STANDING COMMITTEE ON LEGISLATION

CRIMINAL INVESTIGATION BILL 2005
CRIMINAL INVESTIGATION (CONSEQUENTIAL PROVISIONS) BILL 2005
CRIMINAL AND FOUND PROPERTY DISPOSAL BILL 2005

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 19 JULY 2006

Members
Hon Graham Giffard (Chairman)
Hon Giz Watson (Deputy Chairman)
Hon Peter Collier
Hon Sally Talbot

Hon George Cash
(substitute member for Hon Ken Baston)

Committee commenced at 10.50 am

KING, MR BARRY
Senior Assistant State Counsel, State Solicitor's Office, examined:

OSWALD, MR STEPHEN
Research and Legislation Officer, Western Australia Police, examined:

SAMSON, MR MATHEW
Acting Senior Legislation Officer, Western Australia Police, Legal Services, examined:

CHAIR: On behalf of the committee, I welcome you to the meeting today. Thank you for attending to assist us with our inquiries into these bills. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

CHAIR: Today's discussions are public. They are being reported and a copy of the transcript will be provided to you. Please note that until such time as the transcript of your public evidence is finalised, the transcript should not be made public. I advise you that premature publication of the transcript or inaccurate disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. If you wish to make a confidential statement, you can ask the committee to consider taking the statement in private. If the committee agrees, the public will be asked to leave the room before we continue.

I invite Mr King to make an opening comment to the committee in a general sense and then committee members will raise particular issues.

Mr King: Thank you. On the basis of my assumption that members of the committee have had the opportunity to read the bills as well as the explanatory memoranda and the second reading speeches, I do not intend to make any opening statement as such except to say that I am here on behalf of the Attorney General to offer whatever assistance I can to the best of my abilities and to assist the committee.

CHAIR: I refer to the definition of "officer" under clause 3 of the Criminal Investigation Bill. What is the rationale for including "public officer" in this definition? Why is the bill constructed in a way that obscures who those public officers might be?

Mr King: There is a purpose to having two sorts of officers in the bill; that is, police officers and other officers. Throughout the bill reference is made to not only police officers, but also to "officer" per se. The definition of "officer" includes police officers and public officers. The reason for the distinction between the two is to allow for there to be public officers who are not police officers - for example, wildlife officers or health officers - to be prescribed to be public officers within the bill and to be provided with investigatory powers under the bill. The purpose of that provision is to try to locate all those sorts of powers that apply to investigations within one piece of legislation and then to allow for different investigatory bodies or officers to be provided with those powers in due course. At this stage, they will be limited to police officers, as no other officers have been prescribed.

CHAIR: That is part of our question to you. Why is the prescribing of public officers deferred in that way?

Mr King: I will take advice on this. There are at least two reasons. The first is that this bill mirrors the Criminal Investigation (Identifying People) Bill, which is in the same form. The second reason is a number of different bodies of investigatory officers exist under their own legislation. In order to ensure that this bill was created in a form that was manageable during the time frame for the drafting for it to get through Parliament, it was determined to keep the definition at the level of police officers and other future investigatory officers as they arise. The alternative would have been to have gone through each act that provides powers of investigation and to have removed those powers from that legislation and placed them all into this bill. The difficulty that arises is that some powers provided in different legislation will be different from those provided in this legislation. The idea of this legislation is that the powers of wildlife officers under the Environmental Protection Act, for example, will remain. If it is considered necessary to provide other officers with powers that are provided for in the Criminal Investigation Bill, that can be done in the future.

CHAIR: I will clarify that. You are saying that other acts prescribe public officers with investigative powers.

Mr King: Yes.

CHAIR: They will continue under their own legislation regardless of this legislation. However, in the future, when new public officers who do not have those powers are needed, will they be prescribed by regulation under this bill?

Mr King: That is one purpose. The other is that in the future, those officers who are provided with their own powers under their own legislation could come within this legislation. For example, there are powers under this legislation that are not provided under other legislation. It may be that in the future it will be necessary for those other officers to have those powers. It is not only by regulation that those powers can be prescribed to public officers, but also prescribed by an act.

CHAIR: That can currently be done by an act.

Mr King: Clause 9(1) states that it can be prescribed by regulation or act.

Hon GEORGE CASH: I direct my question to Mr King. You have talked about investigative officers in general terms and have mentioned wildlife officers. Does the definition of "public officer" not include any person who is a public officer, whether he is an investigative officer or not, if he is to become a prescribed officer?

Mr King: He must be appointed under a written law to an office. For example, a wildlife or fisheries officer would be appointed as an officer, and then he would have to be prescribed.

Hon GEORGE CASH: Does it include people who are public officers under the Public Sector Management Act? How can it be determined that this is to apply only to investigative officers?

Mr King: They would have to be prescribed under this legislation.

Hon GEORGE CASH: I realise that. My point is: does the opportunity not present itself for the definition of "public officers" to be much wider than "investigative officers"?

Mr King: There are two matters. The first regards prescription, which is subject to Parliament passing the regulation. The second is that clause 9(2)(d) states -

> (d) the offence is one that the officer, by virtue of being such an officer, is authorised to investigate or prosecute.

It is directed towards an investigatory officer.

Hon GEORGE CASH: By his own principal or parent act?

Mr King: Yes.

[11.00 am]

Hon GEORGE CASH: That is the extent of the restriction on public officers; they must be people who are authorised to investigate or prosecute the issue that they are being empowered to investigate or act upon under this act?

Mr King: Yes.

Hon SALLY TALBOT: I seek further clarification of the use of the term "eventually" in the second reading speech, which reads -

> As the word "officer" is used throughout the bill, it is intended that the powers in the bill may eventually be exercised by prescribed public officers . . .

What process is intended for some of the officers you have named in the areas of fisheries or health?

Mr King: I think the term that is probably more important than "eventually" is the term "may"; that is, there is the opportunity for other public officers to be eventually provided with the power under the legislation. It does not mean that it is likely to happen at this stage.

Hon SALLY TALBOT: What would that require?

Mr King: It would require prescription under this legislation.

Hon SALLY TALBOT: By regulation?

Mr King: By regulation or by act. It can be done by another act as well. For example, under the Fish Resources Management Act it was determined that fisheries officers would be given quite substantial powers under their legislation. If they were to get the powers under this act, that could be prescribed by amendments to the Fish Resources Management Act or a new Fish Resources Management Act.

CHAIR: Perhaps on a not dissimilar question of principle, I might take you to clause 127 of the bill, and in particular clause 127(1)(b). This clause similarly refers to the prescribing of serious offences by regulation. The effect of this, as we see it, would be to allow the prescribing of serious offences to be made by regulation rather than having its own legislative power particularly specified in the act. What is the need for 127(1)(b)?

Mr King: I should put clause 127 into context for the committee. Clause 127 is the statutory embodiment of a policy that the police have adopted for some time. It is also found in other legislation in Australia. The purpose of it is to try to reduce the use of arrest, as far as possible, to specific instances where arrest is required rather than simply done as a matter of course. In this sense it provides for the power of arrest for any offence, which is not the case today. It puts parameters over whether that power can be exercised in relation to any offence. There are circumstances in subclause (3)(b). If, for example, an officer cannot identify who a person is and it is then necessary to arrest the person because he will not give the officer his name and address, the officer has the power to arrest him for that purpose. Those sorts of purposes that are prerequisites for arrest also include a serious offence. For example, if a person is reasonably suspected of a sexual assault of a child, it would not be necessary for the police officer to go through these sorts of thought processes and ask, "Will the person give me his name?" "Okay, he will." "Will the person continue or repeat the offence?" "In the circumstances I do not have evidence to suggest that; therefore, I cannot arrest him." These things do not have to arise before the police officer has the power to arrest for a serious offence. A serious offence is anything attracting a penalty of more than five years' imprisonment, which means that most offences of a serious nature that we can think of come within that category. The reason behind having the serious offence being sufficient to allow a police officer to arrest is that in circumstances like that it is seen, as a matter of policy, to be preferable for the courts to have a role in determining the person's liberty after arrest and whether to grant bail. At this stage, we have limited it to a serious offence attracting a penalty of five years or

more. The reason for the prescription clause is to allow for offences, which at this stage are unforeseen, that may not come within that definition of "serious offence" but would be of such a nature that it would be appropriate for police to arrest, without having to come within all the other prerequisites.

CHAIR: If you were to discover an offence that you wanted to add to the definition of "a serious offence", which, for some reason, might not come within clause 127(1)(a), why would you not come back to the Parliament to ask the Parliament to change the law?

Mr King: Because it is much slower to get an amendment to an act than it is to get a regulation prescribed.

Hon GEORGE CASH: Mr King, could you give us some examples of what you would envisage might be in clause 127(1)(b), because it seems to me that clause 127(1)(b), at the moment, means any offence that is not already a serious offence. It could be as wide as that.

Mr King: Yes, any offence. Mr Samson reminds me that it could be something for which we do not want to raise the penalty, but we want it to be something that would be of a nature - it may not be of the serious nature -

Hon GEORGE CASH: Give us some examples, because examples would be helpful.

Mr King: I do not have a specific offence ready, but, for example, child pornography currently attracts a penalty of five years, so it would come within the definition of a serious offence. If there is an offence that is not quite of that nature - let us say, related to child pornography but not child pornography per se - which attracts a penalty of four years, it may be determined that that offence should be an arrestable offence or should be a prescribed offence for the purposes of clause 127, but at this stage none has yet been identified.

Hon GEORGE CASH: Given that clause 127(1)(b) in its present form means any offence that is not already determined to be a serious offence - we agree on that, and you have suggested that perhaps other acts that may not attract a five-year penalty should be arrestable offences - why is 127(1)(b) not couched in terms that might say something like "an offence with a penalty of between three and five years may be a serious offence if prescribed by regulation"? I am concerned that at the moment subclause (1)(b) is providing for any other offence, whereas it seems that it should be limited to, let us say, a three to five-year range, rather than a nil to five-year range.

Mr King: Mr Samson reminds me that the penalty is not always necessarily directly proportional to the need to provide a power to arrest in the absence of other reasons to arrest. For example, there may be a decision to effect a zero-tolerance policy in the Northbridge area. It may be that the executive decides that it would be best if, in order to clean up Northbridge, people who were loitering, hoon drivers and people of that nature in the Northbridge area be arrested and brought before the court. These are off the top of our heads. In circumstances like that, the police would be given the power to arrest in the absence of all these other criteria in clause 127(3). The connection between the penalty and the perceived need to arrest is not necessarily there.

Hon GEORGE CASH: I understand where you are coming from, Mr King, and our questions are directed in good faith, but it seems to me that at the moment we have an extremely wide area. We are leaving any other offence to be a serious offence if so prescribed. It is obviously convenient to raise various issues - Northbridge, hoons and all sorts - and I understand why you would do that. We read about these sorts of things in the *Sunday Times* every weekend. It seems that the newspapers are able to determine what is or is not a serious offence. I am just concerned that the area is too wide. Perhaps I should ask my questions by way of asking whether there are some other words that would give the Parliament greater comfort that serious consideration was given to those other offences before they were prescribed as serious offences.

Mr King: I wish to give two answers to those questions. First, Parliament does have control over regulations and regulations can be disallowed. The second is that although we are talking about

something defined as a serious offence within this legislation, we must recall that it is within the clause relevant to the issue of power to arrest; it does not result in anything further than giving the police the power to arrest a person in circumstances where they reasonably suspect that the person has committed an offence. They can currently do that - apart from simple offences - in any circumstances now. As I said before, one of the primary purposes of this clause is to reduce those times when police would otherwise arrest a person. This is, in a sense, an exception to that; that is, to when there is a serious offence. That serious offence is called a serious offence, but really its nomenclature is something that is picked up because of its convenience. To start with, it relates to offences that attract a penalty of five years, but it is not necessarily limited by its nomenclature. I think there is not a lot more I can say about it other than that.

Hon GEORGE CASH: I understand the answer. There is no difficulty in understanding where you are coming from. The question is whether or not it should be all other offences able to be prescribed as serious offences. The only saving grace, if I might say, is that at the moment you say that there is no limit.

Mr King: Apart from simple offences, there is none. Simple offences are not arrestable offences. May I have a moment?

CHAIR: Yes. I should say, too, that if you are more comfortable taking on notice any of the questions we are asking today and coming back to us, we are quite happy to deal with questions in that way.

Mr King: Thank you. I think in this case we are happy enough to proceed. Mr Tremlett reminds me, I think in line with what I have already suggested about the term that was used, that we could have used the term "prevalent offence". It could be related to prevalence rather than to seriousness. The way the provision is framed now gives us some sort of fairly prescribed area to start with; that is, if we know there is a five-year offence, there is the power to arrest in the absence of any other criteria. Whether that should be expanded in the future to include other offences, whether because of prevalence or otherwise, remains to be seen, but, at this stage, it is very much limited.

[11.15 am]

Hon SALLY TALBOT: I wish to ask one question because it spins off the answers you have given to Hon George Cash. Imagine for a moment that we deleted subclause (1)(b), given that you have used the example of hoons on the road. It looks as if subclause (3) makes the provision about offences that are not a serious offence. If an offence is not included in (1)(a), given the examples you have just used, both those cases would then be covered by paragraph (iii).

Mr King: If a police officer reasonably suspects that a person has committed an offence that is not a serious offence, the criteria in (iii) apply.

Hon SALLY TALBOT: If it is not a serious offence, it does not come under subclause (1)(a)?

Mr King: That is right. If it is not a serious offence under (1)(a), the criteria in (iii) apply. If it is a serious offence, subclause (2) applies. Did I answer your question?

Hon SALLY TALBOT: I am just reflecting on that. You may well have done; it may be my failure to grasp what you are saying. It seems to me that you have two types of offences - serious offences, that is, those that carry a penalty of imprisonment for five years or more, or non-serious offences, which carry a lesser penalty. You only have two categories you can put people in. If it is category A, they come under (1)(a). They can be arrested if the offence carries a statutory penalty of imprisonment for more than five years. You are saying that there might be other offences which you then want to classify as serious for the purpose of arresting somebody, but which carry a lesser period of imprisonment. I am suggesting that they would be covered by paragraph (iii), which covers an offence that is not a serious offence.

Mr King: They may well.

Hon SALLY TALBOT: Can you think of an example of an offence that would not fit in either (1)(a) or (3)(b)?

Mr King: I will try to answer your question in this way. You will recall the context I tried to paint at the outset of questions about this clause. If a police officer reasonably suspects someone of committing an offence - say it is an offence that does not carry a five-year penalty; as Mr Tremlett suggests, I rely on the hoon legislation - the police officer is not entitled to arrest a potential offender unless the police officer is satisfied of one of the things in (3)(b): that is, he cannot verify the person's name; the person is likely to repeat the offence; is likely to commit another offence in the near future; is likely to endanger another person's safety or property, and likewise there would have to be some temporal aspect to that; is likely to interfere with witnesses; is likely to conceal or disturb a thing relevant to the offence; or the offender's safety will be endangered. If, for example, someone was seen driving in a hoon-type way and was followed back to his place of residence, the police officer asked for his name and he readily provided it, and there was no basis for the police officer to have a reasonable suspicion that that person would continue the offence, because he had driven home and the night was finished, that person would not come within subclause (3)(b). In order to arrest that person, the police officer would have to have some other power. If that sort of legislation were prescribed under (1)(b), the police officer would have the power to arrest. Without that exception, the police officer would have no power to arrest.

Hon SALLY TALBOT: I understand now what you are saying.

Mr King: One of the difficulties with the way in which we have drafted this section was that we put "serious offence" at the outset to define it because it then gets used in the context of the provision, but it is simply seen as an exception to the requirements in (3)(b).

Hon GIZ WATSON: In that scenario, if the police had actually stopped the person rather than waited for him to get home, would subclause (3) apply?

Mr King: It may well.

Hon GIZ WATSON: A person's safety would be in danger. I do not know that that example holds up terribly well.

Mr King: There is the example where he has gone home and there is no basis upon which one could reasonably suspect all these other criteria would apply. The example is only thrown up as illustrative. It may not occur in those terms. The point I am trying to make is that (3)(b) would normally apply to give the power to police to arrest, but there will be circumstances when it will not and therefore they should not arrest. They should issue a summons in relation to the offence. That is the purpose of the provision. But where there are offences of a certain nature, at this stage they have been identified as so-called serious offences under (1)(a), the police do not have to have a reasonable suspicion of any of those things in (3)(b).

Hon GEORGE CASH: We could discuss this for many hours. There is a sense that the committee is concerned that (1)(b) in its present form is too wide. It may be possible for (iii) to be modified to provide some additional words so that at least the police officer has to have a reasonable suspicion with respect to some other words. I accept that if you remove (1)(b), you remove the Parliament's oversight, so to speak. If we leave this clause on the understanding that you could look at some additional words to (iii) or some other words to (1)(b), perhaps we can move on. I think you can judge the sense of the committee. Dealing with the words that are here will not necessarily allow us to progress with the rest of the bill.

Mr King: I have tried to explain the purpose of the serious offence provision. I think that is now understood. I assume it is for the committee to make its deliberation and report on it. I am not familiar with the process whereby the committee would make a recommendation on the basis that we went back and reconsidered the clause.

CHAIR: I think what is being put to you is that you might take back that consideration and look at an amendment to it, notwithstanding whatever the committee might recommend in its own report, but at least make the government aware that the committee has a concern on this issue. The government may anticipate that the committee will make a comment or potential recommendation with respect to that.

Mr King: I am happy to do that.

CHAIR: We will go back to clause 5 of the Criminal Investigation Bill. I have a question about "thing relevant to an offence". Can you give an explanation to the committee of the inclusion of this definition? It is an interesting term - "thing relevant to an offence".

Mr King: It is a new provision. The intention of this provision is to be as broad as possible so that things that are connected in any way to an offence or may provide evidence to an offence are included. It extends to things that are non-material or animate. In particular, we are looking at things that may afford evidence. When a person is being searched and a thing that may be relevant to an offence is found, it can be seized. It is in the context of that nature that it arises.

Hon GIZ WATSON: In relation to clause 5(2), what sort of thing is being anticipated by something that is non-material or inanimate?

Mr King: The committee will note that there is an example given of the distance between two things or the visibility from a window. I am told that it is not unusual for police to want to get into a place either where an offence occurred or that is relevant to an offence, in order to look from a window to see whether things could be seen. That would be a thing relevant to an offence, which could be obtained under a warrant but it is not animate. It is not a thing as such in the normal terminology.

Hon GIZ WATSON: You mean they could require that the measurement be taken?

Mr King: To take the measurement or go into someone's residence or look from a window would require a search warrant.

Hon GEORGE CASH: Can we just continue from where you finished with the words "would require a search warrant". So a search warrant would not be required if entry to a building is required to determine a view from a window, for instance, into another building where an offence may have been committed?

Mr King: No, it would.

Hon GEORGE CASH: Perhaps I misunderstood what you said. I thought you said a police officer would gain entry to another building to determine the view from that building with respect to another area where an offence had been committed.

Mr King: If a police officer wanted to get into a building and consent was not given to enter that building, the only power that a police officer could be given would be under a search warrant to enter a building in relation to something like this. The police officer would have to show that there is reasonable suspicion of a thing relevant to the offence in the building. What is that thing? It is the view from the window. It is not something that they can pick up. It is only something they can then give evidence about in due course.

Hon GEORGE CASH: But a search warrant will still be required and they will have to show that it is a thing relevant to the offence and that is why they require the search warrant.

Mr King: Exactly.
[11.30 am]

CHAIR: I refer to clause 18. We have received the clause-by-clause comparison, for which I thank you; it has been very helpful to us. It appears to the committee that there is presently a

deficiency in the law concerning police officers setting up roadblocks, and that this bill is clearly intended to remedy that. Is that something you agree with?

Mr King: Yes. As we sit here, there is no power to set up a roadblock in the way we all understand from American movies in which we see roadblocks set up to stop all cars and to search them for a thing or a person. There are powers under the Road Traffic Act for RBTs. They are not roadblocks as such, but those powers could not be used in the way we envisage this provision to be used.

CHAIR: Can you confirm that under clause 24 police will not need to be present if a citizen is exercising necessary force? Does the bill contain an express provision for indemnity to citizens who might be engaged in conduct that is contemplated under this clause?

Mr King: Yes. We confirm that it is not necessary for a police officer to be present to exercise the power under that provision. There are no provisions in relation to indemnity in this bill. There was one that has been removed that is not relevant to this issue. There are indemnity provisions under the Criminal Code.

CHAIR: Was consideration given to this; has that been an issue?

Mr King: Do you mean indemnity for a citizen's arrest?

CHAIR: Yes.

Mr King: This clause provides that it is lawful for a citizen to act to prevent offences. Provided that a citizen exercises that power reasonably, he is acting lawfully. That would be the question in terms of whether a person committed an offence by touching a person and thereby left himself open to an assault charge. As long as the action comes within this clause, then he would not be committing an offence. Likewise, in terms of civil liability, provided he had been acting lawfully. These questions would be determined on that basis.

Hon GEORGE CASH: Why is clause 15(5) necessary? It appears to provide an indemnity when someone is required to give assistance in the exercise of certain powers. Are we relying on some common law issue in clause 24 to protect someone when he is lawfully trying to prevent an offence of violence, but in doing so causes damage to property or an injury to someone who is acting lawfully? He does not appear to be indemnified in express terms in this bill.

Mr King: I think the first answer is that we are not relying on common law power. The indemnity provided in clause 15(5) provides protection when there is no other enactment that provides protection. The lawfulness of clause 24 would not arise in circumstances of clause 15 or vice versa. If someone were asked to assist a police officer and did so, that person would be protected in the same way that a police officer would be protected under the Police Act for any act.

Hon GEORGE CASH: When you say "any act" does that include any damage or injury that might be sustained?

Mr King: Yes, to the same extent that a police officer would be protected. Clause 15(5) goes beyond that to include the state. Subclause (5) states "any enactment that protects the person or the State from liability".

Hon GEORGE CASH: Why is a person not indemnified under clause 24 if he is acting lawfully but causes damage or injury to the other party?

Mr King: Are you asking whether the state would indemnify the individual or provide him with a defence to the person for any claim?

Hon GEORGE CASH: Yes; I expect the state would be indemnifying the person. It appears that if a citizen acting under clause 24 causes damage or injury to someone else in the carrying out of that power, he is not indemnified at all. He would be leaving himself open.

Mr King: I come back to the terms of clause 24(1); namely, if a citizen uses force that is reasonably necessary in the circumstances, what he is doing is lawful. There is no need for indemnification as such. A claim could not arise. In a sense, that would provide a defence, I think, to any claim.

CHAIR: I think the issue is becoming circular because that takes us back to clause 15(5). I think the question is: if it is not necessary in clause 24, why is it necessary in clause 15(5)?

I refer to clause 25. Is there any reason a minor would not be able to arrest another person?

Mr King: No.

CHAIR: I refer to clause 31(6). Can you explain why it was necessary to include a provision to allow the omission of the name of the judicial officer who issues a search warrant?

Mr King: It is current practice not to provide the name of the judicial officer. Copies of the warrants are provided to the subject of the search warrants. It is to protect the judicial officers from any repercussions that might arise from issuing search warrants.

CHAIR: Why is it discretionary as indicated by the word "may"?

Mr King: The police would omit the name as a matter of course. If for any reason the judicial officer wanted the name on the copy of the search warrant, it could be included.

Hon GIZ WATSON: Perhaps it should be stated a bit more clearly. The practice seems to be a reasonable proposition but the bill does not reflect that the judicial officer has the final say.

CHAIR: Is it intended that the discretion in these cases be exercised by the judicial officer?

Mr King: I understand that it was intended merely to give the power to omit the name. The question of whether the judicial officer would have discretion to include the name on a warrant was not considered. Warrants must be signed but copies that are provided may not have the name on them. A warrant that contained the name of the judicial officer would remain with the court but a copy provided to the person who was the subject of a search may or may not have the name. This clause provides the police or the court the power not to include the name.

CHAIR: It is not very clear who would make that decision. Would it be one of those standard forms on which the name is included on the front page and on the page underneath there is a blank box? Is that intended as a matter of course?

Mr Samson: Yes.

Hon GEORGE CASH: Is it possible for that clause to be rewritten? At the moment it is not clear who should exercise the discretion - whether the judicial officer requests that his or her name not be included or whether for reasons best known to the police officer, he or she decides it should not be omitted. Surely if it is to protect the judicial officer, at the very least it should say "the judicial officer may request his name be omitted from" whatever it is.

Mr King: It could be clearer. I think we have to go back and look at the original intention. My understanding is that it is as I put it. However, if the intention was to enable the judicial officer to make the decision about whether the name was to be included on the warrant, that could be much clearer.

CHAIR: Perhaps you could provide some feedback to the committee on that. I refer now to clause 35. You refer in your table to the chance discovery principle. Can you explain to the committee what that principle is?

Mr King: When a police officer is investigating a reasonably suspected offence and comes upon evidence by chance of another offence, the police officer can seize that evidence. It is a longstanding common law power from the case of Ghani v Jones. It is now to be included in the statutes.

[11.45 am]

Hon GEORGE CASH: When they come across evidence by chance, is that when they say, "Hello, hello, hello; what do we have here?"?

Mr King: My understanding is that they are taught that in the academy, so yes!

CHAIR: I move now to clause 36. In your summary chart you say it is a contraction because it limits the power to police officers and other specified public officers when, depending on the circumstances, common law would permit any person to enter to assist a seriously ill or dying person. It refers to officers. That could mean police or public officers. Therefore, is this really a contraction?

Mr King: No. I think that is probably a misuse of the term. It is really more of a definition, or a better description of the use of the power, rather than a contraction of it.

CHAIR: I move now to clause 41, which provides that an application for a search warrant must be made to a JP. I draw your attention to the fact that the Kennedy royal commission recommended that applications for a search warrant should be made to a magistrate. Is there any reason why that recommendation of the Kennedy royal commission was not carried over into this bill?

Mr King: Yes. There were two recommendations that were not carried over into this bill, as a matter of policy. This was one of them. The other was the videotaping of the execution of search warrants. In both cases it was accepted that the recommendation, if adopted, would lead to practical difficulties. In this case, it would require a magistrate to be on call 24 hours a day. We have put in a provision that applications can be made by remote communication. Nonetheless, it would still be necessary to have a magistrate available somewhere in this state 24 hours a day, seven days a week. Therefore, it was determined that, as a matter of policy, that would be impracticable. In terms of the videotaping of search warrants, similar issues of practicability would arise, particularly in stations where police officers are on their own, or in two-man stations where one officer is on duty and the other is not, because it would mean that another officer would need to be brought in to hold the video camera while the search was being undertaken. In some circumstances that would be almost impossible. There is currently a policy within the police force. I have a copy of it here. It is in what is called the COP's manual, or the Commissioner of Police's manual. It is administrative policy 24.1. It is about the video recording of searches. It states that it is the responsibility of all members to ensure that searches are conducted in a thorough and professional manner, and that the integrity of the search is maintained at all times; for this reason, where practicable, a video recording of search warrants is to be considered. It states also that organised crime squads conduct their operations under standard operating procedures that require all searches to be video-recorded. The procedures that ought to apply when a video-recording takes place are also provided in the policy. The police try to do that whenever they can. However, to make it a requirement and say that if it does not occur, the evidence obtained will not be admissible, will simply leave too much out.

Hon GIZ WATSON: This issue about the availability of magistrates is raised regularly. Is it not the case that magistrates are available 24 hours a day to issue restraining orders, and they can be issued by phone? Therefore, magistrates are available 24 hours a day in this state.

Mr King: That may well be the case. I am told that hundreds of search warrants are issued every day.

Hon GIZ WATSON: Sure, but the way it is stated is that we do not have a magistrate available 24/7. That is not true.

Mr King: It would require a magistrate to be available to issue search warrants 24 hours a day. There are practical considerations as to why it should not be taken any further than that.

CHAIR: I move now to clause 47. Can you explain to the committee how you have arrived at the penalties that are contained in subclauses (7) and (8)?

Mr King: The penalties are fairly standard penalties for simple offences. The penalties are similar to other penalties for offences of a similar nature; for example, for the move-on power under section 50 of the Police Act, the penalty is the same; for damaging property under section 445 of the Criminal Code, the penalty is the same; and for criminal trespass under section 70A of the Criminal Code, the penalty is the same. So, for a similar nature of offence, it is a similar penalty.

Hon GEORGE CASH: Does that make it consistently right or consistently wrong?

Mr King: Consistent!

CHAIR: I move now to clause 48(5)(e). Can you explain how you have arrived at the time period of six hours?

Mr King: A time had to be determined. Six hours seemed like a reasonable sort of limitation, without giving too much time or taking away too much time, so we settled on six hours.

CHAIR: It is not standardised against anything else?

Mr King: Not as far as we are aware. We had not standardised it in any event.

CHAIR: Was this recommended to you by officers who are working in the forensic area?

Mr King: I do not recall any recommendation. As I have said, a time had to be determined. We had to consider the fact that, for example, the owner of a small shop - these amount to crime scenes, or restricted forensic areas -might have his shop closed off to use for a certain amount of time. It was considered that 12 hours might be excessive and two hours might not be sufficient for police officers, so we settled on six hours as being a fair compromise.

CHAIR: I move now to clause 76(2). The committee's concern here is about the potential misuse of forensic information without penalty. I am referring in particular to paragraph (d) - a photograph of a person's internal parts or orifices. Is there anything in the bill that would make it an offence to misuse material gained through this provision? Is there any clause in the bill that would cover that situation? The advice that the committee has received from submissions is that there ought to be some sort of penalty for the potential misuse of that information.

Mr King: The short answer is that there is not an offence for the misuse of information of that nature as far as we can remember.

CHAIR: Do you have a view on whether that should be an offence?

Mr King: If I can express an opinion off the top of my head, from a policy perspective I can see no reason why there should not be some sanction for the misuse of information of this nature. That could apply to all information that was obtained. That is, information should be used only for the purposes specified under the legislation, and no wider, whether it be a photograph or a hair follicle. There are some drafting issues in terms of narrowing the scope of any offence-creating provision in relation to any information obtained through a forensic procedure. However, as I have said, from a policy perspective, I can see no reason why there should not be some sort of sanction. Of course, police officers would be sanctioned under their own legislation for going outside their powers.

[12 noon]

Hon GEORGE CASH: How would they be sanctioned?

Mr King: By disciplinary provisions.

CHAIR: That would not be a defence. I refer to photographs of deceased bodies being put on the Internet, for example.

Mr King: Of course that comes to mind.

CHAIR: The committee is putting the proposition to you that the misuse of that type of evidence ought to be an offence.

Mr King: We have not given a great deal of thought to whether it ought to be an offence or simply remain within the police department to be dealt with by way of disciplinary sanctions.

Hon GEORGE CASH: The legislation refers to "a person". "A person" would extend past a police officer, would it not?

Mr King: Yes.

Hon GEORGE CASH: Therefore, those disciplinary opportunities available regarding a breach by police would not be available to another person?

Mr King: By and large, those persons would be medical persons.

Hon GEORGE CASH: Staff from the coroner's office, the Department of Health and other medical people may be in possession of these types of photographs.

Mr King: They would be subject to sanctions under other legislation or by their professional bodies. Certainly the Public Sector Management Act provisions would apply.

Hon GEORGE CASH: If the original argument was to consolidate various issues and bring them into one being, it would be convenient also to have the sanctions in the same bill rather than be required to go to other legislation to find out whether action can be taken with regard to a sanction. You have said that there is no reason or public policy against such a sanction.

Mr King: I carefully refrained from saying an "offence"; I did say a "sanction". What that sanction ought to be is something that we have not given a lot of thought to.

Hon GEORGE CASH: The committee is in a position to take on board your comments.

CHAIR: The coroner raised with us his concern about clause 82(5). He believes that that provision is unhelpful and unnecessary. What is your view of his description of that provision?

Mr King: As I recall, the coroner has the power under the Criminal Investigation (Identifying People) Act to do the same thing, and that is why it is there. He has the same powers in different legislation. This provision does not restrict him from exercising his powers in the other legislation. He is not entitled to use this legislation to authorise a forensic procedure to obtain an identifying particular. That is done under the Criminal Investigation (Identifying People) Act.

Hon SALLY TALBOT: Can it be done under other legislation?

Mr King: Yes, I will find the other section. It is section 21(1) of the Criminal Investigation (Identifying People) Act 2002, which states -

> (1) The State Coroner may authorise the taking of identifying particulars from deceased people, whether or not their deaths are reportable deaths within the meaning of the *Coroners Act 1996*, for or in connection with forensic purposes.

Hon GEORGE CASH: What is the purpose behind clause 82(5) of the Criminal Investigation Bill?

Mr King: It is merely to draw a line between the powers under this legislation and the powers under other legislation. It is made clear that any power to obtain identifying particulars comes under this legislation. If changes are made to that legislation, it will affect the coroner's power to authorise the obtaining of identifying particulars.

Hon GEORGE CASH: Will clause 82(5) not affect the coroner's power in any way?

Mr King: No.

Hon GEORGE CASH: Is there no conflict?

Mr King: No, there is no conflict. It simply says there is no authorisation under this section.

CHAIR: Clause 100(4) concerns the application for a warrant in respect of an incapable person. The committee has received a submission from the Public Advocate, who told the committee that there are no provisions in the Guardianship and Administration Act for her to undertake any functions in relation to the application of a warrant. The committee believes that she has previously confirmed this with the State Solicitor's Office in relation to a provision in the Criminal Investigation (Identifying People) Act that is similar to clause 100(4). What is the Public Advocate expected to do once a magistrate gives her a copy of the warrant, and how she can respond to a magistrate's request for information or submissions?

Mr King: This provision provides the Public Advocate with the documentation relevant to the application. The magistrate can then seek submissions from the Public Advocate. The Public Advocate may or may not wish to make submissions. However, we do not see that the Public Advocate can be in any way restricted from making such submissions under her own legislation. I have not looked at it to see whether there are restrictions in the way the Public Advocate can provide submissions. This provision allows for the Public Advocate to make submissions and to be invited to make submissions.

CHAIR: That is the difference. She appears to be saying to the committee that she does not see there is any provision under her legislation to enable her to do that.

Mr King: It may be best if we look at the relevant legislation and take this question on notice.

CHAIR: Thank you. The committee has resolved to make that submission public, so a copy of her submission to the committee will be provided to you before you leave today.

Mr King: Thank you.

CHAIR: The Public Advocate has told us that she cannot intervene with persons aged under 18 who have a decision-making disability. The question then arises: how will they be dealt with by a magistrate?

Mr King: She cannot intervene? Does intervening mean to come between the -

CHAIR: This is the Public Advocate.

Mr King: Yes. I do not quite follow what that means.

CHAIR: The issue is that the person is younger than 18 years of age.

Mr King: I understand that. What does "intervene" mean? Is it an intervention on behalf of the person who is younger than 18, or is it regarding making a decision for a person younger than 18?

Hon SALLY TALBOT: She says that the Public Advocate has no statutory responsibility in relation to those individuals; that is, people younger than 18.

CHAIR: Perhaps it would be best if you read the entire submission and then addressed that.

Mr King: That would be preferable.

CHAIR: It is difficult if we just quote little sections of her transcript to you.

Clause 112(3) refers to the destruction of forensic information to be approved by the Commissioner of Police. The coroner's view is that he should give co-approval for the destruction of forensic information because he authorises forensic procedures on deceased people. What is your view of that? I do not think he is saying to the exclusion of; he is saying that he should also have that power.

Mr King: Likewise, I cannot see a reason why the coroner should not have that power with regard to the information that was obtained under his authority.

CHAIR: I refer to clause 147 and, by way of an example, the printing of a document from a computer rather than removing the entire computer. What is the probative value of a copy that has

been printed off a computer? Would that have the same probity value as would the provision of the computer itself? Would it need to be provided as an authenticated copy in some way?

Mr King: This provision does not provide for the admissibility of anything that is seized by an officer. It simply gives an officer the power to take it or to take a copy. It is up to the officer to determine whether he requires the original or whether a copy is sufficient. He would take advice on the application on the relevant provisions of the Evidence Act on the admissibility of the document in due course.

CHAIR: I refer to clause 92(2)(c). The Department for Community Development has raised concerns with the committee that this clause provides for an officer to request consent from a child suspect and a responsible person for forensic procedures to be carried out on the child. The DCD has raised with the committee its concern that if a child is estranged from a parent, it would be inappropriate for a parent alone to give consent in the absence of the child's consent. What is your view of that?

Mr King: A "responsible person" is defined slightly differently from a "parent". Clause 73 defines a "responsible parent" as a parent or guardian, or another person who has responsibility for the day-to-day care of the child, and provides that other persons can be prescribed. The intention is that the person who is responsible for the child is the person who would make the decision.

CHAIR: Clause 88(3) states in part that if an officer reasonably suspects that in the time it will take to apply for a forensic procedure warrant or for an application to be decided the relevant thing to be searched for may be disturbed or lost, the officer can detain a person for a reasonable time. What is meant by "reasonable time"? In light of that, DCD is concerned that a reasonable time should take into consideration the detrimental effect that the detention would have on a child. Do you have a view on that?

Mr King: I think that is inherent in the term "reasonable time" and what is reasonable in the circumstances, such as the circumstances of being a child, and also the circumstances may be the way in which the child is acting or coping with the situation.

CHAIR: That may be a very short time under the circumstances.

Mr King: It may be. One has to recall that these are exceptional powers. The police are there, especially in circumstances like this, really for the benefit of the child. The police are not going to abuse their powers where it will be to the detriment of the child whom they are trying to protect.

CHAIR: I have a general question, which arises for example in clauses 88 and 139, on the whole issue of a detained person. General references are made throughout the bill to a detained person being a person who is not arrested or a person in custody. The bill contains provisions that allow police to detain people without arrest. What are those people's rights? For example, what if they were to leave the place where they were being detained?

Mr King: That would be covered by clause 13, which provides that they are taken to be in lawful custody. It means that they would then be subject to the powers of police to chase them if they escaped legal custody. They would be subject to any offences for so escaping.

CHAIR: Are a person's rights when being detained in custody and not charged well understood? It seems a bit hard for the committee to work out where those people stand.

Mr King: I think you have raised an anomaly that we have not considered. Under division 5 of part 12, there are rights applying to arrested persons that do not apply to people who are detained, particularly when those detained people are not there, by and large, because they are suspected of committing an offence. It would certainly be beneficial, one would have thought, to apply those sorts of rights, or perhaps slightly different rights, to people who are detained under the act rather than arrested.

Hon GEORGE CASH: In respect of those three words you used, "detained in custody", and then arrested, you pointed to clause 13 which states that a person who is detained is taken to be in lawful custody. At what stage does the person know that he is being detained and that he is in custody or arrested?

Mr King: First, I have to withdraw some comments I have already made. Mr Samson points out to me that under clause 88 (3)(c), in order to detained a person, he must first be arrested. I think that is the same as other provisions in part 9.

Hon GEORGE CASH: Is that not in the alternative; that they can be arrested under paragraph (c) or they can be detained for a reasonable time?

Mr King: It is "and".

Hon SALLY TALBOT: How does clause 13 work when somebody is detained and taken into lawful custody but is not under arrest?

Mr King: Where does it apply? We will have to think about that.

Hon GEORGE CASH: Could I come back to clause 88(3)(c) and (d)? Paragraph (c) is the issue of an officer, without warrant, arresting the involved person, and I think I understand what that means. Paragraph (d) is a separate issue, because the officer may, without warrant, detain the person for a reasonable time. It does not say that in order to be detained the person needs to be arrested.

Mr King: No, but he would have to be arrested and detained, and reasonable measures would have to be taken.

Hon GEORGE CASH: You said there was the word "and".

Mr Samson: "And" is between paragraphs (d) and (e).

Hon GEORGE CASH: Yes, but that refers to either an arrested person or a detain person. If Mr King is saying that to be detained, a person must be arrested, I understand the answer. I do not believe that is what it says, but I do not claim to have the drafting skills of Mr King or Mr Tremlett. What is it intended to mean?

Mr King: As I understood previously, the intention was that in order to detain a person, he must first be arrested. I am grateful to Mr Samson for bringing it to my attention. We have the arrest part there. It is now clear to me that the original intention was that in order to detain a person under these provisions in part 9, the person must first be arrested.

Hon GEORGE CASH: Then why does it not say in paragraph (c) "arrest the person involved and", in paragraph (d), "may . . . detain the person"?

Mr King: It could all have been in one conglomerate but here it has been separated into arrest, detain for a reasonable time - that being reasonable time to allow the application to be made - and take reasonable steps to ensure that things are not somehow disturbed. It is a drafting technique rather than anything else.

Hon GEORGE CASH: Clause 88(3)(d) requires the person to be arrested before he can be detained.

Mr King: Yes.

Hon GEORGE CASH: Are there any other instances in the legislation where somebody can be detained without being arrested?

Mr King: Yes.

Hon SALLY TALBOT: May I just recap on that point? Have we determined that there should be "and" between paragraphs (c) and (d) or "or"?

Hon GEORGE CASH: No. My understanding is that Mr King is saying that it is intended that before somebody can be detained he must be arrested. I am left up in the air, but if that is the intention, I would have thought that we should be putting the word "and" in.

CHAIR: Do you say "(a) and (b) and (c)" or do you say "(a), (b) and (c)"?

Hon SALLY TALBOT: Only if there is a possible confusion between "and" and "or".

Mr King: I am told that the Interpretation Act applies to a list of this nature. Where "and" is found before the last one of a list, I assume it would apply to the other ones. I also think there is some help to be obtained from paragraph (e), which refers to "while the person is so detained", which refers back to paragraph (d), for showing a list that is altogether. Paragraph (e) could not stand on its own; a person would have to be detained. Likewise, paragraph (d) could not stand on its own; it would have to be after someone was arrested.

Hon GEORGE CASH: It is clear then that the word "and" is to be interpreted as being after paragraph (c) and not the word "or"?

Mr King: Yes. We are fairly comfortable that there are provisions that provide for the detention of persons without arrest. We are scouring the legislation at this stage to try to find an example. We thought that perhaps in relation to the powers to search people, there are powers to detain persons for the purposes of other powers being exercised. For example, under the powers for ancillary searches provided for in clause 65(2), if a person is authorised to do a basic search, under subclause 2(a) the person has the power to stop and detain a person for a reasonable period. That means that a person who is detained under that provision is in lawful custody. If he runs off, provisions relating to escaping from custody would apply.

Hon SALLY TALBOT: They are in custody and they are detained but not arrested.

Mr King: That is so.

Hon SALLY TALBOT: What if they escape?

Mr King: They are escaping from legal custody.

Hon GIZ WATSON: They can be held in custody without being charged?

Mr King: Yes.

CHAIR: Under that provision?

Mr King: Yes, for the purposes of search.

Hon SALLY TALBOT: They are the people who come under clause 13?

Mr King: I thought there were more than merely that one, but that is an example.

Hon GIZ WATSON: Must someone who is detained in custody and is to be subject to a search be suspected of committing a particular offence?

Mr King: It would depend on where the power to search came from in the first instance. Under clause 68(1), if a police officer reasonably suspects that a person has in his or her possession or his or her control anything relevant to an offence, the police officer may do a basic search, so there has to be that reasonable suspicion that a person has something relevant to an offence. There is then the power to detain the person, but only for the purposes of the search. Yes, the person is being detained without arrest, but for a brief period.

Hon GIZ WATSON: That is for any offence and not limited to a serious offence.

Mr King: No, it is not.

Hon SALLY TALBOT: Moving to another area of questioning, I again refer you to the second reading speech, which refers to the fact that the Law Reform Commission had two particular

concerns, one of which was related to section 68 of the Police Act, which I think it wanted repealed. May I ask for your assistance? The Law Reform Commission raised two concerns.

Mr King: I have also forgotten the second one. I recall one being section 68.

Hon SALLY TALBOT: Perhaps you could answer the question in relation to section 68, while your colleague is finding the other reference. The second reading speech refers to the fact that you have reached a balance between these kinds of concerns and the needs of the police. Have you had any feedback from the Law Reform Commission about the extent of its satisfaction with the balance as it relates to section 68 of the Police Act and the other point that we are about to locate?

[12.30 pm]

Mr King: In terms of section 68, I think the only response I got from the Law Reform Commission was simply to note that its recommendation had not been followed. I cannot recall the exact terms of that.

Hon SALLY TALBOT: Are you saying you do not recall whether there was any commentary on that?

Mr King: There was a very short paragraph noting that we had not followed that recommendation.

CHAIR: Just for the record, section 68 does what?

Mr King: It gives police the power to search a person's place of residence if they are arrested. When a person is taken into custody on a charge of a crime, his premises and property may be inspected and searched by any officer of the police force. It is fairly draconian in its scope. The police have made representations to the Attorney to the effect that this was a very useful power, particularly in relation to serial offences such as burglaries where people tend to do not one, but many. Offenders would keep things at their premises and a person might be picked up for another burglary and be caught in possession of what they had stolen, but there would be no reasonable suspicion that there was anything else to give the power to the police to go back to the place of residence in order to search it, to see whether there was anything else besides what they had picked up with their hand. This gave the police the power to go back to the person's place of residence to see whether there was anything of a similar nature. The balance that we struck in relation to this is to say that they can do that, but only in relation to serious offences and only with the authorisation of a senior officer, so someone who would be making a career-affecting decision would have to put their name to the approval to go and search a person's place of residence.

Hon SALLY TALBOT: Would those provisions be alterable by regulation in line with the discussion we had earlier in this hearing in relation to an arrest? I am talking about the definition of a serious offence.

Mr King: The serious offence could not be, no.

Hon SALLY TALBOT: I have located the other concern of the Law Reform Commission. It was the suggestion that police powers should be retained in the Criminal Code rather than put into this bill.

Mr King: That was not followed for the reason we gave at the outset.

Hon SALLY TALBOT: Again, there has been no commentary?

Mr King: Not that I can recall.

Hon SALLY TALBOT: The reference to balance being struck in the second reading speech is not so much concerning reactions by both parties, but is the police service's assessment of the balance being struck?

Mr King: The balance is seen as a matter of policy to protect people from abuse of a power of this nature, to ensure that it is only done under the auspices of the authority of somebody who is in a

position of seniority, and only in relation to more serious offences. For the purpose of the record, I am advised that I should have said that we are discussing clause 132, a replacement for section 68.

CHAIR: Are you aware of any proposals that we have not discussed today in relation to this bill or amendments coming forward?

Mr King: There are no proposed amendments that I am aware of.

CHAIR: That concludes any questions I have on this piece of legislation. If there are no more, I will move to the Criminal Investigation (Consequential Provisions) Bill and ask two small questions. Do you have any proposals for amendments to the bill? Clause 13 says "deleting". Is that supposed to be "inserting"?

Mr King: Yes, it should be "inserting".

CHAIR: We thought so. I assume the government will put that amendment on the notice paper. Are there any other amendments to this bill that you are aware of?

Mr King: No.

CHAIR: We will move to the Criminal and Found Property Disposal Bill. What is the rationale for clause 6(2) where a chief officer may enter into a contract with a person for storing, managing or maintaining property, rather than the chief officer being responsible for it?

Mr King: That was to allow a chief officer the power to store goods in the chief officer's possession with a contractor. For example, Pickfords or another major contractor who is able to put something into storage on behalf of a chief officer will be able to do that. This legislation relates not only to the police, but also to any other agency that is prescribed for the purposes of the bill. I am reminded that there may be the need for coolroom facilities or other things that need to be used to keep property.

CHAIR: Clause 10 sets a fine of $5 000 for unauthorised dealing with seized property. How did you arrive at the amount of $5 000? We queried whether that would be sufficient to deter an officer acting corruptly.

Mr King: This provision does not apply to that scenario where an officer acts corruptly. If that were the case, the officer could be charged with fraud or stealing or another criminal offence. Rather, this applies to a situation under clause 146 of the Criminal Investigation Bill which has similar effect to the powers in the Police Act under sections 90B and 90C. They are imposing an embargo notice on something. For example, if an item that is too big to be carried away by the police officer needs to be seized - say a bulldozer - they can put an embargo notice on it so the person cannot deal with it or move it. If a person does move or deal with that property, this provision will apply. The penalty under the Police Act for a contravention of that nature, dealing with property that was under an embargo notice, was $2 000. This has gone up to $5 000.

CHAIR: Moving on to clause 12(2), can you explain to the committee the circumstances for the order that information given to the court not be disclosed to the aggrieved person? Under what circumstances might that provision apply?

Mr King: For example, if property were seized during the course of an investigation and the person who was the subject of the investigation wished to be provided with that property, and the police did not want to disclose to that person the reason why they had it and thereby jeopardise the investigation, they could seek an order that that information not be disclosed.

CHAIR: I take you then to clause 14. Why does this clause talk about the entitlement to a receipt as opposed to a more simple issuing of a receipt? Why would someone simply be advised of their entitlement to something rather than simply being given it?

Mr King: If there was a requirement for police to give a receipt in every instance, it would result in impracticalities. A policeman is not always in a position to issue a receipt. For example, if you

take something to a police officer you see on the street and say, "I just found this", the police officer will say, "You are entitled to a receipt" but he may not have a receipt book or something of that nature that he can provide. Often people bring things into police stations and say, "I've found this thing." A police officer can say, "Would you like a receipt for it" and the person could say, "No, I'm not interested; see you later" and that is the end of it. A person can be told that they have an entitlement to it and are obliged to be told that they have the entitlement. We see it as going too far to require the police officer to provide a receipt in every instance.

Hon GEORGE CASH: Is there some police regulation or requirement that when found property is brought into a police station, if the police do not have to physically give a receipt, they are required to enter it into a logbook of some sort?

Mr King: Yes.

Hon GEORGE CASH: Can you explain the circumstances?

Mr King: I am told that when something is brought into a police station, the police officer who receives it has to place that notification on the property system and a receipt is generated as a matter of course but there is no requirement to provide it to the person if they do not want it.

Hon GEORGE CASH: Is there a provision in an act that requires a receipt to be generated?

Mr King: No.

Hon GEORGE CASH: Is there some reason why a receipt would not be generated?

Mr King: There are two provisions that apply to property in the possession of police officers - sections 75 and 76. You are probably familiar with them. They are not as complete as one would hope. That is one of the reasons why we have this bill.

Hon GEORGE CASH: Is there any reason why clause 14 should not be expanded to ensure that a receipt is required to be generated?

Mr King: I can see that there may be benefit in having a requirement that a record is made to ensure that there is a trail of the receipt of the property and that that can be followed. If that were done, there would be no need for a receipt requirement per se. There is already a requirement within the police service to keep a record within the police accounting system.

[12.45 pm]

Hon GEORGE CASH: I raised this because if someone who finds property reads this act he will know that he is required to hand it in but that is where it stops as far as the finder is concerned. Other regulations and police operational schemes might require other action to be taken but it does not necessarily give any comfort to the finder of the property if that is not known to them.

Mr King: The finder can be told that he is entitled to a receipt. One hopes there are police procedural requirements to let him know of other entitlements under the act. If the finder wishes to make a claim on the property on the basis that the true owner has not been found, that can be done under clauses 23 and 24 of the Criminal and Found Property Disposal Bill 2005.

Hon GEORGE CASH: I recognise that other provisions exist. I would have thought a case might arise in which someone takes property to a police station or other prescribed agency and some time later attempts to claim that property but is told that the property was never handed in. We are told that the police are required to enter these particulars in a log or record. I do not know about prescribed agencies because we have not raised that issue. Of all places, I would have thought that this would be the appropriate place in which the community could take some comfort in knowing that when they take found property into a police station or prescribed agency, at the very least, a record will be made.

Mr King: They are given a receipt.

Hon GEORGE CASH: You said that they are entitled to a receipt.

Mr King: If they wish to have a receipt, then they can have one. If a person takes something into a police station and considers that at some stage he might want to make a claim for that property, he would be told that if he wishes, he can have a receipt. That would be his record in the same way we are given a receipt from RetraVision for our new camera.

Hon GEORGE CASH: That is self-generated at RetraVision is it not?

Mr King: That is probably a poor example, and I apologise. The point is that there is a record that the person who brought in the found property can take away with him.

Hon GEORGE CASH: The mere fact that someone is entitled to a receipt does not in my view guarantee that the matter will be recorded.

Mr King: Neither does a legislative provision guarantee it.

Hon GEORGE CASH: I accept that but at least a legislative provision that requires it to be recorded is a first attempt and a clear indication that that is the way the law is meant to operate.

Mr King: I understand your position. I am advised that there is no difficulty taking the committee's views on board and coming back to the committee on that issue.

Hon GEORGE CASH: Although, I acknowledge that pawnbrokers are in business to buy and sell property, and the police are not meant to be dealing in property as such, the Pawnbrokers and Second-hand Dealers Act places significant requirements on pawnbrokers regarding the receipt and management of property; yet we do not appear to apply the same requirement to police and other agencies.

Mr King: I understand that.

CHAIR: Clause 24(3) provides that -

> A notice of a claim cannot be given under subsection (2) by -
>
> (a) a member of the Police Force; or
>
> (b) a government agency, or an employee or officer of a government agency, if he or she found the property in the course of duty.

Can you explain to the committee the rationale for having a more blanket approach to members of the Police Force?

Mr King: The theory is that police officers are on duty 24 hours a day.

CHAIR: I refer to clause 32. This legislation is not retrospective. What currently happens to held property? Does this provision reflect a change?

Mr King: I am told that, in practice, all things are auctioned as a matter course. One of the difficulties brought to our attention in the drafting of this bill was that the police property branch has a lot of property that is of minimal or no value and it wants to be able to get rid of it without having to go through the auction process. Some substances, for example mercury, which is highly poisonous, might come into possession of the police but the police cannot put it up for auction because it is too dangerous so they must tender it privately.

CHAIR: What value are you contemplating for clause 32(1)(a)?

Mr King: Under the Unclaimed Money Act there is prescribed level of $300 but we have not given this a great deal of thought at this stage.

CHAIR: Are there any proposals for amendments?

Mr King: Not before today.

Hon GEORGE CASH: This question is not directly related to the bill but it will certainly be affected by the bill. Who owns the property on the verge of local roads that we see placed out for pick-up by local authorities?

Mr King: I understand that it depends on the intention of the person who put it on the verge; for example, if a person put property on the verge intending that the council pick it up - sometimes councils pick up goods to sell them to generate money - the property would belong to the council.

Hon GEORGE CASH: Does the property pass to the council as soon as it is deposited on the verge?

Mr King: Yes; that is my understanding. These are very nice legal questions to be determined on the basis of evidence. That is my understanding of the general rule.

Hon SALLY TALBOT: Is that the case only if the council is intending to take it to the tip and sell it?

Mr King: No; if it is intended for the council.

CHAIR: That concludes questions. Thank you very much for your time today.

Mr King: Thank you for your forbearance.

CHAIR: You will get back to us on the few issues that we have identified. You will be provided with a copy of the transcript and asked to make any corrections and return it. We will make sure you get a copy of the Public Advocate's public submission to the committee.

Mr King: If on examining the transcript other issues arise, apart from the ones we have identified, can we provide submissions in relation to those issues?

CHAIR: We would welcome them. Is there anything we should have asked you that we have missed?

Mr King: I am sure there is not.

CHAIR: You are complimenting us on our thoroughness! Thank you very much for your time today.

Hearing concluded at 12.54 pm