STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

CHILD EXPLOITATION MATERIAL AND CLASSIFICATION LEGISLATION AMENDMENT BILL 2009

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 16 SEPTEMBER 2009

Members

Hon Adele Farina (Chairman)
Hon Nigel Hallett (Deputy Chairman)
Hon Helen Bullock
Hon Liz Behjat

Hearing commenced at 11.50 am

FIANNACA, MR BRUNO
Acting Director of Public Prosecutions,
Office of the Director of Public Prosecutions,
sworn and examined:

FOX, MR LINDSAY
State Prosecutor,
Office of the Director of Public Prosecutions,
sworn and examined:

KEATING, MS NUALA
Legal Policy Officer,
Office of the Director of Public Prosecutions,
sworn and examined:

The CHAIRMAN: Sorry for our late start this morning, but we had a number of other bills referred to us this week in Parliament that we needed to sort out. I have some formal matters that I need to start off with, so I apologise for the formality at the beginning, but after that we will try to be as informal as we can, and I will be using first names, so please do not take any offence at that either. I will introduce my other committee members—Mr Nigel Hallet and Ms Liz Behjat—who are both members of the Legislative Council. On behalf of the committee, I would like to welcome you to the meeting this morning. Before we begin, I must ask you to take either the oath or affirmation.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: Thank you very much. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: Thank you. These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make too much noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. At the moment we do not have any one here, but you still need to make that request for it to be held in closed session if you do not want it to appear on the public record. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Bruno, I invite you to make an opening statement if you would like to. Also, on behalf of the committee thank you for your very thorough submission. It is much appreciated.

Mr Fiannaca: Thank you. You are welcome. Can I say first of all that my involvement in relation to this proposed legislation really commenced with the matter being referred to me as the Acting Director of Public Prosecutions. I had not had previously any involvement in the drafting stages or in providing any advice. For that reason, I have asked Nuala Keating and Lindsay Fox to attend today; Nuala because she has very good knowledge—intimate knowledge, in fact—about the early stages when my predecessor, Robert Cock, QC, did provide advice in the drafting stages, and Lindsay because he has considerable experience in the prosecution of these sorts of offences and in preparing appeal submissions, and has intimate knowledge of the current legislation and is well placed to comment in relation to the proposed legislation.

The first point I would make is that I have read Mr Cock's submissions in relation to this matter previously, and I am in general agreement with them, as I say in my submission. I do support the proposed shifting of the offences and the expansion of the offences into the Criminal Code. One of the issues that has been raised, and which I will deal with briefly at this stage, is the question of consistency with legislation in other jurisdictions. I think, as the government has previously stated, that we endeavour to achieve consistency. I have been involved with the Australian Association of Crown Prosecutors now for some time, and it is always helpful when we can talk about legislation that is similar rather than having to talk about different forms of legislation. Nevertheless, having said that, I think it has always been recognised that states and territories, and the commonwealth for that matter, may for various reasons rely upon a different form of words, and perhaps even different concepts as appropriate, to be applied in their own jurisdictions. I think generally, however, from what I have read of the legislation, that the general tenor is still there, and it is similar. All of the legislation is essentially concerned with the protection of children against abuse—predominantly sexual abuse, but other forms of abuse as well. That reflects what the courts have said for a long time—that the possession and distribution of this sort of material effectively provides the market for that abuse to occur.

In the submission, I have addressed what I consider to be some issues of importance. Some of those issues are to do with definition. I appreciate that the committee has some concerns about terminology. I have indicated some concerns of my own. There are some issues to do with penalties, and perhaps a perception that there may be a discrepancy between the proposed offences that deal with involving children in child exploitation, and the sexual offences that currently exist in the Criminal Code, where the penalties for sexual offences against children between the ages of 13 and 16 are less than the offences under proposed section 217.

The other matter that I have addressed, as you will have seen, is to do with the offence of producing exploitation material. There are concerns that the definition perhaps needs to be prescribed a little more than it is, or that it is not defined at all. There is also the issue that I have raised about attempting to produce exploitation material and whether there is any real justification for differentiating between those who attempt to produce such material and fail, perhaps due to incompetence, but who have nevertheless been involved in the exploitation of children, and those who actually succeed, because the ordinary meaning of "produces" would usually imply that they have succeeded—that a product has been achieved.

Hon LIZ BEHJAT: A finished product.

Mr Fiannaca: That is right. So I have raised that as an issue that perhaps ought to be addressed as the legislation progresses further. Then I have raised some questions in relation to the defence under section 221A(1)(b), which effectively requires the defendant to prove a state of knowledge that is not consistent with their having committed the offence. That is dealt with at pages 7 and 8 of the submission. Page 8, which deals with the application of the provision in the Criminal Code concerning a claim of "honest and reasonable mistaken belief", flows largely from what I say in relation to section 221A(1)(b). I think that in summary indicates the areas of concern that I have

dealt with in the submission, just to place it on the record, and obviously there would not be any point in my going over all of that, unless —

The CHAIRMAN: We might ask you some questions to put some of that on the record for us. Just to go back to the issue of the definitions, my understanding is that you do not have a problem with the definitions of "offensive", "demeaning" and "abuse"; you are confident that they are fairly well covered in law?

Mr Fiannaca: They are. As to whether or not there is any specific definition of those words in the authorities, certainly the concept of what is offensive to a reasonable person has been dealt with in the context of what is indecent or what is obscene. There is a large body of law that is concerned about those terms. Generally, it simply involves the application of community standards in the judgement of what fits that description. I will perhaps put it in this way. By having a description that is broad in that sense, it essentially allows a jury to make a judgement about the material in the sense of, "You know it when you see it. You know that the material is offensive when you see it." I would assume—I would hope—that none of you have had to actually view this sort of material. It is a very unpleasant task. Prosecutors have to do it and the police have to do it, obviously, in bringing these matters to court, and juries have to do it when they make their judgements about these things. But I think it can be fairly said that generally with this type of material the argument is not whether it is obscene; there are usually other issues that have been raised. On occasions, yes, certainly there are questions about whether it is offensive to a reasonable person, but it is a rare occasion where we are having to deal with that issue as opposed to whether the person knew what they had and whether they actually had possession of it and that sort of thing.

The CHAIRMAN: You have raised in your submission your concern about the word "concerned" and have suggested that the word "involved" should be used rather than "concerned" in relation to the phrase "invites a child to be in any way concerned in the production of child exploitation material", and the other phrase, "in any way concerned in the production of child exploitation material".

Mr Fiannaca: Yes, only because it is circular, it seems to me. When one looks at the dictionary definitions, "involved" and "concerned" are almost synonymous. I really could not see the point in introducing another term that would need to be explained to the jury as part of what is meant to be involving a child in child exploitation material.

The CHAIRMAN: That seems like a very good point.

Hon LIZ BEHJAT: Say what you mean and mean what you say!

The CHAIRMAN: It is amazing that we have had to get to this stage to pick it up—and you are the only one who picked it up, so thank you for that, because it seems like a very valid point to make.

The other issue that you have raised concern about is the definition of the word "production". In your submission, you have raised some possible ways of dealing with that. Do you have a preference?

Mr Fiannaca: My preference would be for it to be within the definition of "produce", or for there to be a definition of what it is to "produce", and to include in that what would effectively be any act that constitutes an attempt to produce so that the sorts of things that I have described—where the camera has failed, or there is some other incompetence in the way that things have been done—would not prevent it from constituting "producing".

The CHAIRMAN: Is there any other jurisdiction that uses a definition of "production" that we can look at in terms of drafting something for Parliament to consider?

Mr Fiannaca: Yes. I refer in my submission, at the bottom of page 6, to the Tasmanian provisions, section 130A.

The CHAIRMAN: Are you happy with that? Do you feel that satisfies your concerns?

Mr Fiannaca: I think it does. I must admit that it was not something on which I have asked for a contribution from either Mr Fox or other colleagues, but it seems to me that the term "does anything to facilitate the production of" ought to cover any act that might be regarded as being a step in the production. As I say, we could rely on the attempt provisions in the Criminal Code, but the effect of that would be to reduce by half the maximum penalty that has been provided for the offence.

The CHAIRMAN: I might just invite Lindsay and Nuala to make some comments at this point on this suggested definition.

Mr Fox: Nuala and I did have some discussions about "producing" long before we even looked at the interstate acts. I certainly have no difficulty with the Tasmanian provision. It does seem to cover the field, as Bruno had said.

Ms Keating: I support what both my colleagues have said.

The CHAIRMAN: Thank you for that.

The South Australian legislation provides a more prescriptive approach to the definition of "child pornography". You will have seen in the government response that the government has stated that other states are concerned about three things under the South Australian approach—first, that it could be difficult to establish the elements of child exploitation offences; second, that conventional cases would be more difficult to prosecute; and, third, that the South Australian approach would be more likely to have unintended consequences.

I am wondering whether you want to provide any comment on the South Australian approach and also the government's response?

[12.05 pm]

Mr Fiannaca: I think there is in fact potential, when you become more prescriptive, to make it more difficult for the prosecution simply because there is then greater scope, from a defence point of view, to rely on technical aspects of the definition to create reasonable doubt, if you like. I suppose one way to put it is that if you are going to use more words to define a particular word or a particular term, then those words themselves become the subject of argument about what they actually mean. Although you are trying to limit what you are meaning or make it more obvious what you are meaning, you obviously end up with a situation where there is scope to actually argue about what those other words mean. That is a difficulty.

A second difficulty is with the concept in the South Australian legislation with requiring "intention"—what was intended by the material to be an element of the offence. Under section 23 of the Criminal Code, "intention" is not an element of an offence unless it is specifically provided for in the offence creating provision. There could be a very curious situation, for instance, being able to prove—because you just never know what sort of evidence might be available—that the person who has actually produced the material in fact intended to excite sexual gratification, let us say, where the material itself has not got that impact; it is not offensive to a reasonable person. It might be because the person producing it has particular perverted views that suggest to him or her that this material would excite sexual gratification when in fact it is just not capable of doing that, or in any event the material itself is not offensive. In those circumstances you could have a situation where the material comes within the definition even though it might not in fact be offensive to a reasonable person, and it would seem curious that that sort of material would be caught by child exploitation material offences. But more generally, once you start introducing elements of intention, it does obviously make it more difficult for the prosecution. The most difficult task, I think, that a prosecutor ever undertakes in prosecuting offences is having to prove intention, because you are trying to get into the mind of the individual. You normally have to do it by inference. It is something that has never existed within our child pornography legislation and, it seems to us, is best left out of any proposed legislation. In our view it will be preferable not to have that kind of element

in the definition if there was going to be any further definition; but we do not think that it is necessary.

The CHAIRMAN: In terms of the title of the bill and the change of terminology in terms of going to "child exploitation material" rather than using "child pornography", the committee raised some concerns that this change of wording might have actually been intended to desensitise the whole issue. There was some concern about whether we should actually be, from a policy point of view, looking to desensitise the issue, because it is a grave issue. The community generally understands "child pornography" a little better than they would understand the words "child exploitation material". The committee has raised that concern. I would like some feedback from your point about that. The feedback the committee has got from other witnesses has been along the lines that the intention of using the words "child exploitation material" was to broaden the scope of material that falls within the catch of this legislation, whereas "child pornography" was somewhat limiting. From that point of view the committee understands the need for the definition of "child exploitation material" because obviously we want to broaden the net to put an end to this sort of exploitation as much as we can. We support that policy intent. However, we wonder whether we should also consider reintroducing the terminology "child pornography" so that it says "child pornography and child exploitation material" or "child exploitation material and child pornography material" so that we are not removing that potential desensitisation because the community is not that au fait with the term "child exploitation material" and what that might mean. Do you have a view on that?

Mr Fiannaca: I suppose the view that I expressed in the submission was a little bit different in that it seemed to me that if one was wanting to address the core evil in all of this, then "child abuse material" is probably the most apt description because it is the abuse of children that we are concerned with. But I must say that I did come to the view that "child exploitation material" obviously does still address one of the main descriptors that the courts used of the evil involved in this sort of material; namely, that it involves the exploitation and abuse of children. When one looks at the commonwealth legislation, where there is a differentiation between "child pornography" and "child abuse material", you are then starting to introduce the need for definitions of two types of "child exploitation material" where the one definition, certainly from a prosecutor's point of view—and we keep coming back to this, I suppose, in terms of facilitating prosecutions for these sorts of offences—would certainly make life a lot easier for us and for the judge in having to explain this sort of thing to a jury. Whilst I understand the full process that perhaps it desensitises the community to what this material actually is, provided the community was told what this is intended to cover, one would hope that it would not have that effect.

The CHAIRMAN: Liz, did you want to follow up with any questions?

Hon LIZ BEHJAT: No. That makes sense, actually. I did have one question. The fourth paragraph on page 5 of your submission, in relation to the definition of "produces", states that this would be broad enough to include all those who may be involved in the making of child exploitation material; for instance, in the case of a film or video production. It goes on to state that when we were then talking about section 130A of the Tasmanian example that you gave us "production of child exploitation material".

Going back, we had an issue with using the word "concern". The word "involved" is better because "concerned" is circular. Would it have the same effect if we were then to adopt "produces or is involved in the production of child exploitation material" rather than "or does anything to facilitate the production of"? Could you use "involved" again there, because then you are being consistent throughout the legislation? That would answer your concern about capturing the film crew and the sound boy.

Mr Fiannaca: Certainly consistency within legislation or particular sections of legislation is to be encouraged. The word "facilitate" to me still suggests that it can be short of the production actually having occurred; whereas to say that someone is involved in the production might imply—I have

not thought through whether the use of the word "involved" would imply that something is actually being produced as you go along, so to speak.

Hon LIZ BEHJAT: Could I ask for that to be put on notice, for you to think about?

Mr Fiannaca: Certainly.

The CHAIRMAN: And provide some comment back to the committee.

Hon LIZ BEHJAT: Because if we do go down that road, it seems to me, to be consistent through the legislation, the word "involved" would make it easier.

Mr Fiannaca: Yes. The suggestion that Nuala makes is that if we were to use the words "involved in any way", that would be clearer.

Hon LIZ BEHJAT: Yes.

The CHAIRMAN: Did you want to comment on that?

Ms Keating: Yes. Can I go back to the previous question you asked, just for the benefit of the committee when you are doing the research—I looked at all the legislation in terms of defining "produces" and came up with two. This was one; and Mr Fiannaca refers to the other in the New South Wales definition. But they were about the only two that were at all useful in this legislation. I also looked at the federal Copyright Act, on Mr Fox's advice. I did not find that at all helpful. I can save you the trouble.

The CHAIRMAN: Thank you for that. In terms of the questions that we had prepared, does the definition "child exploitation material" include the scenario made out in the case of Phillips v South Australian Police, which was a South Australian case involving the secret videotaping of men and boys urinating in public toilets and undressing in public areas?

Mr Fiannaca: It could do. It might depend on the context in which the material is possessed or distributed, but the question really then is whether a jury would regard the material as being offensive to the reasonable person, otherwise it seems to me that it has the capacity to come within the definition because I would have thought that it could be said that it would represent a child in a demeaning context. It would, in that sense, come within the definition. But the question the jury would have to address, or a magistrate would have to address, would be whether the nature of the material is such as to be likely to offend a "reasonable" person. It seems to me that in Phillips v South Australian Police, the court there was of the view that it did not, but that is a value judgement. It is a value judgement that, in the first instance, has to be left to the trier of fact. On appeal obviously, if the court of appeal comes to the view that the trier of fact could not reasonably have come to that conclusion, they can displace the decision that has been made at first instance. But I think the only answer we could give is that it could be and it would depend on the assessment that the tribunal of fact makes about the material in a particular case.

The CHAIRMAN: In the preferring of charges, we heard from the police witness—this is in public evidence so I may refer to it—that in some cases they would not use these provisions to lay charges, they would actually use provisions that currently exist under the Criminal Code. At what point is that decision made as to the preferring of charges under these provisions or under provisions already existing in the Criminal Code? Do the DPP get involved in that process?

Mr Fiannaca: We may be involved very early if the police seek our advice. But even if the police take a particular view of the matter and charge under other provisions, if it is an indictable offence that person is charged with it does come to us—because if it is a summary offence only, then it will not come to us—we review the evidence. We form our own view about the appropriateness of the charge. If, in any particular case, we came to the view that a charge under this proposed legislation was a better fit for the facts of the case, and the seriousness of it was such as to justify the penalties, if these penalties are greater than what the police charged with, then we would make a decision to change the charge. We do have that discretion to charge differently to what the police have done.

We cannot completely charge a completely different sort of offence. If we do that, we would normally send it back and they would need to start again and charge in accordance with what we consider to be the appropriate offence.

The CHAIRMAN: We note that in the proposed legislation, distributors and producers of child exploitation material would be subject to a penalty of a maximum of 10 years' imprisonment, yet a person in possession of child exploitation material would only face a maximum of seven years' imprisonment. Do you have a view or would you like to make any comment about that difference in penalty and whether you think it is justified?

[12.20 pm]

Mr Fiannaca: I think it is, because if we focus again on what the real mischief is that is being addressed by this sort of legislation—the abuse of children—the producers are obviously the closest to the actual source, the abuse that is occurring. The distributors are the next closest, or at least are fuelling, if you like, the business of producing this sort of material. When we compare this, for instance, with drug offences, the Misuse of Drugs Act does have greater penalties for people who are in possession with the intent to supply, or who actually supply, rather than those who have possession. That distinction has always been recognised as a valid distinction in that legislation. I think, with respect, that it is also a valid distinction to be drawn here.

The CHAIRMAN: The committee has received a submission in relation to having an aggravated offence penalty for possession of child exploitation material in the capacity of 10 000 images, or more. Do you have a view on that?

Mr Fiannaca: Yes. My view is that the actual maximum penalties that have been provided provide adequate scope for sentencing; in other words, they adequately reflect the seriousness of this sort of offending. If we are starting to get into people who are physically abusing children, we do have other provisions of the Criminal Code that we rely on as far as those sexual offences are concerned. The difficulty with introducing aggravating circumstances that will increase the maximum penalty, especially if you are using ones that require quantification, is how do you arrive at an arbitrary figure that justifies the greater penalty? How do you justify having a different maximum penalty for a person who has say, 10 000 images—or, to do it the other way, for a person who has 9 999 images compared with a person who has one extra image?

The CHAIRMAN: But we do that with other offences, do we not, in terms of possession of a certain amount of cannabis or illicit drugs?

Mr Fiannaca: Yes, we do; that is true. But with this sort of offence, the judgement about the seriousness of the offence and the appropriate penalty in a particular case is something that is more on a continuum—it is more than just arriving at a cut-off and saying, "If you have more than a certain amount, you are liable to a heavier penalty." It seems to us that it is preferable to leave it to the discretion of the court. They are factors that will be taken into account anyway. Judges now do take into account the number of images in deciding the appropriate penalty. They take into account the context, the degree of abuse that is depicted in the imagery, in coming to an appropriate penalty. If they do not—our argument would be that they should, but, if they do not, and if that results in a penalty that we think is manifestly inadequate, then we would certainly consider taking an appeal against the sentence. In my view, it is just difficult to see why there would be a need to introduce different penalties because of aggravating circumstances. If there are particular circumstances that the committee thinks should be considered, other than the number, then yes —

The CHAIRMAN: What about the age of the child as an aggravating circumstance?

Mr Fiannaca: Again, that is normally something that is taken into account in a general sort of way in the sentencing process. The difficulty with that, too, is that, again, it is a question of where you draw the line and how in any particular case you would be able to establish that the child—unless you know who the child is in the particular image—falls either side of that age.

The CHAIRMAN: Okay. Lindsay, do you have a view?

Mr Fox: I just want to reinforce the last point that Bruno made about proof of age. I will give you an example of how an average sentencing for a child pornography offence at the moment might work. The police might find 500 images. Usually someone in our office will review that and pick an arbitrary number. They will say 400 of those are definitely children under the age of 16, but with the other 100, one could argue whether they are 15, 16 or 17. All other things being equal, those 100 images would be discarded in the sense that we do not rely upon those, because we just have to prove under the age of 16. It would become much more complicated if there was any aggravated circumstance that required strict proof of any younger age. It is a very difficult thing to do as it is, and it would certainly become unnecessarily complicated were there to be a low arbitrary age. It does impact on sentencing, in the sense that a judge, as I have already indicated, will have regard to the age of the child when determining the penalty to be imposed. Likewise, to use the example that Bruno gave, if a person was found with 9 999 images on the one hand, and the next person was found with 10 000 images, the person being sentenced for the 9 999 figure could justifiably expect to receive a much more lenient sentence merely because of the fact that they have one less image and fall within a lesser scale of offending. Again, there is a wide scope of that as well. A good example is the Misuse of Drugs Act, where if there is a quantity of drugs for dealing, the penalty goes up to 25 years. This is different from the context of the drug legislation. A judge is probably equipped to determine where the quantity fits into the relative seriousness of the offending, and to sentence on that basis and within that scope. I suggest there is the same scope here. One does not need an arbitrary cut-off line to get a circumstance of aggravation to make a determination as to how serious the offence is and how it should be sentenced.

The CHAIRMAN: Except that we have a maximum period of imprisonment of 10 years, and some people might say that is too low given the evil of the offence, and therefore justifying an aggravated offence provision where clearly the person is distributing a vast quantity of material or is in possession of a vast quantity of material.

Mr Fox: I will put distribution to one side because it is a slightly different issue. The difficulty with the maximum penalty—I will not express a view as to its adequacy, but using that 10-year one for the production—is that once we start to have maximum penalties for the production of child pornography of over 10 years, we could end up with a situation where the maximum penalties for those types of offences are actually greater than the penalties for the sexual offences against children that are already contained in the Criminal Code. For example, there is already an offence of indecent recording of a child. The maximum penalty for that is seven years, and it goes up to 10 years if the child is under the care, supervision or authority of the person who does the indecent recording. The maximum sentences will then start to be in disparity if you start to have an offence that is greater than 10 years for an act that is already covered by another criminal offence, but with a lesser penalty.

The CHAIRMAN: Would that justify reviewing those Criminal Code penalties, in the context that clearly there is a policy decision that this issue of child exploitation is one that we are not on top of with the current legislation, and we are obviously looking at it, but maybe there is need to review those Criminal Code penalty provisions as well?

Mr Fiannaca: We have certainly made the point in the submission that there may be a need to do that in relation to offences concerning children between the ages of 13 and 16 when we are dealing with indecent recordings, for instance, of those children, because there does seem to be that discrepancy of seven years compared with 10 years under the proposed legislation. But otherwise, if we are talking about what is an appropriate maximum penalty, it seems to us that we are starting to then stray into the area of policy and what Parliament would regard as an appropriate sentence. We are not equipped at this stage with research that would suggest that there should be an increase in the penalties for sexual offences within the Criminal Code, which might in turn justify an increase

in the proposed maximum penalties under this bill. So I think that is a matter that would require greater research, and it is beyond our capacity at the moment to deal with that.

The CHAIRMAN: Nuala, do you want to make any comment on that?

Ms Keating: I was only going to make the obvious point that the legislation does propose increases in penalties. Currently section 60 is seven years, and the other provision that was taken into account was section 101, where the penalty is 18 months. So we are looking at marked increases already. As Mr Fiannaca pointed out, and you have worked it out yourselves, if you do look at increasing the penalties, you are going to have to look at all the other offences to make sure that if a person has sex with a child, a greater penalty attaches to that. It is probably true to say that this sort of material does not necessarily get made in Western Australia, so the people who are committing these sorts of offences are not being captured by this legislation.

The CHAIRMAN: Turning to section 221A(1)(b), Bruno, do you have any suggestion on how to amend that particular section to address the concerns that you have raised in your submission? Sorry if that puts you in the hot seat!

Mr Fiannaca: The only thing that I have already indicated is that it is difficult to see why we would not simply refer to material to which the charge relates as being "child exploitation material". I will go to the actual section. At the moment it reads that —

> the accused person did not know, and could not reasonably be expected to have known, that the material to which the charge relates describes, depicts or represents a person or part of a person in a way likely to offend a reasonable person;

The effect of what has been done here is to take out a part of the definition of "child exploitation material". It may be that the point of referring only to that part of the definition was to specifically exclude any reference to age. But we cannot be certain that that is the reason that it was done in that way. It seems to me that if part of the intention of this provision was to enable an accused to say, "Look, I did not know that this was child exploitation material, not because I looked at it and I formed a view that it would not be offensive to a reasonable person, but because I thought I had bought a Disney *Snow White* DVD. I had no idea that the content of it was in fact something very different and involved child pornography". So that kind of defence it seems to me needs to be there—it is apt to have that—although I will come back to the question of whether the point of this is to effectively reverse the onus on what might otherwise be seen to be an element of knowledge of what it is that you are possessing. But, if that is the case, then it seems to me that rather than put it in terms of that the person "did not know, and could not reasonably be expected to have known, that the material to which the charge relates", one could simply say that the material to which the charge relates was child exploitation material, which would simplify that. But, other than that, we really have not had the time, I suppose, to formulate a different view. I understand that the former director was consulted in the process of formulation of these defences and it seems may not have had in the end an objection to the final formula, accepting that the government had come to the view that it was necessary to deal with these issues by way of defences. I do not know that he accepted initially that that was necessary, but once it became clear that government was going to go with that approach, then the formulation I understand he did not have a difficulty with. I have some concerns, as I say with 221A(1)(b), but other than to reformulate it by way of simplifying it in the way that I have suggested, the only way in which you could then specifically ensure that knowledge as to the age of the persons in the video or in the image is not a defence—in other words, a mistaken knowledge or mistaken belief—is, it seems to me, by specifically providing for that.

[12.35 pm]

I have dealt with that under the section concerning section 24 of the Criminal Code in our submission. It really comes down to this: that there is authority to say that mistaken belief as to age is not a defence to the offence. However, as I point out, at least in one case in Western Australia—

the case I have referred to of Ackley, and I understand the view may have been expressed in a similar way by other judges—the judge in that case came to the view that whilst the defence of honest and reasonable mistaken belief did not arise on the facts in that case, that did not exclude the possibility of it arising in appropriate circumstances. There is this question of whether it is still open, on the formulation of the definition of "child exploitation material" and the defences, to argue that mistaken belief as to the age of the persons depicted is an excuse.

The CHAIRMAN: I would imagine that it would be an excuse that is frequently used in these sorts of offences.

Mr Fiannaca: If the material is obviously of a child who looks five or 10, or whatever —

The CHAIRMAN: I appreciate that.

Mr Fiannaca: — it is never going to be an issue. I think Lindsay has already referred to the fact that we have got to exercise some judgement, and the police do before us, in relation to materials, on whether the child "appears" to be under the age of 16. You are going to have that problem with children that are hovering around 16—14 upwards perhaps.

The CHAIRMAN: It seems to me, though, that with this defence, it leaves those children in the age group of 15 and 16 very vulnerable.

Mr Fiannaca: It may do, but it may do by not excluding or not requiring the accused to actually prove that he had a mistaken belief. There are one or two ways you can deal with it. I note the government in one place has said that these were meant to be strict liability offences. It is questionable whether that is achieved.

The CHAIRMAN: I do not think it is, but go on.

Mr Fiannaca: I think, with respect, that is a legitimate view to take. The argument that I have referred to in relation to section 24 of the Criminal Code goes to that very point, because it is not then strict liability if you can raise mistaken belief as to age. I do not know that section 221A(1)(b) in fact was intended to allow that as a defence. In my view, it would be preferable to very specifically deal with the question of belief as to age by the government making a decision—because, again, this is a policy matter—whether it should ever be a defence, whether it was intended to be excluded as part of what the state needs to prove; that is, the state should never have to prove that a person did not have an honest and reasonable mistaken belief as to the age of the persons depicted. It can be easily done, if that is the intention of Parliament, to make it a strict liability offence where a belief as to age is irrelevant by saying it is no defence to an offence under these provisions to argue that the person had a mistaken belief as to the age of the child depicted.

The CHAIRMAN: That would still leave an onus on the prosecution to prove that the child was 16 and not 18?

Mr Fiannaca: Yes.

The CHAIRMAN: Is that problematic, given that a lot of the material is not produced here and we often will not know who the child is?

Mr Fiannaca: It is not so much that the child was 16, but the child "appears" to be under the age of 16 years. We can prove it either way, because you might have a case; for instance, if it is locally produced, you can identify who the child is. Even though the child might in fact look a bit older, you can actually prove that the child was 14 or 15 years old by calling the child as a witness. That might be a case where it is not apparent from the image that the child is under the age of 16 but in fact the child was, and we are able to prove it. But, generally, where you are dealing with material where the identity of the victims is not known, you are relying on the appearance. So it is "apparently" under the age of 16 years. That is a judgement that police need to make in the first place, we make, and then we ask the jury to make. We would not be proceeding with those cases that are really arguable, as Lindsay has already indicated.

The CHAIRMAN: The sad thing is that it seems we are still leaving a lot of 15 and 16-year-olds potentially at risk because of that "appearance" requirement and the fact you cannot identify who the victim is, and therefore not able to get them to testify about their age. You may actually have to make decisions about not preferring charges in a lot of instances because you cannot be sure about the age of the victim that you are dealing with.

Mr Fiannaca: That is true, but by saying that you are leaving them at risk, the implication is that no steps can be taken to try to protect that particular child. That is not necessarily so, because if the police are able to identify the person depicted in the image and investigate who that person is, and prove that they are in fact under that age then we are back to the position of being able to prove it. In any event, there might be offences that have been committed that could then also be charged against the perpetrators in the images, if it is sexual offences. If by that you mean that there might be a category of children who have been abused but we are simply not able to establish that the images are of children under the age of 16, yes, that may be so; but to the extent that that affects the use of this kind of legislation as a deterrent, I do not think it does. Obviously, police are finding this sort of material out there in the community on a regular basis and we are prosecuting those people on a regular basis. They have been sent to jail on a regular basis, so one would hope that there still remains the deterrent effect that is desired.

The CHAIRMAN: To sum up, to make sure that I follow this clearly, what you are saying is if the intention is to have a strict liability offence then, really, the defence under clause 221A(1)(b) should be removed?

Mr Fiannaca: No. What I am saying is that —

The CHAIRMAN: I am glad I asked the question.

Mr Fiannaca: It removed, but, if that was going to be the case then, to be absolutely clear about it, there would need to be a provision that says it is not a defence to say these things. What I was saying earlier is that it seems to me that it is appropriate, as a matter of justice, that a person who is caught with this material, who did not know what it was, should be entitled to establish that and be relieved of any criminal responsibility.

Possession, in relation to drug offences, has been interpreted to include knowledge of the nature of the material, at least to the extent that they were prohibited drugs. We do not have to prove that the person knew that it was heroin or amphetamine but that it was a prohibited drug. If you carry over that kind of interpretation, one would expect the courts to be consistent in the interpretation of "possession". We would need to establish that the person knew what they had in their possession as part of proving that they were in possession of the item. If that is the case then any defence in relation to honest and reasonable mistake would require the prosecution to actually prove that the person did not have an honest mistake or that it was not reasonable. The question is asked elsewhere by the committee as to whether this reverses the onus. It does in that sense; it reverses the onus in relation to that particular issue, at least it seems to me, but appropriately so, from a prosecutor's point of view, because it can be very difficult to prove that the person had actual knowledge of what was in their possession. If the person is in a position to establish that they did not know that what they had was in fact that kind of material then it should be upon them to establish that on the balance of probabilities.

The CHAIRMAN: Very quickly, because it has just been pointed out that we are running out of time—Nuala and Lindsay, did you want to add anything to that?

Mr Fox: No, but can I just say on the circumstances you mentioned about children being at risk, we cannot talk too much about a particular matter I have in mind because it is still before the courts, but there are certainly circumstances where the children are identified, even if there is not a charge of pornography that can be preferred. Usually, it does lead to a whole raft of other charges that can be

preferred once the police investigate further. There are numerous sexual offences under section 321 of the code. That is often what happens in the rare cases where the children have been identified.

Ms Keating: I know there is a question later about age. Whilst we do not have a position on that in that it is a policy issue, obviously if the age were older you would not have the grey area about 15 and 16-year-olds necessarily; the grey nature would shift to 17 and 18-year-olds. As you would be aware, some states do and some do not have it at 18. Some have it at 16 and some have shifted it to 18.

The CHAIRMAN: But you do not have a view about where it should be at, or you feel that you are not in a position to express a view?

Ms Keating: I defer to Mr Fiannaca!

Mr Fiannaca: I think that is clearly a matter of policy as to what the community, through Parliament, regards as the appropriate age that ought to be protected. All that we could say about that is that of course the age of consent is 16, so this is consistent with that.

The CHAIRMAN: I will move on, because I am trying to get through the rest of these questions very quickly. Looking at proposed section 221A(1)(c) where we have this definition of "public good"—which I find very interesting—and also the idea that "artistic merit" should provide a defence. First of all, is "public good" a defined legal concept?

Mr Fiannaca: Not that we have been able to find. Certainly, it is not in the context of criminal provisions.

Hon LIZ BEHJAT: It was in *Lady Chatterley's Lover*, was it not*?*

Mr Fiannaca: Yes. "Public benefit" is used in the Queensland legislation. We would have thought that it is probably synonymous here with the notion of "public interest". That is certainly something that has been considered over time. But, again, it is really a question, in the end, of value judgement about whether something, on any particular occasion, could be said to be "for the public good". What is interesting about the defence is that it requires the act to have been for the public good, not the actual material itself. It will be either the act —

Hon LIZ BEHJAT: The act that has been depicted?

Mr Fiannaca: No. The act that is the subject of the charge.

The CHAIRMAN: For example, the taking of a photo of a child?

Mr Fiannaca: That is right. To use the terms in the legislation, either the production, the distribution or the possession of the child exploitation material is the act that has to be "for the public good". One can perhaps see that there might be circumstances of production, or maybe even distribution, depending on what the material is. I will, very briefly, give an example of that in a moment. But possession, if it is possession in a private home, for instance, it is very difficult to see how that could ever be "for the public good" if the material would otherwise be "child exploitation material". Even if it does have recognised artistic merit, it is difficult to see how one could argue that it would be for the public good to possess it, unless the argument is that it is for the public good for people to be able to own material that is of artistic merit, or whatever category one wants it to come under. We do recognise that there may be material where the argument could be made that there is both—there is artistic merit in it and that it is for the public good. The obvious sorts of examples would be those that may depict the abuse of children or torture, or things of that nature, for the very point of condemning the behaviour and agitating public sentiment against that sort of behaviour.

[12.50 pm]

Hon LIZ BEHJAT: Like an advertising campaign to promote this cause—to stop child abuse from happening—or something like that?

Mr Fiannaca: Yes, an advertising campaign, or documentaries. I would imagine something—the Holocaust is an obvious example—where we see very horrific images of people who have been tortured or abused, and some of them may well be children, yet no-one condemns that sort of material being screened or distributed, for the obvious reason that there is a public good in doing that. There may well be also a depiction of paedophilia for the very purpose of condemning it or at least arousing public debate about it or public sentiment against it, or whatever.

The CHAIRMAN: So you are comfortable about retaining the defence of artistic merit?

Mr Fiannaca: All I can say about it is we can see why there would be public policy reasons for doing so.

The CHAIRMAN: Does it not create a problem? I am reminded of the Bill Henson photographs. I think there has been a fair bit of debate in the community about whether those photographs were in the public interest and whether they constituted child exploitation material. I am sorry, but I find it difficult to see any artistic merit in that sort of work. This would provide a defence for that sort of thing to continue to happen. Even though I appreciate that the child and the child's family have stated publicly that they did not consider the child to be exploited in the taking of those photographs, I think there are a lot of people who would think differently.

Mr Fiannaca: The way in which one could deal with that without effectively throwing the baby out with the bathwater in this context is to leave it in the hands of those responsible for law enforcement in the first place, and then prosecuting matters in the second place, to make a judgement about whether there would be a reasonable prospect of persuading a jury that the material is child exploitation material; and also that, in making a judgement, it is not likely that an accused would be able to prove on the balance of probabilities that the material has recognised artistic merit and that it is for the public good, because that reversal of the onus—sorry, it is not a reversal of the onus, but that placement of the onus on the accused to actually satisfy the defence means that we can make the judgement that prima facie on the evidence the material is child exploitation material, that there is a reasonable prospect of satisfying the jury of that, and also that there is a reasonable prospect—although this involves putting two onuses together—that a jury would not be satisfied on the balance of probabilities that the defence is met. What I am saying is that that sort of judgement has to be made in other contexts on occasions where defences are raised. It seems to me that rather than exclude anyone—such as the documentary maker who has a legitimate purpose in condemning behaviour, or in raising public awareness about abuse and torture and so on—or rather than make such a person liable to prosecution, we should simply leave it to the authorities to make a judgement in a particular case as to whether it is appropriate to proceed with a prosecution.

The CHAIRMAN: I move now to proposed section 221A(1)(d), which provides a defence for law enforcement officers if they have in their possession child exploitation material for the purposes of lawfully conducting their duties. The committee notes that that protection does not extend to child protection officers. In your opinion, should that protection also be extended to child protection officers? Are there circumstances when, in the course of their duties, they might end up being in possession of child exploitation material, either for educational purposes or arising from some other situation?

[12.55 pm]

Mr Fiannaca: The issue here is really the distinction drawn between them, the police and the prosecutors, for instance. On the one hand, child protection officers would have to establish a defence, and, on the other, it is not an offence for police, for instance, to be in possession of the material. The real question, I think, that needs to be asked is: in what circumstances would child protection officers really come to be in possession of this sort of material? If they come across this sort of material, why would they not be disposing of it or bringing it to the attention of the police as quickly as possible in order that the matter can be investigated? If they do then they would not be liable to prosecution in the sense that they have a clear defence. We are not going to be prosecuting

them. The police are not going to be prosecuting people who are clearly acting in the public good and coming into possession of the material by virtue of carrying out their duties. It seems to us that it is going to be a small number of cases, if at all, where this would ever arise, which justifies the distinction; otherwise, you are really creating a situation where one would need to be looking at whether they have this material because of their employment, or for some other reason, and having to carry the onus of proving that it was not for the purpose of their employment.

The CHAIRMAN: We have asked the police the same question. Are there guidelines in place at the DPP in relation to how you make decisions whether to prosecute a matter that has come before you, when you look at the circumstances of the case and you feel that maybe it is not appropriate to proceed with the prosecution?

Mr Fiannaca: Of course, yes. We have a published prosecution policy and guidelines that set out a number of factors that are taken into account. I have actually got a copy of them with me, but I might commend the committee to our website, or we can make a copy available. I think that is probably the preferable thing. I understand that Ms Veletta may have a copy available.

The CHAIRMAN: I will have a look at that.

Mr Fiannaca: You will certainly find that there are a number of factors taken into account which may well assuage any concerns the committee has about the way in which we could approach it.

The CHAIRMAN: Your view is that we should not extend that protection to child protection workers because it will just start creating more problems than it might solve, and that if a child protection worker could justifiably show that they have got that material for the purposes of their duties and have disposed of it as quickly as they can, or were about to dispose of it, that prosecution would not proceed against a childcare officer in those circumstances?

Mr Fiannaca: That is right. All I am saying is that if that is the scenario then there would be no basis, it seems to us, for prosecuting them for being in possession of the material.

The CHAIRMAN: The other issue of the act that has caused some interest for the committee is this requirement that people dispose of the material as quickly as possible rather than report it and bring it to the attention of the authorities, which I particularly find an interesting approach. I would have thought that if we are actually trying to get to the bottom of this and eliminate this evil, we actually want it reported and we want investigations happening and the offenders brought to justice. Do you have a view about the direction that has been taken in the act to simply require people to dispose of the material rather than report it?

Mr Fiannaca: It may depend on what the drafters had in mind in terms of the circumstances in which somebody might come into possession of the material. Certainly, if there is a physical object, one would have thought that it would be preferable that the requirement is that it be taken to the police so that an investigation can be made into who is distributing it and what the source of the material might be. But if someone, for instance, inadvertently, on their computer —

Hon LIZ BEHJAT: Spams you on the email.

Mr Fiannaca: Yes, and you end up with this sort of material, in fact bringing it to the attention of the authorities would require you to hold on to it for a lot longer than what would be appropriate to expect a person to do. It seems to me that what is contemplated here, that where that sort of material is received, one would expect that the person gets rid of it as soon as possible. There might be other circumstances. I do not know whether Lindsay can contribute.

[1.00 pm]

Hon LIZ BEHJAT: What would happen if it was a spam email and there was an image of child exploitation, and I hit the delete button and I got rid of it—it was no longer on my computer—and then all of a sudden I got another one, and I deleted it again, but it continued? If I then wanted to take it further and I went to the police and said, "Over the last few months I have received many of

these images, but I have gotten rid of them", how are they then going to try to prosecute that person without the evidence being there, because I have done what the act has said and have taken reasonable steps to get rid of the images?

Mr Fiannaca: That is really more a question of investigation. I am not sure that I am best qualified to comment on that, because there might be a means of tracing the material —

Hon LIZ BEHJAT: Yes, from the hard drive.

Mr Fiannaca: You are far more computer literate than I am so far as these sorts of issues are concerned! It seems to me there may still be a way of tracing it. But I understand that that is a legitimate concern.

Hon LIZ BEHJAT: That is really causing us some concern.

The CHAIRMAN: Yes. I have used this example. I received a photo on my mobile phone of a male private part. I had to do a bit of looking at it to actually work out what it was! I have no idea what age the person was. When I received it, I was obviously shocked by it, but I was in Parliament at the time, so I could not go straight to the police; I had to wait until Parliament rose before I could take the matter to the police. But also, I have had a history with a stalker, and I was not sure whether that had been sent to me by the stalker, so I did want it to be investigated. In any event, I thought my responsibility was to report it to the police at the earliest opportunity and not delete it, so I did not delete it. I went to the police station and I reported it, and the police then told me to leave it on my mobile phone while they investigated, because they might, depending on what their investigations turned out, need that photo image. Now, having read this legislation, I am starting to worry about whether someone might innocently get caught by this legislation if they behaved and acted in the same way as I had done. Clearly, I reported it to the police at the first opportunity that I could, but then they asked me to hold on to it, so arguably I could have been in possession of child exploitation material. Again, I do not know whether the photo was of a child or an adult—if it was a child, it was a very older child, but I did not know. I am concerned that this requirement to dispose of the material might create a problem with the investigation. In my case, the police would not have been able to pursue an investigation if I had disposed of the image and then reported it.

Mr Fiannaca: It may be that it would be prudent to include some form of proviso in that subsection that relates to the need to bring matters to the attention of the investigating authority.

The CHAIRMAN: Are you satisfied that the actions that I took in those circumstances were "reasonable" steps to dispose of that material? Would that fall into the category of "reasonable"?

Mr Fiannaca: It certainly would, even if it could be established that it was a child's member. It really is going to be a question of the way in which the law is applied—the law enforcement scenarios. I do feel confident that if the law enforcement agencies considered that the person had genuinely brought the matter to the attention of the police as soon as possible—and I suppose in the instance of receiving a text message, the time that the matter was reported could be established, and the person would hopefully be able to account for any delay that might have occurred—then the matter could properly be dealt with by them making a judgement of whether reasonable steps had been taken to dispose of the image.

The CHAIRMAN: Nuala, do you want to add anything?

Ms Keating: Obviously, to go back to your idea of trying to facilitate investigation, there is a public policy issue there, but I think that probably the negative side of it is that you have to be very careful about how you phrase it, because someone who actually has deliberately acquired pornography may then seek to escape prosecution.

The CHAIRMAN: Justify possession of it on that basis?

Ms Keating: Yes, because of any possible amnesty. So I can understand your concerns, and it might need tweaking, but again it is a public policy issue.

The CHAIRMAN: It is a bit hard to know how to tweak it, though, and we have given some thought to that, but we always fall into the category of trying, in any wording that we come up with, to protect the innocent, but also to make sure that we are getting the offenders. Perhaps the wording as it stands is reasonable, or the best that we can do. Lindsay, do you want to add anything?

Mr Fox: No. The point I was going to make is the one that Nuala has just made. If we start to draft a defence that would encompass that sort of thing, it could be misused by people invoking the defence unnecessarily, whereas in the situation that you have described, you would not expect the police to charge you; and, if they did, you certainly would not expect the DPP to charge in accordance with our guidelines—and, if that did happen, you certainly would not expect a jury to convict. I suggest that there are probably enough safeguards to avoid the type of scenarios that you have described.

The CHAIRMAN: We now move to the issue of sexting, which is a new phenomenon. We understand from our questioning of the police, and also of the Attorney General's office, that the provisions of this proposed legislation would cover texting. So if a 14-year-old girl were to take a photo of herself and send that to someone else, would that person be committing an offence under this proposed legislation?

[1.05 pm]

Mr Fiannaca: They could be. But whether anyone would actually be charged or prosecuted in those circumstances would obviously depend on the circumstances of the case. If there is an element of abuse involved, then that would more likely be a situation where a prosecution might occur. But if you are dealing with people who are young people, who are simply being silly or engaging in consensual activity of this sort, it is probably analogous to cases of sexual acts between teenagers under the age of 16 where a judgement has to be made as to whether there is any public interest in prosecuting two kids, both of whom are technically committing an offence—and we would not. We would usually only prosecute cases of sexual acts between teenagers where there is a lack of consent on the part of one of those children. There is precedent for having to deal with this kind of situation. I would hope that that precedent would satisfy any persons who have concerns about whether this sort of sexting would be captured.

The CHAIRMAN: What about in a situation where a 14-year-old takes a photo of her breast to send to her boyfriend, they then split up and he decides to send that photo to 50 of his schoolmates to embarrass her? Would you then prosecute the boyfriend?

Mr Fiannaca: We have had to deal with this sort of scenario in the past.

Hon LIZ BEHJAT: Sorry; you have not had to?

Mr Fiannaca: No; I think we have had to deal with that kind of scenario. Lindsay makes the point that there was one that we did prosecute that involved adults, but it would equally be applicable here. I am trying to recall what the particular offence was.

Ms Keating: Probably a section 319 or 320—one of those.

The CHAIRMAN: Under the guidelines that you have in place currently, would they provide enough direction to prosecute in terms of whether you prosecute in those circumstances, or would you need to develop further guidelines as a result of this proposed legislation actually dealing with these issues? For example, in terms of the response that we have received from the police to date, the response has been, "Clearly, our first step would be education and trying to communicate to these children that this is not acceptable and that it is an offence and that they should not be doing it." But, clearly, someone has to make a judgement call when that line is crossed. I am trying to get an understanding of where that line might be drawn. I can understand that, in the case of a 14-year-old sending a photo of herself to a boyfriend, you might say, "Well, maybe a line has not been crossed there." You may provide a caution to that person rather than proceed with a prosecution. But if that boyfriend then sends that photo to 50 other people, without the consent of the person

who has been photographed, that is clearly an offence, I would have thought, under the proposed provisions of the legislation.

Mr Fiannaca: It certainly can come within the offence provisions—the "distribution" perhaps of child exploitation material. I suppose that in those circumstances it becomes child exploitation material because of the use that has been made of the material. Yes, we would need to consider each case on its merits, but I think that a case of that nature might well attract prosecution; whereas the consenting kids who are exchanging this sort of material would not be prosecuted. It is something that we would need to give further thought to in the future in terms of whether there is a need for guidelines. Generally, getting back to the question of prescription, one does not want to be too prescriptive about guidelines. There needs to be that ability to exercise judgement in a particular case without having to simply tick off boxes. It is getting back to the very point that I made about whether, if it looks like child exploitation material, if it is offensive, then it should be apparently so immediately.

The CHAIRMAN: Lindsay and Nuala, did you want to add any more comments at this point? We are running out of time. One of our members needs to leave us and then we will be without a quorum so I need to start winding this up, unfortunately. Bruno, are there any concluding comments you would like to make before we do wrap up?

[1.10 pm]

Mr Fiannaca: We have addressed some of the other matters, and I would be very happy to put that in writing. These are questions that we have not actually come to in the course of this hearing.

The CHAIRMAN: That would be great. Thank you. We would appreciate that.

Mr Fiannaca: Otherwise, all I can say is that we obviously would be pleased to provide whatever help the committee needs in understanding what would happen from the prosecution point of view, if you have any further questions as you proceed.

The CHAIRMAN: Thank you very much for that. I have just been advised by our legal officer that we would like, if it is possible, to have the responses by Tuesday noon.

Mr Fiannaca: Yes, that would be possible, given that we have already made some notes!

The CHAIRMAN: On behalf of the committee, I would again like to extend our apologies for the delay in the starting time today. I also want to express our thanks for the time that you have put into this hearing, and for the comprehensive nature of the submission that you have put forward. It is much appreciated.

Hon LIZ BEHJAT: Yes. Your submission is extremely helpful.

Mr Fiannaca: Thank you.

Hearing concluded at 1.13 pm