referrals coming from the client who wants to terminate a contract and so forth.

Mr Mackenzie: I am not qualified to speak about referrals in other areas. That would be outside my remit. But one difference between the situation that you have mentioned and the situation that is occurring at police stations is that there is at least some transparency that the agent is making the referral and there are rules which apply to solicitors and agents about what is disclosed in relation to that.

Mr BLEIJIE: Beneficial interests and so forth.

Mr Mackenzie: There are no such rules in relation to police officers. I would also suggest that the situation—the sometimes somewhat desperate and isolated situation—of the suspect at the police station is rather different to a person who is involved in a commercial transaction.

ACTING CHAIR: Thank you very much for your attendance today. Mr Mackenzie, I thank you in particular for finding that provision in the Justices Act earlier on.

Mr Mackenzie: You're welcome, Mr Chairman.

HARBIDGE, Ms Sue, Principal Legal Officer, Misconduct Investigations, Crime and Misconduct Commission

HUTCHINGS, Mr Rob, General Counsel, Crime and Misconduct Commission

JONES, Mr David, Acting Assistant Director, Police Program, Integrity Services, Crime and Misconduct Commission

PATHE, Mr Mark, Deputy Director, Crime and Witness Protection, Crime and Misconduct Commission

Mr Hutchings: Members of the committee, my name is Rob Hutchings and I am general counsel of the Crime and Misconduct Commission. I will be the principal witness today. I have some colleagues from the CMC with me. They are Mr Mark Pathe, Ms Sue Harbidge and Mr David Jones.

ACTING CHAIR: Welcome and thank you very much for coming. Please proceed.

Mr Hutchings: Thank you for the opportunity to comment on our submission. In addition to the written submission that was provided dated 23 September, the CMC would like to make a couple of further comments. The CMC firstly notes that the proposed introduction of non-government analysis of DNA samples in clause 63 of the bill would permit the commissioner, if he so chooses, to bypass Queensland Health's testing facilities at John Tonge altogether. The CMC recognises that for a long time Queensland Health forensic analysts have led the field and would be reluctant to see this expertise diminished. However, it is also recognised that there may have been some delays in the provision of analysis in the past. In addressing this issue, the CMC considers that any proposal to expedite analysis should not be at the risk of the integrity of the analytical process.

A possible solution might be to increase the funding that Queensland Health receives to permit it to respond to the perceived timeliness concerns which might manifest themselves in the proposed amendments. In addition to these concerns, there is the ever-present danger of commercial incentives affecting the integrity of the testing process. Further, outsourcing may make it more difficult to question the continuity of custody or storage and the potential costs associated with a private provider and subpoenas.

The proposed amendments would permit the use of a laboratory which is accredited by the National Association of Testing Authorities, but the appropriate standard for compliance is to be prescribed by regulation. The CMC is not aware if or when such a regulation might be made. The CMC would like to see the present high standard of analysis maintained. Essential to this would be a clearly documented procedure for recording the processes involved so that audits can be conducted to establish the efficiency and effectiveness of non-government laboratories. That was the first issue.

The second issue that the CMC would like to mention briefly is the proposed pat-down search power contained in clauses 6 to 8 of the bill. As outlined in the CMC's written submission, if the use of such a power is to be authorised, it is considered essential that a proper record be made of the circumstances of the exercise of the power so that appropriate scrutiny can be brought to bear. That is particularly important in the CMC's view in the case of pat-down searches of minors for Liquor Act offences. They are the two points that I had to make today. I would be happy to assist the committee with any questions about our written submission.

ACTING CHAIR: We asked the police with respect to the pat-down search matter, 'Is this not a double-edged sword?' I think what you are saying if I read between the lines is that you are going to expect more referrals to the CMC if this additional police power is given; is that correct?

Mr Hutchings: That is essentially one of the concerns. If the power is used indiscriminately, as was outlined in our written submission, there is the potential for that, yes.

Mr LANGBROEK: Mr Hutchings, I am interested in clause 63 about analysing DNA samples. There is nothing about that in your written submission.

Mr Hutchings: No, that is correct.

Mr LANGBROEK: How come?

Mr Hutchings: There was a circumstance within the commission last week which led to the identification of that issue I have just raised. I was not able to discuss it with the chair until this morning. I did so and it was decided that we would raise it this morning.

Mr LANGBROEK: Sure. I think the principles you raise are ones about which the committee shares concern—about making sure that sampling is done properly et cetera—but I was just interested in that.

ACTING CHAIR: Yes, we will indeed. Without going into too many details, does the CMC have an evidentiary basis for the proposition that private forensic laboratories have been inclined in any case to give accommodating opinions?

Mr Hutchings: I am not the expert, but Mr Pathe may be able to address that.

ACTING CHAIR: Mr Pathe, have you got any evidence at all that private forensic laboratories have given accommodating opinions in any case published or unpublished?

Mr Pathe: Again, I am not a specialist in this area but, no, I am not aware of any evidence.

Mr LANGBROEK: Mr Acting Chair, wouldn't it be more that it raises the potential for there to be question marks about evidence that subsequently could lead to a case being aborted or something happening because people ask, 'How do we know the standards are as good as in the public system?'

ACTING CHAIR: Is what the member for Surfers Paradise said what you are saying?

Mr Hutchings: That is correct.

ACTING CHAIR: However, forensic evidence, particularly DNA evidence, is by its very nature a little inchoate. It is very possible when you are presented with two sets of charts with DNA graphs to draw one conclusion or the other conclusion, is it not? Are you familiar with what I am talking about? The DNA evidence in the end appears in the form of a graphic and it is a matter of judgement whether you say, 'Yes, that was his DNA,' or whether on the other hand you say, 'No, there is not enough similarity there to say that was his DNA.' Given that DNA evidence is essentially a little bit inchoate, does that support your view that it should all be done by one laboratory that we know and trust?

Mr Hutchings: My own understanding of it is that the science does lend itself to some interpretation. I may be wrong about that. I am not speaking from a position of authority on that. Some of my colleagues might be able to. But the process adopted in analysis, as I understand it, may differ as between laboratories. That may give rise to potential, for example, for litigation as I understand it about whether a particular process was the appropriate one to be adopted. As to your question about whether the results do not bear interpretation, I am sorry I cannot help you in particular about the scientific aspects of that.

Mr FOLEY: Even private pathology laboratories are all NATA accredited.

ACTING CHAIR: They are all what?

Mr FOLEY: NATA accredited.

ACTING CHAIR: Right. I was trying to help your argument, because you have said to us that you do not have any evidence of any case where a DNA laboratory has given an accommodating opinion. I am trying to find some basis for the proposition, other than the mere appearance of the thing, why we should not go to a private DNA laboratory. What I have suggested to you is that, given that the thing is inchoate in the first place, the graphics that you end up with in the end are a little bit ambiguous in many cases, this is a good reason for sticking to one firm that is known and has one methodology. Have you got any better argument than that? Have you any evidentiary basis? Can you give us any reasons based in the empirical world as to why we should say to the minister concerned, 'No, we think you should stick with the government laboratory?'

Mr Hutchings: In a word, no.

ACTING CHAIR: And yet you said that a matter came up in the last week which inspired you to make this addition to the record. Obviously, we do not want to know what that matter was, but is there anything you can say that can help us to form a view that we should stick with the one forensic laboratory? We have the benefit of your opinion here but we have not got any reasons for it.

Mr Hutchings: I do not think we can put it any higher than we have other than it is a perception issue. As an integrity agency, we are concerned to ensure that the possibility of the necessarily deleterious effects of commercial arrangements affecting evidentiary matters be avoided if possible. This is one way to do that potentially. To answer your question, I cannot put it any higher than we already have.

Mr BLEIJIE: On page 4, clause 101 talks about prostitution and a controlled activity without police officers themselves being liable to an offence. In the submission from the Law Society it talks about civilian participants in controlled activities. That is not mentioned in your brief. Is that what it is talking about—using civilians in those particular controlled activities? Or are you talking about just the prostitution or general policing using civilians?

Mr Hutchings: My understanding is that, no, this is talking about police officers only. The issue of involving civilians in what is to be known as ancillary activities is separate.

Mr BLEIJIE: We can check this but I think it does talk about a controlled activity. Mr Acting Chair, I guess that is a definition we will have to confirm. I know that in the Law Society submission it uses civilian participant in controlled activities. The CMC is talking about controlled activities in terms of prostitution. I am not sure whether we are talking about using civilians in these controlled activity environments.

Mr Hutchings: I hope I can clarify it by saying that our reference to the prostitution provisions in the bill are only in relation to police officers undertaking investigations. They are not in relation to civilians undertaking activities at the request of police.

ACTING CHAIR: Thank you very much. We are very grateful to you for taking the time and going to the trouble of coming to brief us. Your remarks have been very helpful.

Proceedings suspended from 1.02 pm to 2.07 pm

GARLICK, Ms Sue, Policy Coordinator, Queensland Public Interest Law Clearing House

ACTING CHAIR: Ladies and gentlemen, welcome back. To those who have not been here before, welcome. This is a meeting of the parliamentary legal affairs committee. As such, it is a subcommittee of the parliament. It has all the powers of parliament. Consequently, it will be run under parliamentary procedure. I welcome all members of the public to the meeting. To those who speak to the committee, please do not believe what you hear in the media that you are allowed to lie to parliament. That is not true. There are very severe and sometimes quite harsh penalties for people who do that. It is a contempt of the parliament and is treated as such. It is not that I think that anybody here is likely to be a fibber, but it is necessary for me to say that at the outset.

I should also ask witnesses when they speak initially to indicate their names. Although we know your names, could you say your names for the benefit of Hansard when you first speak in order to get the record straight. There is a distinct possibility that you will be filmed or recorded if speaking. If you have a problem with being filmed or recorded, please let us know. I would ask witnesses to check that you have read the instructions to committees regarding witnesses. Each witness is invited to make a brief opening statement and then explain your views in whatever language you choose. Once you have finished that, you may be asked questions by the committee.

Once again, I welcome you all to this hearing of the parliamentary committee. I invite Sue Garlick from QPILCH, the Queensland Public Interest Law Clearing House, to address us.

Ms Garlick: Thank you for this opportunity. I wish to introduce what the HPLC does for those of you who are not aware of the work of QPILCH. QPILCH is a community legal centre. We harness pro bono resources of firms to deliver services to people with disadvantage where they cannot get Legal Aid or other services. The HPLC coordinates about 200 volunteer lawyers from about 20 firms. We have 13 clinics in Brisbane, Toowoomba and Townsville. We do case work as well as give advice to people who experience homelessness. The clinics are all located where homeless people are accessing other services like food or accommodation—places like those run by the Salvation Army, Roma House and those sorts of places.

We open files for about 450 clients a year and about 18 per cent of those are criminal matters. Most of the criminal matters we refer to duty lawyers or to the special circumstances court, but we also defend some matters pro bono. Almost all of our HPLC criminal files are for public nuisance offences. Because people who are homeless have nowhere to go, they are frequently in public space. Their lounge room, their bedroom, their bathroom is the street. So behaviours you and I can conduct in the privacy of our own homes become offences when they are in public. We also find that these public nuisance charges are commonly accompanied by a further charge of obstruct police, contravene direction type charge. In our submission, we have quoted Tamara Walsh who notes that these offences of public nuisance are often gateway offences. You have the initial offence, but you may have a bit of palaver around the arrest and you create further charges.

The HPLC submissions are just on section 52A, the pat-down searches. The power to search already exists in the act, but it is connected to a more limited range of offences. This change will see that quite broadened so that the police only need to suspect that an offence may occur and it can be any offence. We believe that specifying the power in this way will put it at the top of the police officer's kit bag. It will be something that they will use more reflexively and more extensively perhaps than the powers as they currently exist. We have every reason to think that the palaver, as I said, that goes around an initial offence will be heightened by the police power to physically intrude on a person. I can give some more detail about the legislative context of the power, but I thought really what I am more capable of doing is talking about homelessness and the lived experience of some of our clients.

What I am asking the committee to do is really take seriously that police operate at two ends of the spectrum. There is serious crime and some tough stuff where they need to be ready to act in difficult situations, but at the other end of the spectrum we have an increasing collection of people in our streets, in our communities, and they are people who have lifelong biographies of violence. I have a range of statistics—and they are in all the reports I have cited—but just a couple are that 70 per cent of homeless women are survivors of sexual abuse, 80 per cent of homeless males are experiencing very high distress as opposed to about three per cent of the Australian male population, and 34 per cent of children in state care exit immediately into homelessness. So you have people who are really chronically damaged before they enter the state of homelessness. The Queensland government has a strategy, Opening Doors. It was brought out this year to address some of these issues, and it also recognises high rates of trauma, cognitive impairment, mental illness, disabilities and Indigenous status as high-vulnerability areas for people who are homeless.

What research is showing again and again—there is increasing research into homelessness—is that chronically homeless people, people who have been homeless for a while or with complicated circumstances, have almost exactly the same profile and that is a profile of childhood adversity and often lots of violence and neglect. There has been an intervention by the state. It has not been appropriate; it has not worked. There is social isolation. They leave school. They are into addictions. There is almost a total disconnection from protective factors that we take for granted, and so these people are homeless. It is not just a matter of not having an address; they are homeless in their very being and they are experiencing lifelong extraordinary burdens and limited support and understanding from the government and community, though that is changing. The HPLC believes that we expose them to further contempt and humiliation when we treat them as a risk to public safety and criminalise them for their necessary

behaviours. I think actually the situation is analogous to the change that education has had to go through in schools that started in the eighties, I think, where schools have had to address not just educational issues but social behaviours and do quasi-parenting.

We have quoted Senior Sergeant Allen of the Brisbane city beat and he expressed in his Churchill Fellowship report that there is a difference between what the community expects of police when they are handling drug-fuelled louts emerging from a nightclub to what the community expects when police are handling someone who has been living on the streets and who is struggling with schizophrenia, post-traumatic stress disorder, bipolar, autism and a range of disabilities. Their very condition as well as their existence on the street is what is going to make them more antisocial, more inappropriate, agitated and impulsive, and that is obviously going to lead to negative interactions with the police. If they are homeless, the likelihood of someone advocating for them—putting their condition into context—is unlikely. No doubt it is difficult for front-line police to develop the sort of agility that is required to manage these different ends of the spectrum, but it can be met if there is comprehensive training, cultural changes and legislative protections. These are things that have been spoken about for many years in a range of reports.

Police already have a big hurdle to overcome for our clients, who view them as authoritarian; view them as people who want to take information, not give it; and as people who want to search them, not assist them. Senior Sergeant Allen recommends that police develop a mindset that each interaction of a police officer is an opportunity to make a connection and that the police should proactively create these positive communities. The Opening Doors strategy of the government confirms that stable housing is a necessary precursor to engaging with people with these sorts of needs, and housing includes support to help address how they became homeless in the first place. So we believe that police powers and the police need to take into account is the offender adequately housed and supported. That is a primary question to be asking.

We consider that the proposed search powers are really analogous to the move-on powers that are in the act, and these powers appear at first glance to offer a common-sense diversionary tactic. But the reality and the 2010 CMC review of move-on powers shows that actually more people are now being charged with no other offence than that they contravened the move-on power. The CMC comments that perhaps the absence of other charges then suggests that these are indeed gateways into the criminal justice system for our clients, and certainly the CMC was not focused on homeless people and our own reports show that this is more likely to be the case for people who are homeless. The CMC called for training for police to focus on arrest as a last resort and de-escalation and diversionary strategies. It called for legislative protections that narrow the power that require the police to make a higher level of risk assessment and that require the police to issue some sort of documentation of the power when they administer it. It is disappointing that these amendments are not in the proposed changes to the act, but they are the sorts of balances that we are looking for for police to be responsive to both of those ends of the spectrum.

You are probably familiar with the Court of Appeal in the matter of Rowe and Kemper, which was an HPLC matter. The move-on power in that case was found to be unreasonably and therefore unlawfully exercised. The court noted that Rowe was, almost immediately after he was given the direction to move on, arrested and that common sense should have suggested that there should be a degree of give and take to be employed so that the matter was not escalated. I can give details of the facts around that matter if you want them. Yesterday I watched some Brisbane City Council CCTV footage. It was of an elderly HPLC client. We received the footage under conditions, so I am going to call the fellow 'Bob'. He was sitting on a city park bench. It was the middle of the day. Shoppers were strolling past. They were engaging quite appropriately with those people. One of the men had given Bob a bottle of alcohol which he had not opened. He said to us that it was his intention to take it back to his home, and alcohol is not one of his issues. He had had a long history of living on the streets. His wife had died. He had spiralled into depression, sleeplessness and gambling, because the casino was the only place open at night.

Some police officers approached Bob and they complained of him drinking alcohol in a public space and he argued that he had not consumed it and he had no intention to consume it. The lid was on it; it had not been in any way opened. The officer asked for Bob's name, which he gave, but he refused to give an address because he believed he was under no compulsion to do so. He had not committed any offence. On the video the police officer is joined by a further two officers on bikes. They are increasingly aggressive in their posture to Bob. They ultimately handcuff him. They put on their gloves. They search his pockets. This search reveals only a driver's licence, which has his address on it, and Bob confirms that it is his. So then the police officer tells Bob he is unarrested, removes his handcuffs and they charge Bob only with contravening a requirement to give an address under the act.

The HPLC advocated for Bob and clarified that actually that cannot be an offence if there is no primary offence that you have been charged with. This is yet another incident that is typical of many that we see. It illustrates an already isolated individual who has had a lot going on in his life. He is subjected to further humiliation. It is a public and an unnecessary handcuffing. There was no public risk and no safety issues. It was an embarrassing search with limited justification. If Bob had had—he does not—a cognitive impairment or a mental illness, the likelihood of the incident escalating to some violence and more serious charges is really high. The police action in that case also led to a court appearance for no offence other than this procedural offence for failure to follow instructions. So what the HPLC is asking the committee to consider is not how these proposed search changes will impact you or I, who might have calm

psychological profiles, but how they are going to impact these street dwellers who are already vulnerable and will we relieve or will we compound their disconnection by introducing these net-widening amendments?

ACTING CHAIR: Ms Garlick, you came here and started talking about constituents who I know when you were talking about homeless people suffering from mental illness issues who subsequently get themselves into trouble with the police because of a communications deficit. I was interested in what you said, but I would like you to say it again and in more detail. You were saying that we need to do some other things in order to overcome the communication difficulty that occurs in those circumstances.

Ms Garlick: Yes.

ACTING CHAIR: Police having additional powers in circumstances of drunken hooligans or in the circumstances of people who malevolently set out to breach the peace is one thing, but when interactions with homeless or dislocated individuals simply go wrong because of the communication deficit on one side—the side of the citizen—that is a completely different thing. Can you spell out in more detail how you think we could ameliorate those kinds of interactions?

Ms Garlick: The report of Senior Sergeant Allen also discusses this, and I cited a report by Catherine Robinson called *Rough living,* which specifically addresses this issue. In terms of the fundamental notion of listening and paying attention to the scene in front of you in terms of de-escalating, police have to make risk assessments and it does not appear to us that they are making assessments on how much the matter can be contained and whether there is a discretion to put the matter in perspective. If police are following community strategies of policing, often they will become more aware of who the clients are. We have a clinic at Roma House in Spring Hill. There was quite a negative incident there recently with the police, but it was unusual because the Spring Hill police have actually developed a good relationship with Roma House clients. I have had Roma House clients tell me that police have used their discretion to not charge, for instance, if a resident has been in possession of a drug. That is definitely a more appropriate response.

So it is what happens at the point of time—that is, a better risk assessment and a desire to de-escalate. They should use some diversionary tactics. If people do not have housing, that is a bit of a light to what sorts of needs they might have. But then around that are some broader strategies about how you engage with these clients and how you become more aware. We have certainly offered the Police Service training and Senior Sergeant Allen speaks of some of the places where he travelled where police sit down and do community service at, for instance, homeless service providers to really get an increased understanding of the needs of these people and the sheer humanity of them as well I think.

ACTING CHAIR: From your perspective they are 'these clients', to use the phrase that you used a little while ago. From the perspective of the police though, they are not; they are actually impediments to the police getting on with the serious business of their day, which is maintaining law and order. When they come to an interaction with one of these people—a harmless person who might be homeless or who might be suffering from a mental illness—they have a limited repertoire of things that they can do to get the transaction over and done with. They are not allowed to just take the bottle off them and say, 'You're not supposed to have that in a public place and you're not supposed to be drinking. Forget it. Go away.' They cannot do that. They have to follow certain processes. The area that you raise is a really interesting one. How do you ameliorate the kinds of interactions between police and citizens at the lower end of offending behaviour?

Ms Garlick: Yes.

ACTING CHAIR: I would put to you that you are not going to do it by getting the police to see them as 'these clients', because that is the psychological profile of people in your kind of profession to see them in that way. The psychological profile of police has to be different of necessity. They are a self-selecting group of people who are prepared to put their lives on the line to save the community from serious harm, so they are never going to see it exactly as you see it. What we need to do is to equip them with the means of dealing with these people. I am not saying that police are incapable of being compassionate or anything like that. I am not saying the thing adversatively; I am just uttering the truism that different psychological profiles gravitate to different spheres of life. We could not—and, if we could, we should not—try to make the police into social workers. What we need to do in the long term I think is to have a look at what tools are available to the police to expedite these kinds of interactions, and perhaps referring those people to somebody else would be the quickest way of dealing with it.

Ms Garlick: I agree with that and I understand that police have some diversionary capacities. At different times they have had liaison officers and homelessness task forces to deal with this. Certainly in Brisbane the people who are our clients are, by and large, congregated in specific police districts. So there could easily be some training provided to police. It is no-risk training because it is basic communication training and listening training. There is some capacity for training. The recommendation of Allen is that there be not just some people in the police force who understand how to deal with these issues; it should be across all front-line officers.

ACTING CHAIR: There is not a magic formula, is there? The communication deficit is not on the side of the police; it is on the side of the mentally-ill homeless person.

Ms Garlick: I guess I cannot exactly agree with that construction of the dialogue. I think with a capacity to listen and to see the situation for what it is, police could improve in that.

Mr FOLEY: Listening to this I feel so much sorrow for the fact that people are in these situations due to all sorts of trauma and they find themselves in circumstances in which they never intended to find themselves. You made the statement that these are people who are not a public safety risk. I am fairly sure that if you asked the police that same question they might say that, in the light of how significant the trauma has been for these people, they are in fact a public safety risk.

I have seen this done in one country very well. I had occasion to be in Hawaii—not that I will get any sympathy from the other members of the committee for that! In Ala Moana Beach Park, which is one particular area in Waikiki, homeless people are allowed to be in the park. I am talking about right up to where everyone else interacts with them. Generally speaking, they behave really well. They know that they are there at the grace of the community. So the police take a different approach in that they are not busting them for being vagrant, homeless or whatever term may be used. They just sort out the pointy end of it. If there are fights between people or if there are people who are homeless harassing other citizens and so forth, that is really the only time they get involved with it.

It would seem to me, like my learned colleague, that it is more a systemic problem than a communication problem. If you are a policeman and you have someone there and you are responding to a complaint—if there was no complaint and if it was just someone sitting there enjoying the sunshine, I do not see any reason to move them on. The move-on power is probably an example of the law of unintended consequence. Yes, you can move homeless people on just as you can move on obstreperous drunks and violent people, but that is probably not how it was intended to be used.

It would seem to me that the problem is that these people have nothing and have nowhere to go. A member of the public, rightly or wrongly, feels threatened by their presence. They then complain to the police and what do the police have to do? It would seem to me that you could do all the training in the world you like, but the problem is that people have nowhere to go.

Ms Garlick: Clearly, that is the fundamental issue.

Mr FOLEY: That is stating the bleeding obvious.

Ms Garlick: In both the pat-down searches as proposed and the move-on powers, there does not actually have to be a public complaint in order for the police to act. So that is that grey area that we are talking about. It is quite a different matter if a member of the public has been so concerned that they have contacted police.

Mr FOLEY: Just to clarify that point, at the moment if police suspect someone has drugs, a weapon or whatever, can they not do that without a public complaint?

Ms Garlick: Yes, they can, but it is quite specified. There are prescribed circumstances for when they can do that.

ACTING CHAIR: You said that the additional pat-down powers would add to the occasion for palaver, which would provide occasion for the application of additional add-on penalties.

Ms Garlick: Yes.

ACTING CHAIR: I suppose you mean obstruct police in particular?

Ms Garlick: Yes, those kind of things.

ACTING CHAIR: You would think there would be an arithmetical increase in the number of obstruct police charges that were brought as a result of the introduction of this additional police power?

Ms Garlick: We think that is highly likely. The most recent study that has been done in our courts is the study by Tamara Walsh in 2007, which showed there is a 25 per cent add-on effect. So about 25 per cent of public nuisance charges have that added on obstruct police type charge that goes with it. She did not restrict her study to purely homeless people, but a great deal of what comes across our desk already has that add-on charge. Just when you have people who are already vulnerable and already agitated and there is a capacity for a physical intervention with hardly any limitation on it, I think that is quite likely, too.

ACTING CHAIR: I think we should include in our report the prediction that, if this is implemented, there would be an increase in the number of obstruct police charges. If parliament does go ahead and do this and it proves to be the case and we predicted it, that can be taken into account in the next review of the act.

Mr FOLEY: It fills the courts unnecessarily as well. Earlier you quoted some figures. It was something like 80 per cent, 70 per cent and 60 per cent. I was particularly interested, but I missed writing them down. Could you just run through those again?

Ms Garlick: Yes, and there are more. They make sobering reading. I just pulled out a couple, but the ones that I quoted were that 70 per cent of homeless women are survivors of sexual abuse—and that study is considering homeless women quite broadly. Then there was a particular study that was limited to a number of males. In that study, 80 per cent were experiencing very high distress, as opposed to three per cent of the Australian male population. The CREATE report tells us that 34 per cent of children who exited state care got straight into homelessness.

Mr FOLEY: That was 34 per cent?

Ms Garlick: It is 34.7 per cent I think.

ACTING CHAIR: Thank you very much for your time and for your advice to the committee.

Ms Garlick: Thank you.

COLLYER, Mr Nick, Systems Advocacy Worker, Queensland Advocacy Inc.

ACTING CHAIR: Mr Collyer, on my left are the members for Mount Ommaney, Maryborough and Surfers Paradise. I am the member for Murrumba and also present is the member for Kawana. Would you care to begin by stating your name for the benefit of the Hansard record and then speak to the submission you have made?

Mr Collyer: Thank you very much for having me here today. Mr name is Nick Collyer and I am here from Queensland Advocacy Inc. on behalf of our director, Ken Wade, who unfortunately was not able to attend today. Queensland Advocacy Inc. represents people with disabilities. We have a mental health legal service and a human rights legal service that primarily represent the most vulnerable people with disabilities in Queensland, people subject to restrictive practices and so on.

The previous speaker said pretty much everything that I wanted to say. I also wanted to address the committee specifically about the issue of pat-down searches. I have prepared a statement and, if you do not mind, I would like to read from some of it.

There is no doubt that people with disabilities, especially those with cognitive and intellectual disabilities, are overrepresented in the criminal justice system. There is a text box at the back of my written submission that provides data that supports that contention. I refer the committee to our report Disabled Justice, the 2007 report that goes into all of those issues in more detail. If you like, I can leave a couple of copies here.

Given that people with disabilities are overrepresented in the justice system, we think any new measure that is likely to increase the number of people with disabilities in the justice system is not a good idea. That overrepresentation is costly. Human rights, natural justice and systemic equity aside, it is costly to people with disabilities and their families and it is costly to the public that funds policing, judicial and corrective institutions.

I will get more specific, particularly about the proposed new section 52A, the way that police deal with suspects. There is no doubt that policing is a difficult and often dangerous profession and front-line police procedures must account for police occupational health and safety. According to state government figures reported in the *Courier-Mail*, there are more than 600 serious assaults on police each year. So it seems logical, then, that police should be able to take a precaution such as a pat-down search if there is reason to believe that an offender might have a concealed weapon they could turn against the police.

In introducing this bill, the minister stated that the safety of our police officers is paramount and the pat-down search power would give 'greater protection to our police officers when dealing with offenders'. However, the issue we have with that is that, first, you do not have to be an offender to be searched and, secondly, nor do the police need to have a reasonable suspicion that you have a concealed weapon or other unlawful thing as a justification for the search. The circumstances under which a person can be detained and searched are not ones where a person has necessarily committed an offence and nor are they circumstances in which anyone has any reason to suspect that the person might have an illegal weapon in their clothing.

The present section 50 allows, for example, a police officer to detain a person where they reasonably suspect that a breach of the peace is imminent or threatened. That person may not actually be an offender but simply someone who is on the scene at a public event, for example, requiring security management. It could be a person with an intellectual or cognitive disability or a mental health condition who may not know why they are being detained. They might be frightened or disturbed by the experience of being held against their will and they are not aware of any wrongdoing; they do not need to be an offender.

Second, the proposed new section 52A dispenses with the notion of reasonable suspicion, giving the police the power to search a person and their bag simply because they have been detained, not arrested and not charged, when police believe that there may be a breach of the peace—section 50. There is no requirement that the police have that reasonable suspicion. According to our common law, reasonable suspicion is designed to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasions of privacy and property. The idea is that police should have an objectively justifiable reason to stop and to search. The reason to stop may be there, but the reason to search—to require that a person stands passive while their body is patted and touched by a stranger in uniform with overwhelming authority—should be unequivocal given what is at stake.

According to a leading Australian legal academic, any contact not based on reasonable grounds paves the way for arbitrary targeting and, despite the stated aim to reduce risk, it may in fact increase risk by escalating what already may be a tense situation. To address the matters that were being raised by the previous speaker and by the panel—that is, how you deal with the situation without escalating things—I guess there are procedures that the police can follow to de-escalate conflict.

The Queensland Office of the Public Advocate released a paper in 2005—'Preserving life and dignity in distress'—responding to a critical mental health incident. They say that the priority of police officers engaged in critical mental health incidents should be the safe and humane de-escalation of the situation by engaging directly with the distressed person. Successful de-escalation requires exceptional interpersonal skills, active listening and negotiation in addition to a sound understanding of the experience of having a mental health crisis. Those observations apply equally to people with intellectual and cognitive disabilities.

In New South Wales, for example, they use a crisis intervention team model. The Office of the Public Advocate recommends that model. That model should be a priority for any group of vulnerable citizens who have decision-making disabilities, particularly an intellectual disability or acquired brain injury. A crisis intervention team approach which recognises that vulnerability includes specialised training of the police, a coordinated and multiagency human service response and a set of referral and follow-up pathways that are developed for vulnerable people in distress.

Planning to reduce risks could also include conflict resolution skills, field supervision of junior officers and occupational health and safety education—given that the reason for this proposed amendment is occupational health and safety. Violence can be reduced by talking offenders into a police vehicle rather than physically assisting them, speaking in a calm and respectful manner, always addressing offenders by their correct title, removing offenders from the scene quickly to avoid conflict with bystanders, taking extra care if the offender is intoxicated and allowing time for the offender to calm down. That is all I would like to say at the moment.

ACTING CHAIR: On page 64 of the document put out by the Queensland Office of the Public Advocate related to disabled justice you say that police interviews are discursive verbal processes and you go on to say in respect of people who have mental disabilities that they therefore may have great difficulty in understanding and following what is going on. Then you go on to say that from the point of view of the police this may appear to indicate suspicion and may be indicative of guilt. I am sure this is something that very often happens. I think you have put your finger on something that very often happens when you are dealing with a certain kind of person.

This committee has to decide whether to recommend or not to recommend the pat-down powers. You are saying to us that we should not give the police those pat-down powers because there is a certain category of people, particularly people with certain kinds of disability, who are going to be prejudiced as a result of it. What I am wondering is whether the problem is a different one. The problem you are addressing is the interaction between police and people with certain kinds of disabilities. If that problem were addressed then your argument against the pat-down powers would go?

Mr Collyer: I am not sure I agree with that, because I think it is the very fact of the pat-down that has the potential to escalate conflict.

ACTING CHAIR: I see.

Mr Collyer: Because it is an invasion of personal space. It is quite an unusual invasion of personal space.

ACTING CHAIR: I accept what you are saying. It seems to me that there is a larger question that the committee ought to make a comment on, and that larger question is about the interaction between police and this subset of the population that you are talking about. You have said that police need to get some training in de-escalating emotion in respect of that particular group of people, which I understand is part of the routine training of security guards these days. What else are you suggesting?

Mr Collyer: The paper that was produced by the Office of the Public Advocate suggests the adoption of a crisis intervention team model, which is what I was describing before, which is where the police, if they see a situation where they believe a person may have an intellectual or cognitive disability or a mental health issue, would involve a crisis intervention team that is available on call to come and deal with the person concerned. So I guess it is a plea for special treatment for people with those particular kinds of disabilities.

ACTING CHAIR: I suppose you are recommending that police be given a little more training in recognising those mental disabilities?

Mr Collyer: Yes. I believe that the police did for a while do a trial of the Harvey instrument, which is a simple set of questions that are designed to identify whether a person has an intellectual or cognitive disability. I do not think anything came of that. Perhaps it was impractical. I do not know the details of that. As I understand it, now they do not have any particular mechanism that they use to identify people with those disabilities. I believe that the department of disabilities is about to trial one of these sets of questions which allows police to identify these disabilities very quickly.

Mr BLEIJIE: I am putting myself in the position of a police officer who is going to use these pat-down powers and going through their thought process if they have a trial of this list of questions. A lot of times, the environment is one where there is public drunkenness. If they have to go through a series of questions, they have to work out whether it is potential mental illness as opposed to intoxication or slight intoxication that impairs their ability to say X, Y, Z. Do you see where I am going? How do you distinguish between genuine mental illness or those with a temporary incapacity because of intoxication or drugs?

Mr Collyer: In the heat of the moment, I would imagine that it would be extremely difficult to apply any kind of test that involves a set of questions. That is, it is something you could not do, especially if there was a serious public order incident going on. So I would not think it is something that could be applied in the heat of the moment. I would think it would have to be something that is applied later on. What we are saying is that the potential benefits from the extra power of conducting the pat-down search to the police in terms of occupational health and safety are outweighed by the infringement of a person's personal liberties and private space and so on.

Mr BLEIJIE: So is it your testament that that should be the case, because you just mentioned their personal space and so forth, whether they have a disability or not? Are you just opposed to the whole idea of the pat-down?

Mr Collyer: Both. It is a general civil liberties issue and also particularly in the case of people with intellectual and cognitive disabilities, and particularly people with acquired brain injuries who may not understand what is going on in those circumstances and who may be easily triggered into overreacting in a situation like that where they do understand what is going on and there is an authority figure putting them up against a wall and requiring them to spread their legs and get patted down and invading their personal space. There is the potential there to escalate conflict. We believe that there are insufficient benefits from that when you consider the deficit that you get from the infringement of civil liberties.

Mr FOLEY: One of the issues that the member for Kawana has raised is that quite often when people with particularly mental disabilities, be they drug induced psychosis or more easily diagnosed schizophrenia, bipolar and so forth—and it is particularly so when I think of people suffering from schizophrenia who may be very well dressed and present as completely normal, rational, sane people—are in a situation where they have an interaction with the police, the police just do not know what they are dealing with. It could be someone who could be just about to explode.

Is there a way that police can better identify people with mental illness? In my area the police might pick someone up for antisocial behaviour—they might be in a fight or whatever—they take them to hospital, the staff take one look at them and say, 'We do not know whether they are suffering from a drug induced psychosis, whether they are drunk or whether they have long-term medical problems.' They may then say, 'Should we take them to the mental health unit?' The mental health unit is going to send them back and say, 'These people need to be assessed overnight to see whether they just need to be dried out or whether there are longer term issues.'

I share your concern. Up home we had one young man who ended up taking his own life. He had been running around the streets. Our prisons are full of people who are there largely because they are suffering from mental illness. The outcome of that becomes antisocial behaviour, then they get locked up and the cycle goes over and over again. I am particularly interested in how you think the police should respond to a person who is suffering from a mental disability but may not look like they are?

ACTING CHAIR: Before you answer that, Mr Collyer, I have to excuse myself for a moment. I will ask the deputy chair, John-Paul Langbroek from Surfers Paradise, to take over the chairing of the session for a few minutes.

Mr Collyer: I think it is difficult enough for medical professionals with years of training to know whether or not a person has schizophrenia or manic depression or bipolar disorder, or an intellectual disability for that matter. It is very difficult for a clinician to determine those things. I would say it is probably virtually impossible for a police officer in a difficult situation to make that sort of determination. I guess what we are saying is that it is a precautionary recommendation. We are saying that the pat-down in particular has the potential to escalate conflict, and that is what we do not want. We do not want an escalation of conflict. We want a de-escalation of conflict by talking to the person calmly, explaining what is happening and following some of these recommendations that were made in the report by the Office of the Public Advocate.

Mr FOLEY: For instance, if someone had a jacket on and you asked them to open up their jacket to see if there are any concealed items or something like that, that alone can open up some other difficulties as well. Are there any specific suggestions that you could give? What is an alternative to this? The police come across a situation where they have absolutely no idea who or what they are dealing with; what can they do?

Mr Collyer: I think just the things that I have been saying in terms of talking to the person respectfully, addressing people by their correct title, talking offenders—if they are offenders indeed—into the police vehicle rather than physically restraining them, speaking in a calm and respectful voice; doing all the things that, I guess, are common sense in a potentially violent situation.

Mrs ATTWOOD: I think what you are trying to point out to us is that people with mental illness who are on the streets are at risk of violence being escalated because of their condition if police use their pat-down powers in that situation. That is what you are trying to get across.

Mr Collyer: Yes, exactly—the potential to light the fuse, I suppose.

DEPUTY CHAIR: Mr Collyer, the Coroner has made a number of reports into deaths caused by police shootings. There was a significant case at the Gold Coast in about 2005. When Queensland Advocacy has spoken to the police about some of these matters that you have referred to in your submission, what response have you had from the police about Advocacy's suggestions about how they should be dealing with these matters?

Mr Collyer: I am not aware that we have spoken to the police about those particular issues.

DEPUTY CHAIR: You are hoping that they see this as part of their reading of the submissions, as we have read your submission, and that they may well respond to this committee in response to some of the things that you have put to us?

Mr Collyer: Yes.

DEPUTY CHAIR: Thank you. Are there any other questions? Thank you, Mr Collyer, for coming here today. We appreciate your attendance at the committee. We will certainly consider your submission in our deliberations.

Mr Collyer: Thank you very much for having me.

DEPUTY CHAIR: We are two submitters behind. We are running a little bit late so we will forgo afternoon tea. I am sure members of the committee can do without that, unless the Acting Chair comes back and rules otherwise.

MCVEIGH, Ms Aimee, Principal Solicitor, Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service

WALL, Ms Colleen, Executive Officer, Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service

DEPUTY CHAIR: Welcome. Would you like to identify yourselves for the benefit of Hansard and then we invite you to speak to your submission.

Ms McVeigh: My name is Aimee McVeigh. I am the principal solicitor of the Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service. Ms Colleen Wall is the Executive Officer of ATSIWLAS. She is also appearing with me today. As a Dauwa-Kabi woman, Ms Wall will answer any questions that the committee may have that are more appropriately responded to by an Aboriginal or Torres Strait Islander woman.

The ATSIWLAS mission statement includes a commitment to empowering Aboriginal and Torres Strait Islander women so that they are competent in asserting their human rights. An element of this commitment is to ensure that human rights of Aboriginal and Torres Strait Islander people are adequately protected. Our submission is that both the current purpose of the bill and the Legislative Standards Act require the committee to scrutinise the current bill according to Queensland's obligations to comply with Australia's international human rights obligations. In our written submission we have outlined the proposed parts of the bill that unjustifiably interfere with people's human rights. These relate to pat-down searches of both adults and young people, the making of DNA sample orders and responsibilities in relation to questioning Aboriginal and Torres Strait Islander people. This afternoon I wish to make a number of additional comments in relation to these points.

Proposed sections 52A and 53C of the bill widen police powers to carry out pat-down searches. Section 53C of the bill allows police officers to stop, detain and conduct pat-down searches of minors where the police suspect that the minor unlawfully possesses alcohol. Article 3 of the Convention on the Rights of the Child provides that in all actions concerning children, the best interests of the child should be a primary consideration. The primacy of the best interests of the child principle will depend on how much the action impacts children. In relation to proposed pat-down searches of children, the best interests of the child should be the paramount consideration. It is unlikely that stopping, detaining and searching a child because a police officer suspects them of being in possession of alcohol will be in the child's best interests. Stopping, detaining and searching children also constitutes an arbitrary interference with his or her privacy. This right is contained in article 16 of the convention.

The bill's explanatory notes justify this proposed section as a preventive measure that is likely to decrease the number of intoxicated minors who are taken into police custody. We have not seen anything to suggest that the introduction of pat-down powers will deter young people from drinking. The bill's explanatory notes draw on the findings of the Law, Justice and Safety Committee's inquiry into alcohol related violence. Our submission is that proposed section 53C of the bill is not a recommendation of the report and is not consistent with the recommendations of the report. The report does make a number of recommendations in relation to the education of young people around the use of alcohol. We submit that these are preventive measures.

Section 52A of the bill introduces powers to conduct pat-down searches when a person is detained for breaches of the peace and other related offences. This section engages the right to privacy as contained in article 17 of the International Covenant on Civil and Political Rights. Our submission is that public order offences can be minor and that at times the danger imposed to the police when people are committing these offences can be limited. Accordingly, it is our submission that this section cannot be justified.

The bill also introduces new provisions for taking DNA samples from children to investigate sexual offences. Our submission is that, to be consistent with international human rights principles, the child's best interests should not be balanced against the public interest. Section 488G(1) should be amended so that a Childrens Court magistrate may only make a DNA sample order in relation to a child if he or she is satisfied that making that order is in the child's best interests. When determining the child's best interests, the magistrate should have regard to the child's views and wishes.

The final comments that are made in our written submission relate to police responsibilities when questioning Aboriginal and Torres Strait Islander people. We understand that this section makes minor amendments to the current act. However, we see this as an opportunity to improve the manner in which police engage with Aboriginal and Torres Strait Islander people and we ask that the committee give consideration to our written submissions that relate to proposed section 420A. Thank you for the opportunity to give submissions in relation to the bill.

ACTING CHAIR: Do honourable members have any questions?

Mr BLEIJIE: I have a question. Thank you, Ms McVeigh and Ms Wall, for coming in. I turn to the United Nations Convention on the Rights of the Child, which you spoke about in terms of this pat-down for juveniles. This morning we had discussions with the assistant commissioner for police. I asked about this particular issue. On the Sunshine Coast we had an issue where a group of kids aged 12 to 14 years were

in a park drinking cask wine. I am not distinguishing between Indigenous or non-Indigenous, because it was everyone. There were about 14 people aged 12 to 14. Is it not in the best interests of the child to go into that environment, get the grog and tip it out? I cannot understand how it can be in the best interests of the child not to have the power to do that. The police are saying that they will use this process to go in and if there is alcohol present they will take it out of that environment. Isn't that in the best interests of the child—to get it out of that environment?

Ms McVeigh: I am not sure that that is exactly what the bill says. All the police need to be satisfied of is that they have a reasonable suspicion that the child possesses alcohol or is likely to commit an offence in relation to the Liquor Act. We are not satisfied that the police would only use those powers in those extreme circumstances, such as you have just described, where there is a huge number of children in a park drinking cask wine. If it were the case that they were drinking and the alcohol was visible, there would be no need for a pat-down search because the alcohol would be visible. They would be able to ask the children—

Mr BLEIJIE: There are situations where you have backpacks and there is more alcohol. They have to take it out of something to pour it into a cup. Even if you had a situation where there were two people in a park, the police have also said to us this morning that their best practice or their operation manual would dictate to them that if it is a young girl they would have a female officer conduct the pat-down. It would be a very rare and exceptional circumstance where you would have a male officer patting down a young female juvenile. I guess this committee has to determine this, but the flip side of the best interests of the child is to get the alcohol out of the situation. As a committee and as a parliament, we can legislate to allow that to happen. I guess that is where this clearly is coming from.

Ms McVeigh: I understand that and I accept that it would be in the best interests of the child to try to come up with measures to stop young people from abusing alcohol. However, I am not satisfied that the introduction of a pat-down power would necessarily achieve that aim. In applying a human rights framework, you need to be satisfied that it is the least intrusive way of achieving the aim.

Mr BLEIJIE: What is the issue for the child?

Ms McVeigh: It is unjustifiable interference with their right to privacy.

Mrs ATTWOOD: Ms McVeigh, in your submission you have stated that you have no evidence that the power will reduce the number of young people who drink alcohol. What do you base that on?

Ms McVeigh: I suppose that comment is based on our reading of the report that is also referred to in the explanatory notes—the Law, Justice and Safety Committee's inquiry into alcohol related violence. On my reading of that report, it does not actually say that the introduction of that pat-down power will deter young people from drinking or engaging in that type of behaviour.

Mrs ATTWOOD: I guess the reason for the power is partly to deter them. However, the other part of the power is so that they can remove the alcohol from the environment. Consequently, it would be a safer environment for those children once the alcohol is removed from that situation. That is my clarification of the reason for the power.

Ms McVeigh: I understand that. It is just that we are not satisfied that the introduction of a pat-down power is required to achieve that aim.

Mr FOLEY: Ms Wall, you might like to comment on this. What would you see as a more appropriate way of doing that? Say you have a situation where you have a bunch of kids, be they Indigenous or not, who are kicking up a whole lot of noise or whatever and the police get a complaint from the public. What would you believe is a sensitive way of dealing with it, as opposed to the pat-down approach?

Ms Wall: That is a difficult one to answer. Say you are putting the police into a situation where there is a group of, say, Aboriginal children or young people. In the situation with Aboriginal and Torres Strait Islander people—and more so Aboriginal people—in relation to contact with the police, it is more likely than not there would be an aggressive reaction. I think the pat-down powers would actually escalate that. I work mainly in a cultural framework as I manage the organisation. For me, because of the fact that 50 per cent of our population will be under 15, this is a major area for us in the near future. For me, the issue around police being given a power that actually escalates that situation is a worry.

Given that the reaction to police by Aboriginal people is a historical process and they have always been on the back foot, I suppose, a lot of the younger people these days are aggressive in the first place whereas the older people will actually back off. So I think for me it is a situation that will actually escalate a lot of the issues. I think that would generally be the case for all young people at this stage. I am not sure that that helps.

Mr FOLEY: It has been somewhat of a theme today, hasn't it? There have been a few different speakers saying that.

Mr LANGBROEK: Continuing this theme, can I ask about a comment in your submission about proposed section 420A, which is going to take the responsibilities code from a schedule into the act, where you say that the word 'Aborigine' should not be used. It says here—

'Aborigine' is considered by Aboriginal people to be a derogatory and offensive term.

What word would you like there to be instead?

Ms Wall: From my understanding, I have worked in government for a fair while and worked in a policy section and one of the situations we had probably 20 years ago was that there was a move by government to actually use the word 'Aboriginal' instead of 'Aborigine' within that framework because the connotation of 'Aborigine' was offensive to a lot of the Aboriginal community.

Mr LANGBROEK: So 'Aboriginal' is acceptable. I see.

Ms Wall: Yes. I worked a lot on policy with the Premier's department through that process and one of the things we talked about was the separation of having Aboriginals and Torres Strait Islanders. Aboriginal people and Torres Strait Islanders was one of the processes used in the wording but that to use 'Aborigine' was actually an offensive process because of the past use of that word.

Mrs ATTWOOD: The context in which it has been used.

Ms Wall: Yes.

Mr FOLEY: I have a lot of Aboriginal people at home that I am very good friends with and they do not like being called Indigenous. They like being called Aboriginal as a matter of pride.

Ms Wall: Yes. As an organisation, we have issues around people ringing our organisation. Because we are an Aboriginal and Torres Strait Islander organisation, we have a lot of Indigenous people who are not Indigenous to Australia ringing our organisation saying, 'You get Indigenous funding, so why can't you assist us as well?' I know there have been some issues around the elders groups where the elders groups are concerned now that because organisations are called Indigenous they are expected to pick up Indigenous people from other countries in that service and not just particularly Aboriginal and Torres Strait Islander people.

ACTING CHAIR: There being no further questions, Ms McVeigh and Ms Wall, thank you very much for contributing your thoughts to us.

ROGERS, Mr Dan, Solicitor, Caxton Legal Centre

ACTING CHAIR: Good afternoon to Dan Rogers from the Caxton Legal Centre. Thank you very much for coming to speak to us. Would you care to make some comments to your submission and then we may ask you some questions?

Mr Rogers: Just briefly to put my submission and further comments into context, I understand that Caxton produced a short submission and I am keen to elaborate on some of the points raised in that.

ACTING CHAIR: A short submission and a long book.

Mr Rogers: It is a long book and I had significant involvement in writing that long book. It was a painful process, but I do commend it to you.

ACTING CHAIR: I use it all the time actually in my electorate office. I love your work. Nevertheless, I am going to have to excuse myself about five minutes into your presentation, because I am supposed to speak to the media on behalf of the committee at 3.30 pm and we are not going to have an afternoon tea-break. We are going to work through. Because we have so many questions to ask of the witnesses, it is taking longer than we anticipated. So I am going to have to excuse myself. At that point, John-Paul will take over. Right now the floor is yours. So if you would care to begin and if you would not mind introducing yourself for the *Hansard* record.

Mr Rogers: I am the secretary of the Caxton community legal centre. I am a full-time legal practitioner in criminal defence and teach criminal law at the University of Queensland. Thank you for the opportunity to make further submissions today. The work of this committee is most important, particularly when we do not have an upper house, and Caxton appreciates the opportunity to contribute. I regret to inform you that the theme will remain the same from the last two speakers, but that does not detract from the importance of the issues that have been raised by the previous speakers. I will focus just briefly on the two key changes: those being the pat-down searches of minors and the pat-down searches for breaches of the peace. In Caxton's view there is no demonstrable justification for the extension of these powers in circumstances where police already have very broad powers to deal with these types of situations.

The minister in introducing the bill stated that the reason for the amendment to pat-down searches was the prevalence of under-age drinking, a concern for the associated offending behaviour and a strain on police resources. Caxton accepts that under-age alcohol consumption is a widespread problem, and we support measures to curb this behaviour and in particular education and awareness campaigns have been raised as a suitable way to deal with this problem. I note that the report in respect of alcohol fuelled violence, in which a number of members of this committee were involved, spoke specifically about that. In our view that is a more effective way to deal with this issue than giving police more powers.

The problem with this reform is that there is no evidence based research to suggest that allowing police to search children will reduce under-age drinking and associated problems. Good policy and good legislation is based on evidence based research and in the absence of that we should not give police more powers, particularly in relation to children. Our concern is that the police are seeking this power for convenience sake and that they are doing it without any real regard for children's civil liberties, their privacy, their personal integrity, and they are also forgetting the serious consequences that will flow from the negative interactions that will occur between children and police on a daily basis.

The definition of a pat-down search firstly is most concerning. It is described as quickly running the hands over a person's outer garments. In my experience daily, taking accounts from persons charged with criminal offences or working at a community legal centre, this will not in any proper way describe the sort of physical invasion that will occur if police are allowed to pat down and search children. The reality is that children are extremely vulnerable and often very intimidated by police, and this is often conveyed to me by children defendant clients. There will be no real accountability or oversight in the way in which police conduct the search. The requirement for reasonable suspicion is not a safeguard. It will be so easy for police to misinterpret either youthful excitement or exuberance as an indication of some level of intoxication to justify their decision to take hold of a child and pat them down. We are quite concerned that the actual search will include a significant interference with their personal integrity and a public humiliation.

We are also concerned about the broader consequences of this power, such as the deterioration in relationships between police and young persons. The criminal law students who I teach at UQ are aged 18 and 19 and in class discussions they openly talk about the perceptions that youth have of police at this point in time. It is with regret that I hear a common theme of distrust and dislike of police and a real concern about the visible police violence that is commonly seen in the Valley, in the city and in other entertainment districts. I see that in my work as a criminal defence solicitor all the time, and it is concerning to see that this negative perception runs through young persons in our community. This power will only worsen those negative perceptions and further isolate those two groups, where instead they should be working together to reduce this problem of under-age alcohol consumption.

With increased powers and interaction, the flow-on effect will be more children coming before the criminal justice system, and this is a highly undesirable. The best example of this is from public nuisance offences and move-on directions. There were many submissions put to the Crime and Misconduct Commission review about the effect of move-on directions becoming state-wide, and the courts and magistrates I have spoken to are already demonstrating and seeing an increasing number of people coming before the court. The issue with pat-down searches of minors for alcohol is not so much the ticket

that they might get if they have a sixpack in their bag; the issue is the negative interaction is likely to lead to more serious consequences. Young persons are generally anxious around police. They are not aware that police have certain powers and they are often quite intimidated.

We are concerned that if police exercise these powers on young persons then it is inevitable they will be charged with obstructing police or public nuisance or a minor assault. The indirect consequence is that a large number of children will come before the Childrens Court. Although magistrates take great care in not recording convictions, convictions are recorded for those sorts of matters, and a juvenile history, particularly for a 17-year-old who will appear as an adult, can have crushing effects on a person's future prospects, particularly where government employers and private employers require mandatory criminal history checks on a more regular basis. There will be that negative consequence as a result of this search and it will put many youth in a disadvantageous position when they advance through life. We are concerned also that by seeing more people in court there will be a real problem in a greater number of youth being exposed to the criminal justice system, and this can desensitise them to authorities. It can have a labelling effect on them. It can certainly see them associate outside of court with more serious troublemakers and there is that real potential for convictions to be recorded and that will have a long-term effect.

The criteria for conducting a pat-down search in respect of breaches of the peace are just so vague that it will be used for very minor public nuisance type situations where someone is perhaps intoxicated to a degree and yahooing and it is deemed that they are breaching the peace and the police will seize that person and conduct a pat-down search. I urge the committee to remember that police have very wide powers at the moment, including once a person is arrested they can search them. So if a person is causing a public nuisance, they can be arrested and they can be searched. If a person contravenes a move-on direction, they can be arrested and they can be searched. If the police believe that the person has a dangerous item, a drug or a weapon on them, then the police, using their own subjective test of reasonable suspicion, can search the person. Those powers are broad and, in our view, they are sufficient to deal with this problem. The consequences of broadening these powers are unjustified, and there is no evidence to suggest that they will be helpful.

DEPUTY CHAIR: Thank you, Mr Rogers. Questions, members? Member for Kawana?

Mr BLEIJIE: Just continuing the theme I was on earlier about this juvenile pat-down, which I have been on about all day, is it more the fact that these days, as opposed to when you were growing up and I was growing up—

DEPUTY CHAIR: Which were two different times!

Mr BLEIJIE:—and those who are more senior in the room today—there is just a lack of respect for police that used to be there? People used to look up to the blue uniform and had an enormous amount of respect. People got a boot up the backside if they mucked around, particularly in regional Australia. Now we talk about all this fear: young people fear police. Isn't the simple message—and I guess that is where we are going with education—that you have nothing to fear if you are a 12-year-old not carrying alcohol in a park; you have got nothing to fear if you are a 16-year-old and you are not carrying alcohol? I think we have just gone down this track of kids fearing police rather than respecting the uniform and position.

I was on that alcohol inquiry that we did. We went to all the alcohol related nightclub districts around Queensland from midnight until five in the morning. The member for Murrumba and I were the only ones on that committee at that stage. What we saw was when things happen with alcohol related violence with young people, the community—us—detract ourselves from that environment but we send the police in to fix the mess. I just seem to have issues with this whole fear factor now of police, that young people are going to be more fearful of police and it is going to create this problem with police and young people whereas years ago it used to be a respect issue and if you had nothing to hide then you had nothing to fear.

Mr Rogers: I accept that. The police have a very difficult job. I do not think anyone would disagree with that. Those situations where police have to engage in alcohol fuelled violence situations are inherently dangerous, and the physical consequence to police safety is an important issue. Unfortunately, the number of police assaults has increased so significantly recently that there have been calls for mandatory jail sentences for any police assault.

In respect of your question about this issue of fear, the clients that I speak to often report very aggressive interactions by police with them when they are approached. If I can give you an example, at present police do not have the power to search a bag for alcohol. Clients will often report that police will approach them in an aggressive way and say to them, 'You've got no problem with me searching your bag, do you? Nothing to hide? That's okay if I search your bag, isn't it?' A 14-year-old kid is hardly going to say in that situation that he is not happy with his bag being searched or his physical person being searched. Youth generally, I think, are more fearful than they are lacking respect for police. If they are fearful of police, they are clearly aware that police have broad powers already and that police can take certain actions such as charging them. The issue of youth justice cautioning is not something that police always invoke. Police will, in my experience, quite readily charge a youth with a criminal offence and see them go to court.

I am concerned that, by broadening these powers, the already existing fear that is displayed to me by clients is only going to increase and will worsen the relationship between youth and police. As for the suggestion that currently youth do not respect police, it is just not my experience that they have that disrespect. They are actually quite fearful of them in most of the cases that I deal with.

Mr BLEIJIE: I make the point that I think fear is different to respect.

Mr Rogers: I accept that. Perhaps they do not respect police because of the negative interactions they experience. Those negative interactions will only increase if this provision is passed. I think it is more important to develop better relationships between police and youth. Certainly allowing police to grab hold of them and search them is not going to achieve that end.

Mrs ATTWOOD: Just following up on the last question in relation to how young people view police these days, what do you think has occurred over the last generation in relation to changing young people's attitudes towards police?

Mr Rogers: My principal, Mr O'Gorman, made me read the Fitzgerald report on my first day as his articled clerk. It was quite concerning to read of the sort of police mispractice that was occurring in the eighties. I am of the strong view that that sort of systemic problem no longer faces the Queensland Police Service. But as a general comment in respect of police interactions with younger persons, the key issues that I see in practice are excessive use of force in circumstances where the person is being charged with a minor offence. For 90 per cent or more of persons charged with obstruct police, public nuisance or a PPRA assault, they do not have the resources or the capacity to defend those charges and have the court see the sort of mistreatment that they have experienced by police during an arrest or an interaction. The consequence of that is that there is no real oversight or accountability in terms of those situations which commonly occur between police and young persons when they are charged with those minor offences. If this provision were passed and the pat-down search escalated to those minor offences where people are brought before the courts, it is unfortunately the reality that Legal Aid would not be able to fund the representation of those persons for a minor matter such as obstruct police and police will continue to realise that they do not have any real accountability because the matters are not progressing through the courts because they are seemingly not significant enough for Legal Aid funding or people cannot afford private representation. Working in a private firm, I do see examples where supportive parents can fund representation for those minor matters out of principle, and the experience we have at summary trials is very positive in respect of disclosing some of these problems. But it is a rare breed of client or person that appears before the court.

DEPUTY CHAIR: You are not suggesting that by this provision potentially being passed our Police Service will head back towards the days of pre Fitzgerald?

Mr Rogers: I am not going that far. In terms of the examples I give of negative police interactions, I do not suggest that they are a majority. From dealing with police on a daily basis and going to police stations and going to raids, I think that police do an excellent job. But I believe that by this provision being passed there will be a lot more negative interactions between police and children and that those negative interactions will see more people come to court and it will create a situation where physical confrontation is facilitated by a power allowing police to physically pat down children. I am concerned that the types of examples that the member for Kawana gave are at this end of the spectrum and that police may decide to set up outside school dances and search students coming and going because they are in a public place. That sort of invasion would be really disappointing but an unintended and perhaps not foreseen consequence of this power. There is a really broad power that lacks any evidence to suggest that it will directly deal with the issue of under-age drinking.

Mr BLEIJIE: I was not going to ask, but you have spurred the question on. Let us use the under-age school dance as an example. If there were going to be one or two children who were going to bring alcohol into a dance in a jacket or a bag and then give it to other kids and you said to the parents of those other children, 'Would you have an issue with children's bags being searched as they leave a dance?', I think you would be hard pressed to find a parent that would not say, 'Well, it is actually a protection mechanism for my child. I haven't given them alcohol but there is a chance that someone else is going to.' Isn't that a security measure and you then get rid of the alcohol out of the situation?

Mr Rogers: Certainly. For police to use this power they have to have a reasonable suspicion that a person has alcohol on their person. If we take the school dance example, you might have 50 to 100 students in a public area lined up on the street waiting to go into the school dance or going from the school dance. There are a large amount of people who will be excited, possibly screaming and yelling, and police will be given the power to search any one of those persons. My view is that the parents of those children would be appalled to think that police have the power to, on such a low threshold, pat down those children as opposed to searching their bag. The real issue is the pat-down search. So, respectfully, I disagree that parents would be fine with police exercising that power on any number of students out of a large group because of concern that there might be a few troublemakers consuming some alcohol. Coming back to the age point earlier, I do not have children yet but I would not like my children being patted down by police as one of a number of other students outside a school dance.

Mr BLEIJIE: I have three children and I would rather them not have alcohol at a school disco, and if we can prevent that then I guess that is where I am coming from. But I take your view.

DEPUTY CHAIR: Thank you, Mr Rogers, for coming. Thank you for your testimony today.

Mr Rogers: You're welcome. Thank you.

RUSSO, Mr Peter, Queensland committee member, Australian Lawyers Alliance

DEPUTY CHAIR: Welcome, Mr Russo. You have made a submission. For committee members, it is submission No. 16. If you would like to state your name for Hansard and then speak to your submission.

Mr Russo: My name is Peter Russo. I am a solicitor. I am a member of the Australian Lawyers Alliance. I am on their Queensland committee. My function with the committee is to assist the organisation in relation to issues involving practitioners who practise in the area of criminal law. That is the hat I am wearing today. After hearing the last submission I feel a little bit duplicitous in everything I am going to be saying, but perhaps I should just initially start off by indicating to the committee that the mission statement for the Australian Lawyers Alliance is one where they are concerned, obviously, about the rights of individuals and they have asked me to come along and speak about those matters.

I will try not to repeat what you have heard time and time again about the pat-down searches. I think that a couple of issues should come to mind. The first is the fact that we are speaking about juveniles and about a section of the community who do not have the same resources. Have they reached that level of maturity to be able to deal with a confrontation with a police officer?

My understanding of the way the police powers work is that there is sufficient power within the act already for the police to be able to prevent minors from consuming alcohol in public places. Therefore, to take it to the next level where they need to pat down juveniles in public places is excessive. I have been trying to think of a comparison, but the only one I could come up with is of a sledgehammer trying to crack a walnut. It is unnecessary and it is uncalled for.

I am not trying to sit here and tell the committee that youth of today, youth of the past or youth of any time do not experiment with alcohol or whatever else is out there. Unfortunately, it happens. It happens in families from all socioeconomic areas. It is not limited to one part of the community; it covers many. My main concern is that it is something which could be abused. If it can be abused it should not be enacted. I cannot take it much further. Our submission covers it. It is the issue of the abuse of powers.

In doing what I do every day, I believe I have gained a stilted version of life. In defending people who have committed offences, I find it is hard not to be contaminated by what I see and what I hear. I know there are two sides to every story. I often believe that the lawyer is always the last one to find out the truth of the matter. Putting that to one side, at the end of day when legislation is being enacted, if it is open to abuse and the remedy is already available for the police to conduct searches, I do not understand why it needs to be taken to the next level, which has been referred to as the pat-down search. It simply would be open to abuse and, as such, the Australian Lawyers Alliance is concerned that such a power could be enacted. I cannot take it much further after listening to other speakers.

ACTING CHAIR: Honourable members, any questions?

Mrs ATTWOOD: That is a pretty consistent theme that we have been hearing from the last submissions. I am wondering whether you have any alternatives so that police can actually retrieve the alcohol from a potentially volatile situation—in relation to getting that alcohol off that group of people?

Mr Russo: My understanding is that, if there is an incident that the police are involved in, they can seize the alcohol. For example, if they go into a park and youth are visibly consuming alcohol, they have reason.

Mrs ATTWOOD: Hidden alcohol?

Mr Russo: I am having difficulty with this concept of hidden alcohol.

Mr LANGBROEK: That is exactly what I asked the police at the start of all this, partly because some of the justification for this is that I have schoolies in my electorate and the police need more than just the ability to confiscate alcohol from minors or anyone possessing it in a public place. Obviously, they believe that people are secreting alcohol on their person. I am giving you that as a background. We heard that earlier this morning.

Mr Russo: Is not the real issue that they are juveniles? If they are going about their business and there is no indication that they are doing anything wrong, the abuse would come about when the police can say that they reasonably suspect. If you want to use the schoolies example, you could reasonably expect that, unfortunately, there would be under-age children with alcohol at schoolies. You would be naive to suggest otherwise. I think the problem comes when that person is then intercepted and they pat that person down. The abuse is open because if it is hidden, how do you form the reasonable suspicion?

Mrs ATTWOOD: Behaviour, I guess.

Mr Russo: Behaviour of youth in situations. I am hesitant to use this example—and I will not say where I was to be fair to the parties. I happened to be at a show—I will call it a show. I went there because I was asked to escort a person there, to basically be the driver. Whilst I was at this show I noticed that a large number of youth had congregated at this particular function. I thought to myself that it had the potential for trouble. That is my view that I formed. Rather than leave I hung around. Obviously, when youth gather in large numbers being able to discern what is actually going on is very complex. I do not know, for example, if the police needed a presence there or not—and there were police present just going about their normal duties; they were not there for any sinister reason. I do not know how they would have been able to look at these youth—and I as a member of the public looking at this was thinking, 'This has

potential'—and then conduct a search. At that particular function I noticed that, as the people were entering, their bags were being searched by security. I do not understand why the power is needed when there are other avenues available to remedy this problem. I do not think we will ever get to the point where we will stop youth from drinking—pat-down search or not.

ACTING CHAIR: Mr Russo, your proposition that we do not need this power entails that the police have the powers already to enforce the law. Can I ask you a hypothetical, please? Say a police officer sees a young person with an apparent age of 16 walking out of a beer garden with sagging pockets and the police officer suspects, on reasonable grounds, that his pockets are full of alcoholic beverages. What powers under the Police Powers and Responsibilities Act is the police officer now supposed to refer to in order to enforce the law that young people are not allowed to buy alcohol and that shop assistants are not allowed to sell it to them?

Mr Russo: Hypotheticals are always difficult. My view would be that he would have the power, first of all, to speak to the youth without doing the pat-down. He could, for example, ask the youth his name and he could ask him how old he was. From that, if he formed the view that he had purchased alcohol, he could then take it to the next level. I do not understand why he would have to pat him down to search for the alcohol. That is where I find the difficulty.

Mr LANGBROEK: But he would not because he is in a public place and he is a minor. So he should not have alcohol, anyway. Is it not practical policing that would have him say to the young fellow with the sagging pockets, who would not normally know that the police could not say, 'Show us what is in your pockets'? Is it not an element of practical policing that we like to think that under the PPRA police are not going to victimise people at school dances or just anyone walking down the street with a sixpack if they are obviously not consuming it or things like that?

Mr Russo: My view is that the police officer would be able to take it to the next level, which would be asking the youth to accompany him down to the police station where he could be properly supervised if there was a necessity for a search, not there on the side of the road.

ACTING CHAIR: Under the amendments that we are considering today the police officer would have to say, 'And you understand that you do not have to come with me'—

Mr Russo: And then they show him his rights.

ACTING CHAIR:—and so the young person says no. So where does the police officer go then?

Mr Russo: He has come off licensed premises, has he not?

ACTING CHAIR: Yes.

Mr Russo: So he is underage on licensed premises. That is an offence, is it not?

ACTING CHAIR: So he should charge him, do you think?

Mr Russo: No, he should not charge him, but I also do not think he should pat him down. My view is that if the youth says that he does not want to go with him then he should get the youth's name. It is a complex issue. I am not coming up with the right answer here at the minute; I know that.

ACTING CHAIR: It is okay. We have a habit of asking difficult questions because we have to make difficult decisions. At the end of the day this committee has to recommend to the minister and to the parliament generally, 'Yes, endorse this power,' or, 'No, do not endorse this power.' There is a problem that needs to be addressed one way or the other. The committee will say, 'Do not endorse this new power,' if any witness here can explain to us how we can get by without it and still enforce the law.

Mr Russo: You have been asking all day.

ACTING CHAIR: Sorry?

Mr FOLEY: We have been asking that all day of different people: what is the alternative?

ACTING CHAIR: Yes.

Mr Russo: Sorry to interrupt.

ACTING CHAIR: No, please go ahead.

Mr Russo: The difficulty as a defence lawyer is to recommend that a police officer should arrest a youth. I find it very difficult to say that. The point is that the police could take further action against the youth that would not involve the charging of the youth. For example, the fact that a youth is coming off licensed premises can trigger a whole range of welfare issues that the police can act on. For example, they could be concerned about simple supervision of this youth. Why is a 16-year-old on licensed premises? Does the police officer not then have responsibility towards the youth to ensure his safety? Is this person being properly cared for? Does he have responsible parents, or is he a truant? The police must deal with those issues every day when they have to ask people to come to the police station where they do not need to be charged because they are concerned or they may be simply living on the street or not have proper parental supervision. The clincher here is juveniles. Proceed with caution because they are juveniles.

ACTING CHAIR: I am sure every member of the committee takes that on board.

Mr Russo: The protection of the juveniles should be paramount in this whole discussion, and that to me was what was driving the Australian Lawyers Alliance to make the submission it did.

ACTING CHAIR: As members of parliament, we meet a whole cross-section of society, including the cross-section that you come into contact with most often. I expect all of my colleagues know 16-year-old persons who, if they were challenged in the circumstances you described by a police officer, would say, 'You can't make me come to the station,' and walk away. So what we are looking for is an alternative strategy. Either we are going to have to recommend to the parliament, 'Yes, go with the amendment,' or we are going to have to have some plausible alternative that is available to ensure that the law is enforced with respect to it. So if you or any of your colleagues come up with the answer to that, please just give us a wave and come back to the table.

Mr Russo: But if I could just deal with the issue in relation to why there needs to be an alternative, why does there need to be an alternative? Why do the police need the pat-down power? Logically, to me, it does not make any sense. Why do you need pat-down powers to find alcohol, because that is what this piece of legislation is saying? That is the way I read it, and I stand to be corrected. I am suspicious of the guise that it is put in the explanatory notes in the sense that it says that it is a recommendation because we do not want our youth destroying their lives with alcohol. It is to prevent youth from drinking. Tell me if I am wrong, but the way I read this section is that what the police are trying to do is prevent youth from drinking by having pat-down powers.

ACTING CHAIR: Yes. I am not able to speak on behalf of the author of the legislation, but I think it is about schoolies, is it not? He thinks it is about schoolies. I think it is about schoolies.

Mr LANGBROEK: The minister basically put that out there when he first released the bill, saying that it is another shot in the locker for the armourmentarium of the police. I asked them about that today and they confirmed that as being something they would see as being necessary.

Mr Russo: I do not have anything further.

ACTING CHAIR: Thank you very much, Mr Russo. We really appreciate your taking the time to advise us and the spirit in which you have done so. We are engaged in a genuine inquiry and you have helped us with it. Thank you.

Mr Russo: Thank you.

STEPHENS, Mr Michael, Private capacity

ACTING CHAIR: Mr Stephens, the members of the parliamentary committee are Julie Attwood, the member for Mount Ommaney; John-Paul Langbroek, the member for Surfers Paradise; Dean Wells, the member for Murrumba; Jarrod Bleijie, the member for Kawana; and the member for Maryborough, Chris Foley, when he comes back. Would you please tell us what you would like us to know?

Mr Stephens: I was asked to come and speak to you pretty much because of a letter that I wrote to Ms Grace Grace. I represent a number of property holders and owners in the CBD who essentially are looking for an extension of move-on powers to include the Queen Street Mall district. This is not dissimilar to, as we understand it, what is happening at South Bank and also in Fortitude Valley. That was a letter of 19 May 2010 which I included in the submission.

ACTING CHAIR: We all have the 'Dear Grace' letter in front of us, but for the *Hansard* record could you explain to us what you would like to see occur?

Mr Stephens: Essentially it is a widening of the move-on powers to include the Queen Street Mall district.

ACTING CHAIR: So you want to expand the move-on powers into the Queen Street Mall?

Mr Stephens: That is correct, yes.

ACTING CHAIR: And you want to do that because—

Mr Stephens: The aberrant behaviour particularly of gangs of youths which have increased in the mall in the last number of years. It is quite extensive and is taking up quite a bit of property owners' attention, to say nothing of them visiting the public in the area, and also police and Brisbane City Council's time in dealing with people who are constantly choosing to hang out and cause disruptions in the Queen Street Mall precinct.

Mr BLEIJIE: In terms of the pat-down that we have been talking about, Mr Stephens, with regard to juveniles but also general pat-down provisions, what do you think about that in terms of the context of the move-on powers?

Mr Stephens: I have only been sitting here—I have not been here all day—for the last 20 minutes.

Mr BLEIJIE: There is an amendment which gives a new power for police officers to pat down juveniles for alcohol if they have a reasonable suspicion they have alcohol. Have you had any involvement with that at all?

Mr Stephens: We have not seen too much alcohol abuse in the area with the youth. We have primarily seen abuse of methamphetamines and people being totally off their faces abusing the public and threatening people in shops for no good reason and then the police have had to come and arrest them. Whether a pat-down would reveal that or otherwise, I cannot really answer that.

ACTING CHAIR: What hours of the day do you see this behaviour?

Mr Stephens: Primarily they are there when the public are there and then it goes into late in the evenings, when it is at its worst. But in the last two weeks there seems to have been a distinct lack of people in the area. I am not sure whether that is relating to activities for this area, but primarily late in the afternoons leading into the early evening and then again late into the evenings, when we have people taking up residence in office buildings and retail buildings and creating a lot of damage.

Mr FOLEY: One of my major concerns, Mr Stephens, is the carriage of knives in public. A number of people who have addressed the committee today have talked about the inappropriateness, from a civil liberties point of view, of police having those pat-down powers and so forth. I have been particularly alarmed at the uplift of knife offences in Queensland and the number of young people going armed in the public. When I was a kid, if two blokes had a punch-up they would have a punch-up. But now if there is a whole gang of them and one person pulls a knife out, it quickly escalates into a potentially life-threatening situation. Have you seen much evidence of that in the Queen Street Mall?

Mr Stephens: Personally, no. But I have heard reports from security guards who respond to us directly where we have had some people dealing in drugs underneath buildings just off the mall in those areas, and in recent times we have had to have security guards escorted with a dog and they did report one guy with a knife down there. That is his report to me. I have not personally seen it myself.

Mr FOLEY: I meant anecdotally, because there has been quite a bit of media publicity over the last few years about violent incidents in the mall and so forth. Are there many more of those that go unreported, or generally do they get reported?

Mr Stephens: I cannot really attest to any knife incidents—

Mr FOLEY: No, I did not mean knife; I meant just in general—the bashings and the bad behaviour and so forth.

Mr Stephens: There is definitely an increase in aberrant behaviour and fights and people really getting outside of normal activities, and that happens in the mall where they seem to want to display themselves.

ACTING CHAIR: Mr Stephens, thank you very much for giving us the benefit of your thoughts. We really appreciate your coming in. Thank you. Our next witness is by teleconference. If there are any media here, they can have this story: we are in the ludicrous situation that we cannot call out because it is an STD call. We cannot call out from this phone, so they have to call us. Gail is calling them and they are going to call in now. While we wait to get our next witness on the phone, ladies and gentlemen, thank you all very much for coming. What we need now is somebody to entertain you, so the best entertainment I can give you in these circumstances is to tell you the history of this kind of parliamentary committee.

The way it all began was with a recommendation of another committee, and that other committee said, 'Why don't we have committees that can actually do something rather than committees that don't really do anything much apart from oversight what other people are doing?' That committee of the Queensland parliament recommended that before any legislation should get seriously debated in the parliament first it should go to a committee which would consider the proposals in the legislation, and that is what we are doing today. What we are doing in the process that you are taking part in is not a process that happens in any other state of Australia or yet in the Commonwealth of Australia parliament. It does occur in New Zealand, so this is pioneering stuff that we are involved in where the citizens actually get a meaningful right to actually contribute to the policy-making process. You will have sat back there and watched us asking occasionally brutal questions of the witnesses who have come before us, but you have probably got the impression that we are asking them in the genuine spirit of the inquiry because we do have the capacity to make recommendations to the executive arm of government. Can I stop filibustering yet? Have we got them on the line?

Mr LANGBROEK: We have yet to see, Mr Chairman, if they are going to take up any of our recommendations, though.

CRASE, Ms Jann, Multicultural Development Advocacy Worker, Centacare Cairns Migrant Settlement Services

ACTING CHAIR: Hello, Jann. This is Dean Wells. I am the acting chair of the committee. You are going to speak to us on behalf of Centacare Cairns Migrant Settlement Services.

Ms Crase: That is right.

ACTING CHAIR: You are addressing a parliamentary committee consisting of Julie Attwood from Mount Ommaney, Chris Foley from Maryborough, John-Paul Langbroek from Surfers Paradise, Jarrod Bleijie from Kawana and myself from Murrumba.

Ms Crase: Okay.

ACTING CHAIR: We have your submission before us. Would you like to speak to that submission and then maybe we will ask you some questions?

Ms Crase: Sure. If I can, that would be great. I would like to say thank you for the opportunity to speak with you all about our submission and the proposed amendments to the Police Powers and Responsibilities Act. I will probably refer to the act as the PPRA, just for brevity's sake. You all know who I am. I work for Centacare Migrant Services here in Cairns as a multicultural development advocacy worker. I would like to acknowledge the work of the entire Queensland Police Service in providing for the safety and security of all Queenslanders, particularly our cultural advisory unit and the Cairns cross-cultural unit and cross-cultural liaison officers and police liaison officers. They have a really hard task and we acknowledge the work that they do. In our submission that you have in front of you we focus on amendments to the PPRA around issues relating to the use of interpreters by the Queensland Police Service. We are aiming to substantiate the need for greater access to interpreters by people from a culturally and linguistically diverse background when engaging with the police. As such, we are recommending an amendment to the act to this effect, which is not in the current proposed bill. I will probably use the CALD acronym when referring to culturally and linguistically diverse individuals and communities, to save my tongue getting tied up all the time.

I have a couple of brief points. Currently, interpreters are only required under the PPRA when a person is a suspect in relation to his or her involvement in an indictable offence. Section 433 provides for an interpreter when someone is being questioned and in relation to the performance of certain forensic procedures under section 512. We have a range of documented case studies from clients who have had negative experiences with the Queensland Police Service due to issues around interpreter use and access in a range of circumstances that are beyond what is provided for in the act. They are around domestic and family violence, for example, but also when people are victims and witnesses of assaults and break and enters. Some of the key issues with the Queensland Police Service in this area include not engaging interpreters, not using accredited interpreters but relying on family or friends, a lack of understanding about the need for an interpreter in a range of different contexts, whether it is around domestic violence, for example, a lack of familiarity with the internal process for securing interpreters and a reluctance to engage interpreters, seemingly around perceptions relating to internal processes and around potential budget implications.

I would like to briefly mention a case study that I was personally involved in that highlights some of the issues that our clients are facing. A female client of ours was subjected to domestic violence by her husband. The attending officer did not use an interpreter to take her statement. Her brother-in-law was used to interpret in this case. A few days later, the day before the matter was due to go to court—she was seeking a domestic violence order—our client wished to review her statement with an interpreter to make sure it was accurate. A case worker from our organisation tried to prearrange an interpreter for this appointment at the police station. However, when the case worker and the client turned up to the police station there was no interpreter booked. It took nearly two hours of constant advocacy from myself and the case worker to push for an interpreter to be secured in order to review this statement. We had to get the authority of the district inspector before an interpreter could be arranged and over four officers were involved in the process, including the cross-cultural liaison officer, the duty sergeant, the police prosecutor for domestic violence and so on. It is a pretty cumbersome process. We constantly had to repeat the case for an interpreter to be provided under these circumstances. There was limited recognition that it was important or appropriate for our client to clarify her statement and be satisfied with its accuracy before proceeding to court.

It is a little bit unclear how the Queensland Police Service can demonstrate the delivery of its services equally to all Queenslanders, regardless of the language they speak, when the statutory right of an interpreter is available only under limited circumstances. Some of you may be aware of some of the impacts that failing to have an interpreter can have, particularly on individuals from a CALD background. This can cause them stress and anxiety, affecting their settlement. Many refugees and new arrivals have had a history of torture and trauma at the hands of authorities in their home countries and this affects their relationship with police in an ongoing fashion. In relation to the impact of not using an interpreter on police work, it can waste time and resources, lead to inaccuracies in evidence, possibly inappropriate investigations and imposition of charges, and increase the likelihood of a miscarriage of justice.

We propose that a new provision be inserted into the PPRA to broaden the circumstances under which an accredited interpreter must be secured. That will give clarity to police officers around when to use an interpreter. We believe that widening these circumstances for an interpreter would deliver a range of

beneficial outcomes for people from a CALD background. They will be able to access police services equally and improve their settlement outcomes and good relationships with the police. For the Queensland Police Service, this will provide equal and fair access to their services, improve their efficient and effective delivery and enable them to meet the legislative purposes of the PPRA. Section 5 sets out all the requirements for that. There is a range of strategic and policy goals in the QPS multicultural action plan, the language services policy and the strategic plan that would be better met. For the Queensland government as a whole it would mean meeting the legislative requirements under the PPRA and providing tangible implementation of policy commitments through the new multicultural policy, the Queensland language services policy and whole-of-government multicultural action plan. To ensure the provision of a fair and just police service that is accessible to all Queenslanders, regardless of the language they speak and their background, we are advocating for this expansion of the statutory right to an accredited interpreter and we urge the committee to consider this proposal. Thank you.

ACTING CHAIR: The right that you are seeking to have expanded, I was looking at it but I have lost it. What section is it in?

Ms Crase: It is section 433 in the act. In the amendment bill, you are proposing to amend that act in a small way, which is around how police officers should test the English proficiency of somebody in front of them. The bill is proposing section 432A, which is around how a police officer can test the capacity of a person in front of them around their English language proficiency in order to assess whether they need an interpreter or not. But again, that is not expanding the right. It is still focused on indictable offences and whether you are a relevant person, as the legislation refers to, which is someone who is a suspect in relation to the commission of an indictable offence. That was my understanding of the provisions. Section 415 provides that clarification around what a relevant person is.

ACTING CHAIR: At the moment the section applies if a police officer reasonably suspects that a person is unable, because of linguistic issues, to handle a matter. What are you suggesting by way of the expansion that you want?

Ms Crase: We are suggesting that a general provision be inserted right up front in the act, probably around section 12 or section 13. That would cover all operations of the Queensland Police Service. In our submission we have four parts to it. An interpreter should be provided in the early investigative stages, where it may not even be clear that an offence has been committed. If you cannot communicate with somebody, it is pretty hard to understand what has gone on, what offence may or may not have been committed, whether the person in front of you is a victim or a witness or what is going on. We are recommending (a) in the early investigative stages; (b) whether it is an indictable or a simple offence; (c) whether the person is a suspect, a witness or a victim, so you are covering all participants in any offence; and (d) in any potential domestic violence situation. As you know, domestic violence and domestic violence protection orders are not simple or indictable offences until a domestic violence order has been breached. In the early stages when you are securing a domestic violence order and until it is breached, there is no criminal status given to those circumstances.

ACTING CHAIR: What we have at the moment is a requirement that if a police officer believes that, because of a lack of fluency in English the person is going to have difficulty with the conversation, the police officer has to arrange for an interpreter.

Ms Crase: Section 433 comes within chapter 15, Powers and responsibilities relating to investigations and questioning for indictable offences. Section 433 only applies when you are questioning someone in relation to an indictable offence. We are saying that you need an interpreter in a whole range of circumstances—whether it is a simple offence, whether it is a domestic violence situation—before you even know if an offence has been committed.

ACTING CHAIR: But if somebody is at risk of their liberty, obviously there is an important requirement to have an interpreter so that they do understand. Where it is not a question of somebody being at risk of their liberty, to place a legal requirement upon the police officer to do something that they might very well be inclined to do anyway at their discretion seems to be an unnecessarily onerous burden, does it not?

Ms Crase: I would submit that in order to provide equal access to the protection of the Queensland Police Service and to have a fair and just system, everyone needs to be able to communicate effectively, regardless of the nature of their issue. If they are not able to communicate effectively, the Queensland Police Service is not providing fair and effective policing across the community. Some sectors of the community are missing out from that protection because they are unable to communicate effectively. Definitely in the circumstances when potential deprivation of liberty is a case, of course they must have an interpreter. That is where the difficulty of our situation is. We are trying to advocate and demonstrate that we have a range of issues and if they were followed up with formal complaints through the police process—and perhaps that is the way to document the significance of these issues—an interpreter is needed in a broader range of circumstances, rather than just when the liberty of a person is at stake.

The case study I spoke about, and there are others from other organisations across Queensland, demonstrates the kind of roundabout you go through and the number of people you need to speak to and how upfront and how forceful you need to be in order to get an interpreter to resolve a situation. We spent two hours of my time, a case worker's time and that of four other police officers. Surely it would be better to spend the resources on getting an interpreter straightaway, resolving the matter and then everybody is

clear. It is a lack of clarity around the policy implementation that causes a lot of these problems. Because there is not a clear statutory right, it does not make it black and white when police officers can get an interpreter. Hence, I have to go to the duty sergeant, I have to get the approval of the police prosecutor, et cetera

Mrs ATTWOOD: Can I suggest that we go back to the Queensland police and ask them what their processes and procedures are in dealing with people from CALD backgrounds in terms of the operational procedure. I am not quite sure whether this is a matter for the legislation or whether it is actually a procedural issue.

Ms Crase: Sure. My understanding is that the key set of internal processes in the operating procedural manual—the OPM—provides guidance to police officers that they should use an interpreter in serious criminal cases where there is a complex legal matter and for court proceedings. Those are open to interpretation, I guess.

ACTING CHAIR: The current legislation applies to the relevant person. The relevant person, of course, is a person who has been charged with an offence.

Ms Crase: Yes.

ACTING CHAIR: In those circumstances the police are required, as a matter of law, to get an interpreter.

Ms Crase: That is right.

ACTING CHAIR: Forgive us for asking the challenging questions, but we have to do this.

Ms Crase: Yes.

ACTING CHAIR: That is because we have to make a recommendation about the legislation at some stage. You are saying that you want us to get an interpreter for everybody the police are interviewing. You want to make it a requirement of law that we get an interpreter for everyone the police are interviewing and not just the people who are charged with an indictable offence that could lead them to being locked up; you want it for everyone. The question that the member for Mount Ommaney was just asking was, is this not a question for the discretion of the police officers and the discretionary policy of the government? It may be your desideratum can be achieved by policies recommending, through departmental channels, the use of interpreters more often and 'here is more money for interpreters'.

What you are saying is make it a requirement of law on the police officers so that the police are breaking the law if they do not do it. This could place additional legal burdens on the police and lead to all sorts of gratuitous references to the CMC. Like, for example, somebody is pulled up by the police, pretends to be a non-English speaker and so the police cannot handle the matter of this kid who is skateboarding in the middle of the freeway because the kid is pretending that he cannot speak English and they do not happen to have a Swahili interpreter immediately at hand. If you make it a requirement of law that you have to have an interpreter in every circumstance then—

Ms Crase: I appreciate that what we are proposing could lead to that kind of, I guess, absurd outcome. I am not a legislative drafter. I do not have experience in that area. It is obviously up to the intent of the government how they wish to take things forward. However, a provision could be drafted providing discretion, saying that police officers should rather than must engage an interpreter, and then there is still a strong legislative basis for engaging an interpreter in these broader circumstances. However, the policies and the internal processes will still help shape that down.

The PPRA was being amended and we saw this as an opportunity to put forward some of our perspectives. We are working on trying to get a more detailed report together next year with a stack more evidence about a range of issues, including interpreter use. I understand where you are coming from, I just think that it would be really helpful to have some kind of legislative basis around the use of interpreters in broader circumstances than when someone is being charged with an offence. It could be a step-by-step approach. You could say whether someone is a witness or a victim they must have an interpreter or they should have an interpreter; in relation to domestic and family violence cases they should have an interpreter. It is just providing more of a legislative backing to the policy intent that is sort of evident through the Queensland Police Service language services policy, the multicultural action plan and the whole-of-government Multicultural Action Plan and Language Services Policy. So it is really encouraging and directing the police to be more rigorous without the kind of absurd situation that you outlined arising, because the last thing we want is for frivolous issues to be going to the CMC and to have provisions that have this kind of absurd outcome.

I am not saying that we have all the answers and that we have any sort of perfectly drafted provision just to sort of slot in. It is not a simple situation. Obviously, we are coming from a particular perspective and you guys have other areas that need to be satisfied in making amendments to this act and other considerations. We are just wanting to push for greater legislative recognition of the need for an interpreter and this is one way we looked at it.

ACTING CHAIR: Ms Crase, thank you very much for your thoughts and for giving us your time.

Ms Crase: Thank you very much. I appreciate it.

KING, Ms Jenny, President, Respect Inc.

FORREST, Ms Candi, Treasurer, Respect Inc.

ACTING CHAIR: Do you want to wait until your president comes on the line or do you want to start?

Ms Forrest: No, we do not need to wait for Jenny to come on line. She has a pretty good idea about what I am going to say. I wanted to read out a statement.

Ms King: Hello?

ACTING CHAIR: Hello, this is Dean Wells. I am the member for Murrumba. I take it I am speaking to Jenny King?

Ms King: Yes.

ACTING CHAIR: Jenny, you are on the telephone to a subcommittee of the Queensland parliament: Julie Attwood, the member for Mount Ommaney; Chris Foley, the member for Maryborough; John Paul Langbroek, the member for Surfers Paradise; Jarrod Bleijie, the member for Kawana and myself. You have your treasurer, Candi, sitting at the table with us. Which of you wishes to speak first?

Ms King: I believe Candi will be doing most of the talking today.

ACTING CHAIR: Would you care to go ahead, Ms Forrest?

Ms Forrest: Respect Inc is the peak body in Queensland representing the health and safety rights of sex workers. Currently in Queensland it is an offence to ask a sex worker to provide a sexual service without a condom. Clause 101 will exempt police officers from this law so that they may pose as clients and offer more money to sex workers to provide a service without a condom. We oppose the inclusion of clause 101 in the bill for the following reasons: police are not qualified to be the safe sex police; sex workers do not pose a public health risk; this policing practice undermines best practice in sexual health and HIV prevention; and it targets the most vulnerable sex workers. Police are not qualified to be policing what are essentially occupational health and safety matters for sex workers—sexual health matters. Sex workers have the expertise when it comes to safer sex strategies, not the police, and we do not want the police to be the safe sex police. Why would we spend money on this when sex workers do not pose a risk to public health? Australian sex workers have some of the lowest rates of HIV and STIs in the world and we have better sexual health than the general population.

In Australia there has been no recorded case of HIV transmission through sex work. We do not need the police asking sex workers to have sex without condoms in order to ensure that sex workers will be using condoms. Sex workers have led the way in Australia's successful response to HIV in the HIV epidemic since the early 1980s. If you watch the ABC documentary *Rampant: how a city stopped a plague*, you will see that it was sex workers' organisations doing peer education on condom use that was the first response to HIV. We have not stopped since then. That is the work that Respect does. We do peer education. There is clear evidence that peer education is effective in maintaining levels of condom use among sex workers. There is no evidence that punitive policing approaches are successful. In fact, they undermine recognised best practice in HIV and STI prevention. The negative impacts outweigh any perceived benefit to public health outcomes. It has negative impacts on the occupational health and safety of sex workers and negative impacts on the health promotion work of Respect and allied health agencies.

Not only is it unnecessary for police to be asking sex workers for unsafe sex, it undermines the work that we do. Police ringing up sex workers and harassing them for unsafe sex undermines the entire safe sex message that we have been putting out there since the early eighties. We have worked really hard to solidify that message over the last 30 years and this practice undermines that message. The last thing we need is to have the police undermining this message for no real public health outcome. Furthermore, this practice targets the most vulnerable: those who are new to sex work, those who have English as a second language and those who may be under financial stress due to financial and personal crises. This is entrapment. Those who are confused or under pressure may agree to something that they would not normally. No sex worker wants to provide a service without a condom, but for every person who the police charge there may be 10 or more who refuse the offer and who go away thinking that they might have got a booking if they had agreed to it.

I would like to finish by saying that the police have been using this tactic as part of their standard practice for the last five years. If Respect had been aware that police did not have immunity for this we would have been encouraging sex workers to complain about this for the last five years. We want the practice to stop. We think it is counterproductive, unnecessary and potentially corrupting. We just do not think that other legal workers are subjected to this sort of constant scrutiny by police. That is really what I wanted to say about it. Do you have any questions?

ACTING CHAIR: Ms King, did you want to add anything to what your treasurer has just said?

Ms King: No. I would like to add just a small bit when looking at the vulnerability of sex workers. Because in Queensland sex workers are forced to work legally as isolated workers, a lot are at perceived risk of violence and so some may have been agreeing to the request for unsafe oral, for example, but having strategies in place that they did not get a chance to implement—to put in place safer sex strategies—but felt that they may have been at risk of violence and thus felt necessary to agree. That is it.

ACTING CHAIR: Ms Forrest, you said that for every one who was caught and charged there would be 10 who would go away and say, 'I could have got extra money.' But they would not say that, would they, because would not the police officer say, 'Aha, you just passed a test. I'm a police officer.'

Ms Forrest: No, I do not think that they do that. That is not my understanding.

ACTING CHAIR: What happens?

Ms Forrest: They just say, 'Thank you. I might ring you back,' or, 'I might make an appointment' and hang up. They might make an appointment and never turn up. They might just not bother to. For every booking that a sex worker gets they would have had to field 20 calls from clients asking all manner of questions about the services that they provide and how much and so forth. So, no, it is not my understanding that sex workers out there know that it has been a police officer who has called them and asked them. We only hear about the ones where they have either said that they would or they have said they did not need to use a condom but then they have inserted some other type of prophylactic like a femidom. Some sex workers use femidoms instead of condoms. That is an internal condom that the female sex worker can use. Actually, male sex workers can use it as well. So, if I have a client who is asking, 'Look, do I really have to use a condom? I'll give you $50 or $100 extra,' or whatever, I might say, 'Sure, you don't have to use a condom, come on over,' and I will use a femidom instead. If I have said over the phone to the police officer or in person to the police officer that he does not have to use a condom, I have already committed that offence.

Ms King: Also dams can create confusion because most people might say yes to no condoms for oral sex but may use a dam instead. And if dams have not been discussed through, quite often the sex workers will have strategies that they know they can use.

ACTING CHAIR: A what?

Ms King: A dam is a sheath of latex used for oral sex.

Mr LANGBROEK: Like a dam that we use in dentistry, Dean, for root canal

ACTING CHAIR: Right.

Ms Forrest: In fact, they used to be called dental dams. It is just a piece of latex and you can use it to perform oral sex. It has many functions, actually.

ACTING CHAIR: The member for Kawana has a question.

Mr BLEIJIE: If I can run a situation past you. A police officer undercover goes into the establishment, puts the request for unprotected sex, he will pay extra, and the worker agrees. As opposed to that, a bloke comes in off the street in plain clothes, same deal, does the same thing, offers more money for unprotected sex, and the sex worker says yes. We have a situation where the first one was a police officer, the second one was not but both were accepted and both took the extra additional money. It is just one got caught because they had the power to get caught. How is that different?

Ms Forrest: We would argue that it is just not necessary to conduct this sort of policing because there is not that much of it going on. There is not that much of it going on and it is not a public health risk. It just is not a public health risk because most sex workers are using condoms. It might happen here or there occasionally but generally speaking across-the-board they are generally using condoms or a dam.

Mr BLEIJIE: You say 'most sex workers'. I guess it only takes one. How do you say that mostly they are all using protection?

Ms Forrest: The client has a part to play here as well. The client is also required under this law to not ask. That is what we are talking about. It is an offence to ask for a service without a condom—'prophylactic' I should be saying, but most people understand 'condoms'. It is an offence to ask for a service without a condom and it is an offence to offer to provide a service without a condom or to agree to provide a service without a condom. So the client who asks for the service is breaking the law as well.

Mr BLEIJIE: But if agreeing to it is an offence then the police are conducting an inquiry just as they do for any other offence. If they put a speed trap on the road, you are going to get caught if you are speeding. If they go to a sex worker and request unprotected sex and the sex worker agrees to provide that service then they are going to get caught for committing an offence.

Ms Forrest: Yes, you are right. It is that type of targeted policing. It is a task force. They go out there and they do something like a breath test on the roads, but there are people dying on the roads. There is a need for police to go out there and do breath testing and have speed cameras and all that sort of thing. This is just not a public health issue, and there is no need for us to be putting our police resources into it.

Mr BLEIJIE: Are you saying that there is not a need because HIV is not a problem in the community or it is not a problem in sex workers?

Ms Forrest: It is not a problem in sex workers. The transmission of STIs and HIV is not a problem in sex work. Most of the transmission of STIs and HIV is being done in the general community in normal, consensual, non-commercial sex—not in sex work.

Mr BLEIJIE: Thank you.

Mr FOLEY: A number of other submissions have highlighted that there is an incidence of sex workers coming from New South Wales, where they have a different attitude towards sex without a condom. One submission also talked about the increase of trafficked Asian girls coming in who will have sex without a condom et cetera. In one particular submission that we have received the lady in question was concerned that police could use the request for unprotected sex as bribery for letting the girl off without charge. I just wondered what your comments are on those three issues: sex workers coming from New South Wales, illegal Asian sex workers—and have you heard of any incidents of police asking for sex favours in return for not booking someone? Does much of that go on?

Ms Forrest: I cannot say that I know of a case that has come to our attention in the last few years that Respect has been established where that has happened or where we have been told that a police officer came in and asked for unprotected sex—

Mr FOLEY: And said, 'I won't book you.'

Ms Forrest: We have heard the odd story about a little bit of harassment on the Gold Coast by some police there but not specifically around this issue. With respect to the other issues about people coming from New South Wales and non-English-speaking sex workers—migrant sex workers—coming into Australia, we would argue that we should have the same response to that as we have to peer education in general. Respect is there to give this information to sex workers. It is part of what we do. We give out this information. It is community development. We say, 'This is our community. We have an interest in our safety, our health—your safety, your health—and the standard here is to use condoms.'

Mrs ATTWOOD: Is there a standard response in that education process for sex workers? If they do receive a phone call from somebody asking for sex without a condom, wouldn't they be educated to say to the person who rings them, 'That is illegal'? Shouldn't they have a standard education procedure to say, 'It is illegal to ask for that'?

Ms Forrest: Hopefully they would. But that is why we say that it is the people who are new to sex work and perhaps do not understand the language so well who may be inclined to think that this is yet another person asking for sex without a condom. It is out there. There is pressure to do that. But when they come to Respect and they start talking to other sex workers in the community and online and all the rest of it, they discover that in fact sometimes clients will ring and ask you to do a service without a condom to find out whether or not you are practising safe-sex strategies and often they will not book you if you say, 'No, it's all right. You don't have to use a condom.'

Mr FOLEY: One of the points of difference that I see here is that members of Respect or people whom you are representing have chosen sex work as a profession. My question was more about perhaps the trafficked Asian women. I have heard anecdotal evidence that when it gets too hot in Queensland they will put a whole lot of girls in a minibus and drive down to Melbourne. It is like a floating population. The concern is that the norm in some of these countries that these girls have come from is unprotected sex. If you then start combining language barriers with the fact that they have not chosen to be sex workers—they have been criminally hijacked into it. I am saying that I think there is a big difference between what you are doing with people who have chosen to be sex workers—you are educating them and that may be the norm, but you are also competing in the marketplace with people who do not have those—

Ms Forrest: I do not agree. There is a lot of misinformation out there about sex work and sex workers, particularly around migrant sex workers—people who are coming into the country to do sex work and moving between states to do sex work. We have the greatest amount of contact with sex workers of just about anyone. We are a member of Scarlet Alliance. They are the peak national body. We confer with all of the other sex worker organisations in the other states of Australia. The evidence is that most people who come into Australia to do sex work have chosen to do sex work. They are not coming here thinking they are going to do something else and end up being conned into doing sex work. That is not the case at all. Something like four per cent of the total number of migrant sex workers are people who thought they might be going to do something else when they came to the country.

Mr FOLEY: Either they have been trafficked for labour or a job or a promise of a job.

Ms Forrest: Yes.

Mr FOLEY: Might I say that the Australian Federal Police disagree with your summary.

Ms Forrest: Well, they are there to police the trafficking laws, so that is their business to do that. I do not agree and Scarlet Alliance does not agree that there is a majority of migrant sex workers who have been trafficked into the country.

Mr FOLEY: I am by no means saying that there is a majority. I am just saying that there is an incidence. In fact, one of the submissions we have received from a sex worker—I highlighted it before—says—

Illegal Asian prostitution is the major problem in Queensland. Like cockroaches they just keep on spreading and keep on getting back up and running after you knock them down. Years of effort on the part of sex worker informants and police have been put into this problem, yet it is still the No. 1 issue in prostitution in Queensland.

Ms Forrest: Well, I would say that the tone of the language that is used there gives a clue as to the perspective of the person who is writing it. To call migrant sex workers 'cockroaches' suggests to me that they see them as less than human, as a problem to be solved. I just do not know what to say to that. But I

would reiterate that, whenever you see an argument about particularly Asian sex workers being trafficked and degraded and all the rest of it, you should look at the motivations of the person who is giving that argument.

Mr FOLEY: This is from a person who has been a sex worker in Queensland for 15 years.

Ms Forrest: Yes, and they probably feel like that is their major competition. Respect does not have a financial interest in any of this. There is no financial motivation for us in the arguments that we put. We put arguments based solely on what we feel are legitimate rights—health rights and safety rights—of sex workers. It is not about money. There are sex workers out there who feel that Asian sex workers are their primary competition. They think that they are charging less, that they are not using condoms. It is just really not true. Organisations like Respect are here to access those people. We have bilingual peer educators. We have a Chinese-speaking peer educator who accesses the Chinese sex worker community. She is not finding that they are all out there charging less and not using condoms.

Mr FOLEY: So you believe that that is just an urban myth?

Ms Forrest: Yes, I do.

Mr LANGBROEK: How many people does Respect represent? How many members do you have?

Ms King: We have had over 300 sex workers contribute to the establishment of Respect over the first two years of starting a community capacity-building approach with Queensland Health, and since that time we have probably had another 200 sex workers contribute to the organisation's development.

Mr LANGBROEK: So you have an ongoing membership, Ms King?

Ms King: Yes.

Mr LANGBROEK: What proportion of sex workers do you represent, do you know, in Queensland?

Ms King: That would mean putting a figure on it, and first of all we would have to define what is prostitution. It has a very wide definition. It is like defining homelessness.

Ms Forrest: We are not a union; we are a community development organisation and a community based organisation. We are funded by Queensland Health to do peer education. That is what we do. We seek membership but, apart from our members, we are in contact with thousands of sex workers across Queensland and Australia.

Mr LANGBROEK: I just was not sure of the membership model. Thanks for that.

ACTING CHAIR: Is it your proposition that the program that you are funded to do by Queensland Health would be undermined by the amendment which is proposed in this legislation?

Ms King: Yes.

Ms Forrest: Yes.

ACTING CHAIR: Are there any other questions? Ms Forrest and Ms King, thank you very much. We have three more submissions. I now welcome Dr Dennis Young and Mr Mark Clark from Drug Arm Australasia.

CLARK, Mr Mark, Queensland Operations Manager, Drug Arm Australasia

YOUNG, Dr Dennis, Executive Director, Drug Arm Australasia

ACTING CHAIR: Welcome back to the Queensland parliament. You know who these people are.

Dr Young: Yes, I do.

ACTING CHAIR: Perhaps you would like to address the submission you have made and Mr Clark could support you.

Dr Young: Thank you very much. As you know, I had the privilege of serving in the Queensland Police Service for over 17 years. I also spent a short time in this place. For about the last 24 years I have been heading Drug Arm, which is an NGO. Just recently we have merged with the Mental Health Association Queensland and the Australian College of Community Services. I am generally the group CEO. Mark, who is with me, is my operations manager for Queensland. He also has many years experience within policing generally.

What I would like to do is, rather than talk to the submission, look at the three recommendations we have made. The whole basis of our submission to the inquiry is to focus on diversion. The first recommendation talks about the diversion. You may or may not have read it, but Professor Jake Najman did an evaluation of the illicit Drug Court diversion program as well as the police diversion programs here in 2009. The key summary out of that was that, across all classes of substances, there were in fact significant results achieved from that program. That program is running across Queensland. It is two of the diversion programs that the Queensland government run. They also run the Drug Court and whole range of others.

In relation to our second recommendation, we had a look at the act and we believe that section 603 of the current act virtually incorporates what you are trying to achieve anyhow. Even though it was primarily designed for substances and illicit drugs, it does include methylated spirits and in other acts in Queensland methylated spirits is included in the definition of alcohol. What we are suggesting is that perhaps it would be worthwhile giving some consideration to amending or rejigging section 603 to include alcohol—and that perhaps may achieve what you are trying to achieve—as well as providing people with the opportunity for diversion. What we want to try to do is get these folks out of the criminal justice system and into the health system.

The other thing I would like to say as chairman of the AOD peak body in Queensland is that you have a state that has vast numbers of non-government organisations in the alcohol and drug field that provide quality programs and services across this state that with some resourcing—and they would need some resourcing—would be able to work beside the Queensland Police Service and provide that diversion that I think we would prefer to see. There is already diversion being done in some areas. The Murri court here in Brisbane diverts young Indigenous folk into diversion programs.

The other point we would like to make is that we would like to see the process for the Queensland Police Service simplified in relation to diversion to make it less like an arrest and make the process quicker and more efficient and encourage more police to divert to the providers of these diversion programs which currently include both government and non-government organisations. I guess that is the basis of our submission. We do not want to dwell on our submission, but we feel that perhaps with a little bit more reflection on section 603 it may provide an opportunity to achieve what you want to do and at the same time divert the young people out of the criminal justice system into agencies in the community that can probably best address their issues.

ACTING CHAIR: I like your idea of harnessing that particular power to diversion. It is a really interesting idea. I cannot see how using section 603 is going to help us, because it seems to me to raise exactly the same questions. A police officer has to find a person in possession of a potentially harmful thing. It then goes on to say in subsection (2) that the police officer may search the person and anything in the person's possession to find out whether the person is in possession of a potentially harmful thing. You still have to have the search.

Dr Young: I guess what we are saying is that that section gives you the search. You do not have to create a new pat-down situation; your power is there.

Mr Clark: With due respect, at the moment under that section you can search to see whether somebody has glue, petrol or any other item. Methylated spirits is defined as liquor in the Liquor Act. If you look at the definition of a 'potentially harmful thing' in the dictionary of terms, you will find that it includes methylated spirits. So you can use that section already in respect of some liquor. If you amend subsection (c) of the definition of 'potentially harmful thing' to somehow reflect issues in respect of minors and alcohol, you do not really need to amend the powers of search because you have already got them in section 603.

ACTING CHAIR: Maybe, but I think a court would interpret the section as a whole and they apply a specific test to the section. I do not think the police are going to be doing searches of juveniles any time soon and unless we pass that legislation. Your idea of harnessing the pat-down search to diversion rather than to the creation of a record is an interesting one. We will see what the member for Kawana thinks about it.

Dr Young: One of the current limiting factors of diversion is that the person has to in fact admit the offence before they can be diverted, even if they are caught in the act. If they do not admit it, they have to go to court. That is another limiting factor on the folk who can be diverted. But I need to draw you back to Professor Jake Najman's review. If you have not read that, someone should read it because it does highlight the positives of diversion. Diversion has been operating in Queensland for many years. But we really want to try to keep these folk who are out enjoying themselves and come across the police in adverse situations out of the criminal justice system, if we possibly can.

Mr Clark: Just to support that, there is no jurisdiction in Australia which has negatively evaluated diversion. In some states they divert for powder drugs and do not divert for cannabis. I think the Wakefield project in South Australia is where they actually had a trial of diversion for alcohol related offences and it was positively evaluated by the Attorney-General in South Australia. I am unaware of any jurisdiction where diversion has not been positively evaluated, here or internationally.

Mrs ATTWOOD: How would a diversion take place in relation to the legislation regarding pat-downs of juveniles who are hiding alcohol?

Dr Young: You already have a process right across Queensland for diverting small amounts of cannabis through the police as well as through the courts. They have a state-wide call centre where they have a list of providers and the person who is being diverted nominates the region and the provider they wish to go to. That system is already there and has been in place now for many years. My thought was that it would be a great opportunity to expand that to incorporate this situation as well without requiring great new infrastructure, just expanding the operations you currently have existing in this state.

Mrs ATTWOOD: I am talking about a situation where juveniles, say 11- or 12-year-olds, have alcohol.

Dr Young: You would have to do it in conjunction with the parents or guardian, I would think. That will add a complexity that does not exist for adults obviously.

Mrs ATTWOOD: That sort of diversion does not exist at the moment?

Mr Clark: There is actually a crossover between the objectives of 603 and the objectives in respect of alcohol. The Queensland Drug Strategy 2006-2010 points out that there is a high correlation between alcohol use and the substances that they are talking about in 603. You may find some scenarios where the person has both, so which power are you going to act under? Obviously the one you are going to go for in the police scenario would be 603.

Mr BLEIJIE: Isn't section 603 more to do with the visual stimuli—that is, for the police to see that there is something there—rather than the pat-down, which is to find what is not visible? The definition says as an example if a police officer finds a person with paint on their lips. That would be visual so they can seize it, but it is not physically hidden anywhere.

Mr Clark: Well, yes and no. I think you can form your suspicion on a number of indicators and it will not be just on one criteria. I think even in your proposed amendments you have to some basis for the pat-down search and then it is not something that is—

Mr BLEIJIE: A reasonable assumption that there is something there.

Mr Clark: You are going to base that on something. It is not visible, so what are you going to base it on? There has to be some behaviour, some aspect or some information that will require you to form the requisite suspicion which is no different to what is in 603, in my opinion.

ACTING CHAIR: Gentleman, thank you very much for taking your time to give us your thoughts.

Dr Young: Thank you very much. It is good to catch up with you again.

DIECKMANN, Ms Cristy, Director, Youth Advocacy Centre Inc.

DOOSTKHAH, Mr Siyavash, Director, Youth Affairs Network of Queensland

ACTING CHAIR: Welcome to parliament. I think you know who these people are. We are aware of your submission. Thank you very much. Would you like to speak to your submission and give us such advice as you wish to further to that?

Ms Dieckmann: I will be talking about the insertion of section 53C, as most other people have been here this afternoon. At the outset I would like to say that we are interested in and will support initiatives which attempt to reduce the amount of under-age drinking. We agree with the comments of the minister, the Hon. Neil Roberts, when tabling the bill that he wants to try to prevent young people from undertaking risky behaviours. We are with him on that. However, the proposed amendment will not reduce under-age drinking to any great extent, so we cannot support it on that basis. Any small reduction in under-age drinking which may result is outweighed by the negative impacts of the proposed power. In fact, far from having a positive effect, the proposed power would be a gateway to interactions with the police and young people that are not in the public interest. Yes, it is in the best interests of our young people not to be drinking alcohol when they are under-age, but with this proposed power we need to look at the potential detriment and the potential disadvantage that our young people are exposed to. Let me explain myself by way of a practical example because I think it makes it easy, especially in light of the member for Kawana's discussion before—

Mr BLEIJIE: Dogged determination to get to the bottom of it.

Ms Dieckmann: It is interesting, because I hear your point about children going to a dance not being exposed to alcohol. I thought by giving an example—a bit of an amalgamation of a bunch of cases that we have seen through our centre—you would be able to see that it is not necessarily just about the young person who is found with alcohol but it is about the escalation of what might happen as a result of the interactions that we are really concerned about.

It is the end of school term, there are a bunch of kids hanging out in the skate park in the local suburb, they are all pretty excited, they have two weeks of freedom ahead of them, they are yahooing and making a fair bit of noise. You all know what teenagers are like; they can be a rowdy bunch at times. The local police are on the beat and having a bit of a scout around and from quite a long way away they hear this noise. They have a keen ear because they have a tavern that they have to deal with on Friday nights and they hear exactly this noise. They hear it and they immediately suspect that that sounds like people who are drunk. It sounds like people who might have had a bit too much alcohol. They turn up and see these young people and say, 'Hey guys, we are police officers and we would like to search you and your bags for alcohol.'

If it were you and me we would think, 'I am not doing anything wrong so go your hardest. Search me.' The young people who we see in our office will do one of three things. The first scenario is they will take the bolt. In this scenario the person thinks, 'I am not doing anything wrong but someone else might be. I do not want to be implicated in that so I am out of here.' They run and the young police officer has to give chase and who knows what ensues. It is not a great outcome either way.

The second scenario is the person who thinks they are going to be the big guy and mouth off. They have a bit of a chat back to the police. That is okay to a certain extent. The police are used to dealing with that. But the next step is that the police say they are going to search someone. One of the young women has been abused in her life. We see it a lot of the time with our clients whom we come into contact with. She has a really adverse reaction to someone coming into her personal space. She reacts very badly and starts swearing at the police officer. Of course, she is told to stop. When she does not stop the police officer says, 'I will arrest you.' She is arrested because she does not stop, she is put in the back of the wagon, she is taken down to the watch-house, mum is not back from work for a couple of hours so she has to spend a couple of hours in the watch-house because of what has ensued.

The third scenario is the young person says, 'Search me, that is fine, no problem.' They are not found to have anything and at the very worst all they will feel is a bit like they have been picked on. It is not always going to be that third scenario that happens. The first two are the cases that we see that I am really worried about. It is an amalgamation of a few case studies so it is not a particular case that I am talking about, but I thought it would give you a flavour of what can happen and does happen very regularly.

On top of these issues, we know that police on general duties are stretched. We know it. At the moment the police resources pie is being carved up with a certain amount going to youth policing. We know that at the moment that piece of the pie is going to youth who potentially are really at risk. They are vulnerable, they are at risk of committing more serious offences, they are at risk in many ways. We know that that piece of the youth policing pie is probably not going to get any bigger. What we do know by this potential net widening, though, is that all of a sudden these police resources are not just focused on the young people who are really at risk but it is spread out amongst a whole bunch of young people who really are not at risk. Yes, they are doing a little bit of risky behaviour by having an under-age drink but, compared with the other young people who we are coming into contact with, they are really not at great risk. So the spreading of those resources we really struggle with in terms of a cost-benefit analysis.

I want to mention briefly because I do not think anyone has mentioned it yet—and it was not in my submission because I did not think to put it in at the time—the *Doing time—time for doing* report. It was released in June this year and it is from the federal inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system. I am not sure whether the committee has had the benefit of looking at that report, but it talks in great detail about the connections between alcohol and drug misuse, about social exclusion and interaction with the criminal justice system. I just flag it for the committee as I do not think anyone else has mentioned it—at least while I have been in the gallery this afternoon.

Finally, while I do not agree with it, if the committee decides to recommend going ahead with the inclusion of a new power, my reading of it says that section 30 of the PPRA could be amended instead. The way I read it on a plain English reading, of the frisk searches which were already there and the pat-down search, which is purported to be the new power, the pat-down search is actually wider. The searches that are already there in section 30 of the PPRA are open to the police to use in some quite serious offences potentially. This is a less serious offence—25 penalty units—yet somehow the search power is wider. So there was an anachronistic drafting to my mind. Other lawyers might have a different view of it, but that was my view of it.

The other thing that has been mentioned this afternoon is that this could potentially be around schoolies. If that is what it is then let us name it. Let us not give it a stab across the whole of Queensland with every young person and when it comes to reviewing the act let us see how it went wrong. Let us get it right from the beginning. If it is about schoolies—again, I must put on record that I am not in favour of it even in that case—and if that is what the committee is minded to do, then let us try it on that basis and see whether there are these adverse impacts or not.

I will end with a positive comment, because I like to be positive at some point. We think that moving section 418B from the regulation into the act so that police can ensure support people are adequately informed of their responsibilities as a support person is a great move and is certainly one that we would support.

Mr FOLEY: In the first scenario that you described where the kid says, 'I do not have any alcohol but I do not want to get caught up in this,' and bolts, are you saying that they are not trying to escape from anything in particular but they just want to get out of there?

Ms Dieckmann: We talk about it in a little more detail in the written submission, but it is about the stage of brain development that adolescents are at. It is essentially a flight or fight response that happens. That is why I contrasted it with what you or I might do, because you and I think through the logical consequences of our actions. The psychologist at our office was the one who came up with all the technical stuff. That is her side of things, but it is when you are not thinking through what is happening so you just bolt. That means the police officer then has to chase them. No doubt there is some risk in that for the police officer and for the young person as well. It is not ideal.

Mr FOLEY: Because the police officer thinks, 'What have they got to hide?'

Ms Dieckmann: Exactly.

Mr FOLEY: And the young person thinks, 'I haven't got anything so I do not need to be here.'

Ms Dieckmann: That is it. I can understand completely the police officer's reaction, They think someone has something to hide if they run away.

Mr BLEIJIE: Cristy—I will not try with your surname just as many people do not try with my surname—can I throw you a scenario? Five youth are down at the beach. The group started becoming friendly over the space of a few months. There is one unsavoury character, a 16-year-old, who got this group together and they now hang out every Friday night at the beach. That one 16-year-old unsavoury character has introduced alcohol into the equation. One of these young girls is a domestic violence victim who was a good girl, who had never had alcohol in her life but who is now put in that situation of peer pressure because of this one character. If the police have the power, they would be able to search and detain that guy for a period of time and take the alcohol away from that environment. If we do not have that, who protects that girl from that environment and from that alcohol?

Ms Dieckmann: I have had the benefit of hearing your questions and jotting down some notes while I have been sitting listening. I think the answer is that to solve the problem of protecting that young person and to reduce under-age drinking does not lie in a PPRA amendment. It is simply fatuous to think that a tertiary police response can really have any impact on that situation. If we are serious about tackling this issue, then I think there needs to be truly preventive or at least early intervention strategies. I know that this has been billed as an early intervention strategy when, in fact, for my money it is tertiary. By the time you have a police officer who is seeing it on the street you have not lost the battle but it is very difficult. In that sort of situation—and I do not know whether the police gave a briefing this morning on it or not—there is an early intervention strategy called the Queensland early intervention pilot project. I am not sure whether the committee has had the benefit of hearing about that, but that sort of approach is more what we are interested in.

Mr BLEIJIE: It is really generational change though, is it not? For this early intervention you are going to have to start with preppies. What about all the 7- to 16-year-olds who are out there now who are engaging in this activity? I am not an expert on it but a lot of the education programs say that you have to start them when they start walking and talking.

Ms Dieckmann: Yes.

Mr BLEIJIE: So we have this group of young people who I believe have had a generational change over the last 10 to 15 years who are now engaged in these activities—

Ms Dieckmann: That we are stuck with.

Mr BLEIJIE: That we are stuck with. I do not know how early intervention will help those kids.

Ms Dieckmann: Again, it is not my area but from the social sciences perspective I think early intervention is not necessarily that whole-of-life education but it is early intervention when a problem arises. So it is talking about those people who might be 14, 15 or 16. In fact, you can have some impact then. I think that pilot program of the Queensland police seems to be having some good results in terms of talking to people about consequences, making them think about whether they really want to be that blithering mess at the end of the party or whether they want to be the person who walks away in control of things.

So you are really thinking about what happens when you do certain activities. I do not think necessarily that this cohort is lost just because there has been a shift in values, if there has. I have not really turned my mind to that about alcohol consumption in general but I do think there are measures that we can take. Certainly, our youth workers work with young people who have substance abuse issues and get very positive outcomes. It is resource intensive. I will not fib about that. It takes a lot to take someone who is already at the stage of wanting to abuse whatever substance and to try and turn that around. It is a hard thing for anyone to do. I do not know if I have any answers for you.

Mr Doostkhah: I am the Director of the Youth Affairs Network of Queensland. We are the peak body for the youth sector in Queensland. It is relevant, I guess, to tell you that my background is Iranian originally. I came here about 25 years ago. For the last 22 years I have been working in the youth sector in Queensland from Townsville to Brisbane.

ACTING CHAIR: But especially in Deception Bay in my electorate.

Mr Doostkhah: In Deception Bay, absolutely. There has been much success there in terms of police and youth workers coming together and looking from a health perspective at the issue of alcohol. Deception Bay was a suburb that had a huge problem with alcohol. Each Friday night there were somewhere between 100 and 200 young people drinking alcohol and then creating havoc in the suburb. Ten years ago you would have heard Deception Bay was the capital of youth crime in Queensland and now it is quite a settled suburb. So there are some examples if you are interested in how a health approach to this could actually work.

In terms of a law and order approach, or a criminal response, that is not going to work. I guess you can ask me questions, if you are interested, about what happened in Iran. In Iran you not only get searched but also get whipped—80 lashes to start with up to a maximum of 300 and somewhere between one and 10 years imprisonment, and three people lost their lives for trafficking. Has it stopped anything? No. Has it stopped young people drinking alcohol? No. We have more young people now in Iran who are drinking than 30 years ago when drinking was not illegal and police did not have a role in terms of monitoring it and the criminal justice system was not responding to it in that way. I guess I came from a place where I saw firsthand that by bringing law into this it is not going to work. But I also had the privilege of seeing how in Australia and Queensland a health approach could work. Cristy is correct: it is resource intensive but if you compare the cost of policing and the criminal justice system I think prevention and a health approach is much cheaper.

At the moment, as you would know, our youth detention centres are full of young people. The majority are on remand so they have not fronted the court. We are spending huge sums of money to the tune of about half a million dollars for each of those young people. Is the money we are spending doing anything for these young people? I would say no. We provided some evidence to the CMC when they were looking into the police powers in 2009. Our submission was called 'Breach of trust', which is a key issue. It is about improving the relationship between police and young people. I think that is what happened in Deception Bay. We tried to get young people to look up to police in terms of having a positive interaction with them but also having a sense of fear for when they are doing something terribly wrong, to not lose the authority that police have over the rest of us in the community. If that disappears at an early age, if you start getting contact with the system at an early age, your fear disappears. Once your fear disappears there is no stopping where you end up. That is what is happening at the moment. Very young kids are having interaction with the police and it is leading them to have no fear of the police. That is the reality. So they will bolt, they will swear, they will do anything when they are confronted with that.

In that report we provided to the CMC, some of the young people were saying that they are targeted every day. We are talking about marginalised young people. We are talking about Aboriginal and Torres Strait Islander young people, young people from culturally diverse communities and particularly we are talking about poor young people. They are the groups that are visible because they are mostly in public space. Our children mostly are not in public space all the time. A lot of children drink, but they do it in the comfort of their home because they have a place to go. These kids have to drink in public, so there is more chance of them coming into contact with police because they are more visible.

Look at young people's clothing, which is part of fashion and part of culture. At the moment young people wear very loose clothing associated with the culture of hip-hop and music. They wear very loose pants and jackets. That quite easily could be interpreted by a police officer as clothing for disguising alcohol. Again, it potentially puts police in a very hard situation in which they want to fulfil their duties as opposed to looking and saying, 'These young people aren't doing anything wrong.'

There was a report that we put out in 2007 which was called *No vagrancy: An examination of the impact of the criminal justice system* on people living in poverty in Queensland. It was in collaboration with the University of Queensland and it particularly looked at the interaction between people from poor socioeconomic backgrounds and the criminal justice system. That report documents how existing relationships have broken down and how young people feel. Many of them, particularly those from poorer socioeconomic backgrounds, are targeted. One young girl, who was the 15-year-old girl who was strip-searched in the street, said—

It was the first really bad thing that ever happened to me. I couldn't stop crying.

This obviously was the first interaction she had with police and also the first occasion of anything majorly negative happening.

The member for Kawana mentioned the link with marginalisation. Professor Rob White is a respected criminologist. He has also done a lot of writing around young people, gangs and substance use. In one of his writings he states—

The institutional racism and economic marginalisation experienced by the ethnic minority young people ... is linked directly to group formations ...

... that privileges loyalty and being tough ... in the face of real and perceived outside threats.

A young person interpreting that but not knowing about that writing might say, 'If I'm going to get in trouble for doing nothing, I might as well do something.' What we are talking about is forcing young people, by virtue of making the streets unsafe for them, to form gangs and to form groupings, which then brings many more problems to society.

The research across Australia and in other jurisdictions shows that the issue of alcohol and other drugs has not been able to be won. We have not been able to win the war on drugs internationally. There is a lot of discussion about it and about how much more money we want to sink into that. We are not making the community any safer. In my belief, each day the community in Queensland is losing its safety because of the way we pitch young people and police against one another from an early age. We are filling the youth detention centres at a huge cost to society, to the taxpayer and to us with young people who should really not be there. These young people—some who are homeless and some who have alcohol problems—could be dealt with in a much cheaper way and in a way that really diverts them from a life in the adult system if the issue were looked at from a prevention and health perspective as opposed to a criminal justice response.

In that context, we do not support this; we support the submission by the Youth Advocacy Centre, particularly because we already have problems with the extent of the powers that police have and the pressure on them to exercise those powers and their discretion. Even before these new powers are given to the police, we have many reports of young people talking about being strip-searched, being pat-searched, being taken to places in terms that will impact upon them. We believe that those laws need to be rewound. If you are serious about alcohol issues, if you want to deal with young people from an alcohol perspective, you have to talk about it from a health perspective.

To finish off, I want to quickly mention that young people did not come here on a spaceship from an alien planet. We have created them and they are just like a mirror reflecting what we are as a society. We have an alcohol problem in Australia that is not related to young people. We have an alcohol problem within the community, within society. The government needs to be prepared to take a brave strategy—and it will take a brave government—to actually tackle the alcohol problem in the whole of the community in a serious way. Perhaps it could be done in a similar way to how we are starting to tackle tobacco. It is similar to the tobacco issue, where young people are a subset of society and will benefit from the impact of a real, targeted approach against tobacco. Until we do that, young people will continue to look at alcohol as something that adults do. Because we do not have cultural initiations into adulthood, one of the key things that young people will do is to copy adults when they see that it is something that adults do. If you are truly wanting to tackle alcohol amongst young people, you have to actually point the finger at the adults and the advertising companies and all the marketing that goes with the alcohol. Then you will see that young people will also follow the rest of the community and reflect that.

ACTING CHAIR: Siyavash, I have heard you speak many times before. Every time I do I am edified. Thank you. The question that we have to decide today is a very confined one. Ms Dieckmann, perhaps you can give us a legal answer to the question. Say a police officer sees a young person coming out of a beer garden and their clothes are sagging because it looks like they are full of alcoholic beverages purchased therefrom, which was an offence committed by the person who sold them and these kids are not supposed to have them. What do we do next? Do we have a law that we are incapable of enforcing, which of course defeats the purpose of having laws, or do we give the police the powers in these circumstances to enforce that law? Are you able to tell us of some other section of the Police Powers and Responsibilities Act which would enable the law to be enforced? This committee would be very happy to recommend to the parliament, 'We don't need this provision,' if we can say, 'There is some other way you can handle this situation of the youth coming out of a beer garden with his clothes full of alcohol.'

Ms Dieckmann: I am probably not going to do much better than Mr Russo. It is a difficult question to answer in the finite. In my ideal world, that young person would not have the alcohol in their pockets when they come out of that pub. Presuming that is not going to happen, I look at it as the only way for the police to ascertain that alcohol and get it is to search them or to ask them to empty their pockets. So that is the case. At the moment I do not think there is a power to find that alcohol. That fulfils your purpose of finding that alcohol.

You have potentially opened a can of worms that means it is not worth finding those two bottles of beer in that young person's pocket. To me, it is a balancing effect. Finding those two bottles of beer is less important to me than that young person feeling like they have had their right to bodily integrity maintained and that they have had the ability to go about their business without being put in a situation where their fight or flight response may be triggered. There always has to be a weighing of the benefit and detriment. I do not think the benefit of finding those two bottles of beer—and I grant you that I do not think there is currently a power other than to give a new one. I think the detriment outweighs the benefit.

ACTING CHAIR: The logical consequence of your position is that you think we should not have a law that says that young people cannot have alcohol?

Ms Dieckmann: On the contrary, there are already the powers. As you say, when someone sees the alcohol being drunk, they can take it. We have to draw a line in the sand. There are many ways that you could ensure that the police do not have to deal with that young person taking beer out of the beer garden. We could draw the line in the sand here to say, 'When you see them swigging out of it then you take it.' That is where the line is at the moment: you see them drinking the alcohol then you can take it. Now we are discussing drawing the line a little bit further away from their civil liberties to say that we can frisk-search them. To give an extreme example, you could say that young people are not allowed out of their homes. Then there is no chance of them having beer in that beer garden. I am giving you an extreme example just to make the point that we as a society decide where we are going to draw that line. Just because I say that the detriment of frisking a young person outweighs the benefit of finding that alcohol does not at all mean that I think we should have open slather on young people being able to drink alcohol. I just choose to draw my line in the sand in a different position.

Mr Doostkhah: What is the purpose? What is the intention of this? If the intention is to stop young people from harming themselves by consuming alcohol, this will not do it. This will bring conviction. So on top of the alcohol problem there is the introduction to the criminal justice system and potentially to a life of drugs and everything else that comes with being exposed to the criminal justice system. If the intention is purely to reduce the damage and the harm then this is not going to do it, and we have plenty of evidence about that. I started talking about Iran. I was not just saying that. It does not.

Young people who want to consume alcohol are not going to be turned off by the fact that police have got extra powers. They are not thinking that far ahead; to the contrary. I will give you one more example. In Deception Bay one of the gang leaders of the time—this is going back 15 years. One of the young people there was notorious. One night he was picked up by a police officer, a detective sergeant, with a carton of alcohol. He could not even walk. He was in the gutter fallen. That police officer picked him up and took him home. That young person could not quite remember this until he sobered up and he put things together. From that incident of this police officer not taking him and charging him but respecting his health, taking him to his home and making sure there was somebody to look after him, this young person's attitude totally, 100 per cent changed towards the Police Service, towards the community and towards alcohol. This would not have been achieved if this young person was charged, went through the criminal justice system and ended up in youth detention. He would have been more angry, drinking more and doing more damage in the community.

Mrs ATTWOOD: It was an act of kindness.

Mr BLEIJIE: Surely if they caught him beforehand—if he had a swig of whiskey in his jacket—then he would not have ended up in the gutter and he would not have potentially been run over by a car. Would that not have helped him, anyway?

Mr Doostkhah: It will not stop him. If you do that, there are still ample young people aged 18 and older who will go and buy it and come and distribute it. There is different clothing. People wearing suits and ties can go into places and deliver it to young people. People do all manners of stuff. It is a business out there. You see what is happening in relation to alcohol management in some of the Aboriginal communities—taking it in tinnie boats and getting home brews going. We have to deal with this from the health perspective. America went through the prohibition and I gave the example in Iran. If you look around the world you will see that prohibition and laws have not brought safety and health to any people with regard to alcohol. It has only been health promotion and a health approach that has been able to do this.

Ms Dieckmann: For the committee the only other thing is that—and perhaps this is the way the parliamentary process works—there have been lots of questions—and I understand completely why the questions have been asked—about what alternative there is to this. My question for the parliament is: where is the evidence that this will actually work? It is hard for me to bring the evidence that it will not work, but to me it seems that the question is almost being asked the wrong way around. To my mind, we should only be making legislation when we actually have some faith that it will achieve the purpose we say it will rather than giving it a guess and seeing how it goes and then assessing it down the track. My experience of the move-on powers certainly did not instil a great deal of confidence in looking at how something has or has not worked and reassessing it at a later date.

ACTING CHAIR: Ms Dieckmann and Mr Doostkhah, thank you very much indeed for your time.

Ms Dieckmann: Thanks for your time.

ACTING CHAIR: Thank you for your patience for enduring our sometimes challenging questions and for your thoughts.

Mr Doostkhah: Thank you.

Ms Dieckmann: Thank you.

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

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

FRIEDMAN, Mr Paul, Director, Office of the Commissioner, Queensland Police Service

ACTING CHAIR: Welcome back.

Mr LANGBROEK: Boy, have we met some people who do not like you guys!

Snr Sgt Chan: I am sure it is not personal.

ACTING CHAIR: And we have met some others who like you but have clear views about what you should be doing. I do not know whether you have, off the top of your heads, anything that you want to add—any responses that you would like to make to anything that has been said to us. If you do not then that will be it and we would look forward to receiving your correspondence on it. It depends on how you want to handle this.

Deputy Commissioner Barnett: Unless there are specific issues that the committee would like me to address, we are happy to leave it to our next appearance on the 12th which might enable us to have a more considered response.

Mr LANGBROEK: Something that certainly came across to me through this afternoon and today's hearing is the ethical issues that I think a lot of witnesses expressed concerns about, that are not ethical issues to do with individual police but as a collective. I made some notes here today about all these issues about youth and practical policing and, whether it is related to interpreters or prostitution, there is a cynicism that senior police can direct that, 'This is how things should be done,' but at the coalface it ends up being very, very different. So for the 10,700 police who we know are at the coalface who are trying to do the right thing, when you are actually in an emotive situation and something has to be done, there is a general cynicism from many of our witnesses that it is not like sitting here calmly talking about this power that they will now have, whether it is prostitution or whether it is pat-down powers; it is a sense that powers get misused. That is something I thought you might like to consider in your responses to the committee.

Deputy Commissioner Barnett: Thank you, yes.

ACTING CHAIR: Two of you heard the whole day, I notice. Thank you very much. The committee has to now withdraw and communicate some of our thoughts to the secretariat, unless there is anything immediate that you think we need to know. You heard all of our questions; you know where we are coming from.

Mr Friedman: You are right: we did take copious notes. I think we have got all the key issues that all the witnesses put forward. We have started preparing a response, but I think at this stage of the day, particularly taking into account Mr Langbroek's comments about the ethical issues, it is an issue that we need to cover as well. We are scheduled to come back on the 12th and, as the deputy said, I think we can give you a full response, if you like, at that point in time. There are some things that people have commented on, in fact, that I think we would be able to agree to. We have just got to double-check the processes back at the office to make sure that is all okay. There would be four, five or six suggestions that have been made today that I think we would be able to concede to and get working.

ACTING CHAIR: Excellent.

Mrs ATTWOOD: Well done.

ACTING CHAIR: I would like to thank you very much for your attendance, for your diligence and also for protecting us. Can I thank the Hansard staff. Can I thank the Parliament House security staff. Can I thank the long-suffering committee staff. To the people who are still here who were kind enough to make submissions to us, thank you very much indeed. If there is any bona fide practising genuine member of the public, thank you for taking part in our great Australian democracy.

Committee adjourned at 5.49 pm