



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON LEGAL AFFAIRS**

**(Reference: Inquiry into Police Powers of Crowd Control)**

**Members:**

**MR B STEFANIAK (The Chair)**  
**MS K MACDONALD (The Deputy Chair)**  
**DR D FOSKEY**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**THURSDAY, 15 SEPTEMBER 2005**

**Secretary to the committee:**  
**Ms R Jaffray (Ph: 6205 0199)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

**The hearing commenced at 1.31 pm.**

**KRISTINE KAY KLUGMAN,**

**WILLIAM ROWLINGS and**

**ANTHONY WILLIAMSON**

were called.

**THE CHAIR:** Thank you all for coming. You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation, for what you say at this public hearing. I hardly think that is relevant in an inquiry like this, but I have to say that. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. Do the three of you clearly understand that?

**Mr Rowlings:** Yes.

**THE CHAIR:** Thank you very much; everyone nods. I welcome Civil Liberties Australia here and thank you for making your time available. This is a fairly narrow inquiry, initiated by my colleague Dr Foskey. It is fundamentally an inquiry into police powers of crowd control. There are some specific issues in relation to the use of capsicum sprays, taser guns and the like, specifically in relation to demonstrations. We have spoken to a number of people so far including people in Tasmania—we thought they might have some applicability. We will also be speaking to people in Sydney, to the minister and to further people from the ACT. Is there any comment any of you would like to make just by way of starting?

**Mr Rowlings:** Firstly, let me paint the picture generally and then Anthony will take over specifically on this committee hearing. In general, when you sent out this paper the climate in the community was vastly different from what it is now. I mean the terrorism issue has really risen its head and there have been laws that have come in and have moved the debate more towards giving police increased powers. We would like to really think that this should be a very balanced operation and that we should try to, if possible, take out that emergency situation that is in place now. These laws will in fact be in this territory for an awfully long time and there are other places where that type of legislation, in terms of police powers, is being handled, with already enforced laws and new laws being brought into play. With that background, I'd like to ask Anthony if he'd speak for us to start with.

**Mr Williamson:** It is our view that, in considering any further police powers, or police powers at present, any such consideration should be taken from a standpoint of civil liberties and human rights. We would submit that, if there were to be any increases or changes to police powers in the ACT with regard to crowd controls, they should be done from a position which respects human rights as the foremost consideration, civil rights and political rights—fundamental things such as freedom of speech, freedom of movement and freedom of association. To that end any police powers should be fitted in

around the respect for these civil and political rights; it should not be done from a converse position such that you see what is convenient for the police and then you fit human rights around that. That latter approach would be entirely unacceptable from our point of view.

Just briefly, as the committee is no doubt aware, the police have a number of powers at present, provided for in various pieces of legislation of the territory. Some of those would include the Crimes Act, the Road Transport (Safety and Traffic Management) Act, the Major Events Security Act, the Emergencies Act and also the crime prevention act of 1998. In preparing our submission we were not entirely sure of what matters the committee—

**THE CHAIR:** I appreciate that. That is an oversight by the committee. I think you prepared a very detailed submission. I think the committee is looking at a fundamentally narrow thing. You have the committee's apologies for that, and we thank you for your very detailed submission.

**Mr Rowlings:** Moving on, I take it you have read the submission and that you don't want us to go through it.

**THE CHAIR:** Yes, indeed.

**Mr Rowlings:** There are recommendations in there that we make. Perhaps addressing those would be an interesting way forward.

**DR FOSKEY:** That would be useful; yes.

**THE CHAIR:** That would be helpful, especially if you have any comments on things like the capsicum spray issue, the taser guns and that used in demonstrations. There was an incident in the ACT last year which led to Dr Foskey expressing her concerns. The committee is looking at that. It would be very helpful if you could address those issues as well.

**Mr Rowlings:** In general, while not addressed in this, the issue of tasers and stun-guns is of concern to us. We are actively looking into that and researching the situation. Generally speaking, in the area of stun-guns, capsicum spray, et cetera, we believe that there should be a community advisory body or panel to which the issue is referred. Who might be on that is a separate issue that we could maybe discuss. That body should set up protocols and guidelines for the use of things such as capsicum sprays and tasers, and there should be reports. The police should be required to report on each incidence of the use of them and there should be an annual report in the annual police report to the commissioner for ACT policing.

Those things should be line items and they should be spelt out. Once that body has established the protocols and guidelines for these issues, it should then annually look at what the annual use or misuse, perhaps, of those things has been. They are the direct in-your-face reactions and relations between the community and the police, and it seems to us that it would be right if the community had some representation in dealing with those very sensitive issues. That would be our general approach in that area, although we don't specifically address it in here.

**Dr Klugman:** Just one point about tasers. Under freedom of information we got some information which was highly sort of censored and not terribly satisfactory from our point of view. It seems that, with the trials on the so-called stun-guns, the reporting certainly was extremely lax, extremely sloppy. It seems as if the police in this case had lifted great sections from the manufacturer's guide to the use of this weapon.

Very strong concerns have been expressed in the US with repercussions from the use of these particular weapons. It seems to us that the trials were not properly conducted, not properly evaluated. There are very great medical concerns on this and the long-term effects. None of these things were addressed in the so-called trial. It wasn't clear whether this was being trialled for the ACT, for the AFP or whether it was Australia-wide. In short, those trials seemed to be extremely sloppy, ill-conceived and badly done.

**Mr Rowlings:** For example it appears as if—although we can't get the full papers—almost certainly there were no medical people present at any trials done of those stun-guns in Australia, so far as we are aware. The reports simply report police personnel being present. Certainly there was no rigorous medical inquiry here. It seems as if only the manufacturer's figures were taken, which is a fairly dangerous way to go I think in introducing new technology of that nature.

**DR FOSKEY:** Could I ask whether you would be able to supply the committee with a copy.

**Dr Klugman:** Such as it is, certainly.

**Mr Rowlings:** It would take us some weeks to get something robust together but we have been looking at this for quite some time.

**Mr Williamson:** We could probably provide you with the FOI disclosures we have received to date.

**THE CHAIR:** That would be helpful.

**Dr Klugman:** Certainly our summary points and our conclusions on those trials, as we say, are pretty critical.

**Mr Rowlings:** And the things that alarm us in what we have read of those, too, to make it easier for you in finding your way through it.

**Dr Klugman:** Perhaps working through the recommendations.

**Mr Rowlings:** In the first one we ask the committee to recognise that there are sufficient laws presently in place to regulate the behaviour of people attending protests. We think there is probably quite enough now; that we don't really need any greater laws in relation to that. The detailed argument is in this paper, if you wish to go into it.

**DR FOSKEY:** However, we haven't seen any standing orders, protocols or guidelines around the use of some of the crowd control methods. Are you aware that any exist?

**Mr Williamson:** They do. They are in a document held by the federal AFP. Given the nature of policing in the ACT, you have the federal police providing policing services in the ACT by way of a police purchasing agreement. Those orders are contained in a document held by the federal AFP called *Commissioner's Order No 3*. We have a copy of that, but not with us here.

**THE CHAIR:** In terms of crowd control, demonstrations or whatever in the ACT in recent times, are there any issues you are aware of that have come out of that which cause you concern?

**Mr Rowlings:** There aren't any specific incidences we can refer to, if that is what you are asking.

**THE CHAIR:** Yes.

**Mr Rowlings:** No. Ours is more a paper that reflects on the philosophy of the issue rather than on the instances of it. We don't think it is a big issue, and that is what our paper reflects. In general terms the law is adequate, and we were unaware of where you were coming from. We were sort of saying, "Well, hang on; just step back a bit there." We don't think there is any need for any more. That is in general where we're coming from. You don't know what the climate is when these things arise. I mean things have moved to the right—if I may use it that way—a fair bit since this arose. That was the first recommendation.

The next one is in terms of the Major Events Security Act. We are a bit concerned about police powers to search in that area. It should be spelt out that those powers to search—and this is quite clearly a crowd control issue—should only apply to events in relation to that major event. If the power about security is in relation to a major event, the search provision should only apply to that event. We use an example. If you were going to the football and taking in a hand grenade, obviously the police should search and get rid of that hand grenade. But if they searched your bag and found that you had a little bit of marijuana in it for later use, or something of that nature, they should not be allowed to take that away. We think the act should clearly specify that and should limit the amount of search provisions to what is relevant to that search. At the moment it simply gives police the power to search.

**Mr Williamson:** Further to that, as you would probably be aware, in order for the police to search an ordinary citizen under normal circumstances, they would need to arrest them and have reasonable cause. The Major Events Security Act 2000 suspends that provision. They have discretion to search people without needing to exhibit reasonable cause or placing them under arrest. The act applies to major events that are declared to be a major event by the minister, but it is not to include protests. So for things like sporting games, concerts and what not, the minister may make a declaration, in which case this act applies.

The act was introduced in 2000, so we would suspect it was introduced to coincide with the Olympic Games to give increased security, which we can understand. But you have to remember the purpose of giving what is prima facie a very intrusive power to the police to search people without any reasonable cause, and that is to provide security at the event. We would submit for example that, if you had a person coming through that

was known to the police perhaps for drug offences, for them to conduct a search for the purpose of seeing if they have any drug-related material or paraphernalia on them is not consistent with the purpose of the act because that is not providing security at the event. If they were to exercise the power in this act for that purpose, they would essentially have a back door to circumvent the normal powers of police searches, which requires reasonable cause.

We would accept that there is a need for security reasons and security reasons alone to search people at these events, but if searches are conducted for any purpose other than the security reason—ie other criminal offences—they should not be permitted to take place. If they were to exercise this power for another purpose, we would like to see a provision in the act that would prevent any evidence being admissible in a proceeding against that person.

**THE CHAIR:** Have you got any evidence that the power has been used in that way?

**Mr Williamson:** No, we don't. It is just available there; that could be done.

**Dr Klugman:** The potential is there.

**THE CHAIR:** Say someone were caught with two kilograms, or a kilogram, of heroin on them, and they were searched going into Bruce Stadium. I think that is what the power is for—for a major event when there is some danger of rowdy elements there perhaps. Let us just say there was a bit of history in the particular sport of maybe violence and there were a lot of people there and the police were fearful of that. It would be reasonable to search to make sure people did not have implements in their bags—and someone was found with a kilo of heroin.

**MS MacDONALD:** That is rather a lot of heroin, isn't it?

**THE CHAIR:** Yes, but what I am saying—

**Mr Rowlings:** That is a perfect example. We would say that if that were to be used as a weapon, it is a danger, but if it is for their own consumption, it is nothing to do with search at that event. The event is the issue.

**THE CHAIR:** I am not saying it is. As my colleague says, it is an awful lot of heroin. That would be a major drug bust in any other situation. Surely you would be splitting hairs if perhaps that—

**Dr Klugman:** No, because it is security at the event, not what the individual has in their possession, which is unrelated to security.

**MS MacDONALD:** What about this instance, however—and I am just playing devil's advocate here. Couldn't you say that a person who is going into a public facility for an event of such nature should be aware—say, "Participant beware, you may very well be searched."? I accept that the police have the power to search their bag for weapons and that that is what the police have been given the power to do but, surely, the person has behaved in a rather stupid or reckless fashion, I would suggest, to carry a small amount of heroin for their own personal use rather than two kilos.

**THE CHAIR:** I've dropped it down to half a kilo, Karen.

**Mr Rowlings:** Obviously not. The answer is that they are different issues. This act is set up to ensure security at events, and we think that is where it should remain. If you were dealing with that, that is entirely legitimate but if, in dealing with that, some other issue comes up, the police shouldn't be allowed to have additional powers because this has come up by chance at this event. The searching relates only to security, not to charging people for other offences. That is what we are suggesting should be the case.

**MS MacDONALD:** However, even if we take it down to the dropped down amount of half a kilo, it is still a large amount and would, in any other circumstance, be considered to be a very large drug bust. The person is acting illegally: why should they be afforded a protection? They may very well be going to watch the match but they are also most probably going to try and on-sell heroin.

**Mr Rowlings:** There are other laws that relate to the drug issues. This law relates only to the security issue. What we are suggesting is that it should only relate to the security issue, that it shouldn't be allowed to be a catch-all. It is a danger to give anybody a power that is so sweeping. In this case anything that is found in somebody's possession could be used against them for any circumstance whatsoever, totally unrelated to this act.

**MS MacDONALD:** Referring to this incidence again, should they be afforded a protection? Should they not be able to be prosecuted on the basis that the police did not have the right to search for those particular drugs?

**Mr Rowlings:** Yes, that is what we're saying. In normal circumstances, if that person is walking down the street carrying a bag, police can't search them unless they have reasonable grounds to suspect something. What this does is lower that standard dramatically because it allows police to search without reasonable suspicion. Having lowered it there, this other law is now compromised. What we are saying is that this is a security events issue. It is called that, so it should apply to that. If a police person found something that was not a security issue but related to other offences they should not be allowed to prosecute under that act. In reality they would probably do something else after the event, or watch the people; other things might apply as to how they act. But they shouldn't be allowed to search on security grounds and then action something under different laws where the suspicion would have been far different. That's what we are saying; that's exactly the point.

**THE CHAIR:** But what if it is clearly illegal? I mean, we are probably talking very academically here because I don't think there has been an issue with this act.

**Mr Rowlings:** You'd have to be a fairly stupid druggie to cart something like that in.

**THE CHAIR:** I'd imagine things like that happen. You might be able to assist me here. For example, police have a warrant to search, say, someone's car for drugs and, in executing that warrant, as well as finding drugs they find two illegal firearms which may not be covered in the warrant if it is specifically a tip-off on drugs. I am just wondering whether, in those circumstances, they would be able to be charged for the drugs as well as having unlicensed firearms or whatever as well. I am not sure. That may not be the

case.

**Mr Rowlings:** That leads us into a very difficult area, I think, about admissibility of evidence, which is another issue we are working on. As far as I know, it is at the magistrate's or judge's discretion in that case.

**THE CHAIR:** Thank you for that. That is probably correct.

**Mr Rowlings:** That is a very grey area on which we are also working.

**THE CHAIR:** Yes, okay. I suppose, at any rate, we are talking fairly academically. Is there anything else you want to say in relation to major events?

**Dr Klugman:** Just really for this act, if it is targeted at security then it should be security and should not be used for other purposes. That summarises our position.

**Mr Rowlings:** The next recommendation relates to that. It says on page 13, I think it is, that the grounds under which the police may eject a person from a major event are excessively wide and onerous, and there should be limitations placed on that power. What we are really saying, I think in general terms, is that that act was brought in for the Olympics, when a very special situation applied, and now there is no real need to keep it up in such a stringent, onerous way. It was, and should be, confined to special events only, and not extended beyond that. That is in general what our position is.

**Mr Williamson:** Section 13 of that act provides that the police may eject a person from the major event for a breach of any territory law. It is pretty clear what the act says. If you litter, you have broken a territory law and they have the power to kick you out. We certainly have no objection to people making trouble at such events being evicted, if the circumstances are such as to warrant that. But as to the power to eject them for anything, any breach of any territory law—I will not say they are trivial, but laws in the territory range greatly in terms of severity and what not. For example, where someone offends against the littering ordinance, I don't think that in and of itself should be sufficient to give them the power to evict them. It is just a minor point in the act but it is something that we came up with. It is certainly open to abuse.

**THE CHAIR:** Again, there are no incidents you can point to which are causing concern?

**Mr Williamson:** No.

**Mr Rowlings:** No. There are none that we are aware of. Moving on to recommendation 15—that the crime prevention powers act be amended so the powers of the police are consistent with the recommendation of the ACT law reform committee's report into street offences—this relates to police only being able to move somebody on, one to the other, not in general.

**THE CHAIR:** What if you have a situation where you have two groups of youths shaping up for a fight? It is pretty difficult, if you have 20 on one side and 30 on the other, to do individual directions.

**Mr Rowlings:** You move one side on and leave the others there. Our argument is that if

you have one on one or 20 on 20, then once you move one half of it the others don't have to move.

**Mr Williamson:** The point the Law Reform Commission made is that, when giving a direction, the direction should be made by reference to the other people you are trying to separate them from. So if person A and person B are having an altercation the police will give direction to person A, for example, that "You are not to go within so far of person B." That was not what was put into the legislation when it was enacted, it was just that the police would give a direction relating to a certain geographical location: "You are not to come back to Garema Place for six hours." We would submit that that is silly. If there was a problem and one group leaves, the other party now can't go back to Garema Place for six hours. But if the police had said, "You can't go within X metres of this other group" and the other group leaves, then the problem is fixed and they should be allowed back into Garema Place, for example.

**THE CHAIR:** If both groups are being difficult, then there are probably other passers-by in the area. I can see the logic there. I think the whole idea of the power is to stop people actually getting themselves into trouble, so they don't end up in court with a record for a more serious offence—and basically they would keep the peace, type of thing, too.

**Mr Rowlings:** One of the issues with that is in our next recommendation. We can't talk about this because we don't know how often it happens. We are suggesting that the police be asked to record and report on the number of times they use that provision, which doesn't seem to be a terribly difficult thing to do. You can punch into a computer at the end of the year that you called out, "Move on!"—or whatever the code is.

**THE CHAIR:** They used to be. I am fairly well aware of the power. I recall that, when it first went in, it was the subject of a committee report. I sat on that committee. There was a compromise with your recommendation which got them to keep statistics—I can't remember if it was for one or two years. They certainly did that, and everyone seemed comfortable with that. I seem to recall that it was very labour intensive, so the Assembly disregarded the need for that. I am going back about 10 or 12 years.

**Mr Rowlings:** I think the computers now should be able to do that.

**THE CHAIR:** Basically that has not occurred since. I am not too sure how often it is used. Have you heard any concerns about the use of the power in the last, say, five years?

**Mr Rowlings:** No. We really want to get to the next one. We have concerns about this and we have direct examples of it.

**THE CHAIR:** Yes, sorry. Okay.

**Mr Rowlings:** The last recommendation is that the Emergencies Act 2004 should be amended to make it consistent with the Victorian model for evacuations and provide that a person may not be forcibly moved on or evacuated from any land, building or premise where that person has a pecuniary interest in that land, or goods and valuables thereon. This of course relates to bushfires and police powers under bushfires. It is a major

concern of ours that this has not yet been clarified in territory legislation or in the rules and procedures of operations of the bushfire brigades and the police.

During the last major bushfire problem that we had a couple of years ago this was a huge difficulty, and it has not yet been resolved. We think that the right authorities in this instance are the fire authorities and that the police, who are not experts in fire behaviour, should not have the power to remove people if people choose to stay there of their own free will. This is something that we really think is a major issue that needs addressing before this fire season.

**DR FOSKEY:** That is a good point.

**THE CHAIR:** How would you see that? That is an interesting point, and you are right: there was a lot of controversy about that in the January 2003 fires. This is difficult because it is a life and death issue, but I see your point.

**Dr Klugman:** It is a problem of control and who is in charge. We would contend that, in this case, the fire officers have a much better understanding of fire behaviour than do police officers. In our view the fire officers' recommendation should be paramount but, if people want to stay and fight the fire on their own property, they should be allowed to do so.

**Mr Rowlings:** There are two issues there.

**MS MacDONALD:** So you are saying that move-on powers should not be allowed in any circumstance?

**Mr Rowlings:** We wouldn't express it that way but that is the effect of it, yes. The police would not be able to order people to evacuate their own homes.

**THE CHAIR:** Police evacuation powers.

**MS MacDONALD:** That is what I mean—evacuations in the event of a fire. So people who want to stay behind and fight the fires can do so.

**Mr Rowlings:** At the moment people are committing an offence if they stay and fight for their own home.

**Mr Williamson:** Contrary to the commissioner's directive.

**THE CHAIR:** Is that in the new Emergencies Act?

**Mr Williamson:** No. The new Emergencies Act did not adopt the Victorian approach. There are a number of bodies. The Australasian Firefighters Association recommends that people be allowed to stay and fight fire on their own properties and the McLeod report recommends that they be allowed to stay and protect their own property. The Victorian legislation for the country fire authority provides that people are not to be forcibly evacuated from their own premises.

I can speak to this with personal experience because I have been a firefighter for about

seven years. In the 2003 fires I saw the police give people an order to evacuate and people were resistant. I said to the police officers, “I don’t think they should be going. I think they should stay and protect their houses.” Just about any firefighter will tell you that the accepted statistic is that, if someone stays and defends their home, the home has about a 92 per cent chance of surviving the incident.

With a number of those houses where I told the police, “Look, these people should be allowed to stay,” the police ignored my suggestion. I made it in the capacity of a firefighter on the ground. When I came back later, on subsequent days, those houses were burnt down. I am of the view that they would still be standing if they had taken my advice.

**Mr Rowlings:** The advice from all fire experts is to stay and fight it if you are prepared and you are physically capable of doing so but not if you are a 95 year old and can’t get around.

**MS MacDONALD:** What about the circumstance, though, where somebody wants to stay and fight and protect their house and they are not prepared and they don’t have the expertise to know what to do? What about them?

**Mr Rowlings:** The police are not in a position to make that judgment anyway.

**MS MacDONALD:** But what if they are given advice by fire officers that that person is not well prepared and is not capable?

**Mr Rowlings:** In that case, that would be fine. A provision of that nature would be fine.

**MS MacDONALD:** So then you are saying it is okay to for them to be ordered to evacuate?

**Mr Rowlings:** On the basis of fire, with somebody making a decision on the basis that they are not prepared and they are not capable, yes, if a proper authority makes that. The problem in these situations is that the police go in with no knowledge of fire behaviour at all. They are not trained for fire and they, to some extent, overreact because of the very heightened situation. When they are confronted with a fire, the only power they have to do anything about it is to evacuate people. That is all they can do. They can’t help them with water they can’t do other things so they naturally do that. That is contrary to what the fire authority want people to do and the advice they give them.

**MS MACDONALD:** That contradicts what you said a moment ago—that everybody should be allowed to stay and fight the fires if they so desire.

**Mr Rowlings:** And if they are prepared for it, et cetera.

**MS MacDONALD:** Yes, but I had quizzed if that was in all cases. I am suggesting to you that if a fire officer says, “This person is not capable of fighting the fire and they therefore should evacuate,” that either the fire officer be able to force the evacuation or direct the police to force the evacuation.

**Mr Rowlings:** In the circumstances you have raised, yes. There might be the need for

something of that nature where a proper authority who knows what they are talking about in relation to fire advises the police. At the moment the police are not advised by anybody with competence in fire behaviour. The general situation in Canberra—specifically in the ACT—is that just about every citizen who is threatened by fire, or likely to be threatened, now knows very clearly what they should do. The government has worked to achieve that. People are aware and almost certainly would be competent to fight the fire.

**MS MacDONALD:** I'd actually dispute that, but you know.

**DR FOSKEY:** Is that a broader issue of who takes control in an emergency?

**Mr Rowlings:** Kris raised that. That is a separate issue to what we are talking about. That is another issue but it is not this issue. This issue is that people should be entitled to stay and defend their own home if they choose to. That is the big picture. You might have to have some other things there.

**MS MacDONALD:** Look, I am not saying that there should not be the ability of those people who are capable of staying and defending their properties to do so. But, in spite of all the information and in spite of my position in this place, I would not feel confident in terms of fighting a fire if my house were threatened again, so I would take the advice to evacuate. But there are a number of people out there who would think that they are capable of defending their property but may not be, in spite of all the advice that has been around. That is my concern. I understand your point, but I also would suggest that there needs to be a clear chain in terms of who gets to make the final decision about evacuation and preparedness in that regard.

**Mr Rowlings:** Okay. What we are saying is that it should not rest with the police when it is a fire issue.

**MS MACDONALD:** I accept that.

**Mr Rowlings:** The rest are somewhat hypothetical but this one is not, as we know. We have a very good track record of what the problem is.

**THE CHAIR:** Basically, in summary, if there is a police officer there with a firefighter and the firefighter says, "Look, I don't think that person can defend their home; they should go," that is fine. I suppose if it was such a huge fire, a fire front which might look like taking out, say, an entire street, could you envisage the firefighter there saying to the police, "I don't think there is anything anyone can do about this street; get everyone out"?

**Mr Rowlings:** We would anticipate that, in that case, somebody at a high level would say, "We can't save that street," or, "We can't save that suburb; get everyone out!" That would be within the rules where we are suggesting the changes be made. But if people decide that they want to stay they should be able to do so if they believe they are prepared. That is what most other fire authorities around Australia recommend—and the Victorian one recommends that that is the exact model most use.

**THE CHAIR:** I thank the three of you very much, Mr Williamson, Mr Rowlings and

Dr Klugman. If we could get a copy of what you have under FOI, that would be of great assistance to the committee.

**JAMES DAVID MORRIS PREST** was called.

**THE CHAIR:** I need to read something, Dr Prest, before you start. It is a formal matter we tell everyone who is a witness before an Assembly inquiry. You should understand that these proceedings are legal proceedings of the Assembly and that you are protected by parliamentary privilege. It gives you certain protections and some responsibilities. The protection is against certain legal actions such as defamation for what you say here, which is probably hardly relevant for this type of inquiry, but you do have that protection. It gives you a responsibility to tell the committee the truth because giving false or misleading evidence will be treated by the Assembly as a serious matter. Do you understand that?

**Dr Prest:** I understand that, yes.

**THE CHAIR:** Thank you very much. Would you please, for the purpose of Hansard and the transcript, state your full name and the capacity in which you appear before the committee.

**Dr Prest:** My name is James David Morris Prest and I am a solicitor at the Environmental Defender's Office, which is an incorporated body in the ACT.

**THE CHAIR:** Thank you very much and thank you for the very detailed submission you gave to the Assembly. As you are well aware, we are looking at the issues of police powers and crowd control but specifically honing in on things like the use of capsicum sprays, tasers, et cetera. Thanks for your submission. If you would like to address that and then we will ask you some questions. Are there any comments you would like to put before the committee?

**Dr Prest:** Thank you. Perhaps if I could outline the role of the EDO and briefly what led us to the committee and to this inquiry. The EDO is a community legal centre, which operates on a not-for-profit basis. I am sure you have read some of this background already. Our role is to assist members of the community to be aware of applicable environmental laws and other aspects of public law which might be relevant to their right to participate in public life.

I suppose that some experiences with people seeking advice from us in relation to the use of certain powers by police drew our attention to the need to perhaps specifically safeguard particular rights of public participation by seeking to at least see whether the controls on the use of particular techniques by police were adequate in the ACT. And the two areas of concern for us were the use of pain-compliance techniques that might bring with them a risk of death or serious injury and the use of capsicum spray, which again may, in certain circumstances, lead to the risk of death or serious injury.

It is our understanding from the literature that we have provided to the committee in our detailed submission that certainly the use of capsicum spray has been associated with a number of deaths. There may have been, certainly in the United States, at least 60 deaths from the use of that spray. I am not qualified as a medical practitioner to go into that.

**THE CHAIR:** Over what period of time, sorry?

**Dr Prest:** I would say, from about 1991 to the present.

**THE CHAIR:** Thank you. Please continue.

**Dr Prest:** So our submission, I suppose, seeks to draw attention to the need to find some kind of balance between reasonable use of police powers in crowd control and to constrain perhaps the overzealous or overenthusiastic use of available technologies and techniques. And our concern there is perhaps that, if certain technologies and techniques are available, the temptation is to use them in circumstances that are not appropriate, particularly if there are not adequate guidelines in terms of regulations or instructions to police about the use of, for example, capsicum spray. There is a danger that police may see that they can use this technology as a means of intimidating people so that they will be more reluctant in future to participate in public gatherings. I suppose that is one of our concerns, particularly.

A couple of individuals have come to us for assistance. They were minors that had been sprayed by police at a demonstration on election day.

**MS MacDONALD:** This is the Manions?

**Dr Prest:** Yes.

**MS MacDONALD:** One of them was a minor; the other one was not.

**Dr Prest:** One of them was 18 years, and one was 16. Yes, I would like to correct the record there.

Our concern was that, in that situation, it seemed that that spray was used in a non-targeted way and in a circumstance where it was not a life-threatening situation for police. Perhaps they could have looked at using other alternatives there. The message would essentially get around to anybody who might be inclined to go to a demonstration in the future that there is a risk that they will get sprayed as well.

I think there is a risk that this stuff has a chilling effect on public participation and if it becomes a situation where police bring it out, particularly as we have described in our submission in relation to one particular weapon, which is effectively a semi-automatic launcher, it launches projectiles containing pepper spray onto an entire crowd. The objective there is to—

**THE CHAIR:** Sort of like teargas?

**Dr Prest:** Yes. It launches what are essentially ping-pong balls—I am not saying that they are ping-pong balls but a ball of a similar size—that can be fired in rapid succession at a crowd. And the result there is essentially that that chemical is applied in a non-targeted way to an assembled group of individuals.

**MS MacDONALD:** Are police able to use that at the moment?

**Dr Prest:** Do you mean in the ACT?

**MS MacDONALD:** Yes.

**Dr Prest:** I am not aware that there is any particular restriction, although this is not an area I have specifically researched the regulations or applicable guidelines, to say whether this weapon is allowed or not. I don't know. But if you have the opportunity to meet with the Federal Police, I would suggest perhaps it is worth asking that question.

**MS MacDONALD:** The minister will be appearing before us; so I might ask the minister about that.

**Dr Prest:** In the submission—I am just looking for the correct page but it is shortly after the article by Jude McCullough—there is an advertisement for the weapon that was used in Boston last year that led to the death of, I believe, a 21-year-old in an assembly after a baseball match. She happened to be shot in the eye with one of these projectiles and she died. The city of Boston had to pay out apparently more than \$5 million in compensation as settlement for a civil suit. If the committee just looks at it from the point of view of what is the potential economic liability to the territory associated with police being allowed to use this weaponry in the event that something goes wrong, that, to my mind, is a relevant consideration.

**THE CHAIR:** You mentioned the Manion case. Has that finished or is it still going?

**Dr Prest:** I understand that the matter is being investigated by the internal investigations division. I don't have any advice from them as to what progress they have made approximately a year later.

**THE CHAIR:** But did it go to court? Were there charges laid?

**Dr Prest:** We were not in a position to assist them. I believe they may have spoken to some people in private practice about pursuing that matter, but I am not able to comment.

**THE CHAIR:** I am just asking: did they appear in court and were they convicted of anything?

**MS MacDONALD:** No, there is an internal investigation.

**Dr Prest:** No, they were never arrested.

**THE CHAIR:** That is what I understood.

**Dr Prest:** They were never charged. They were just sprayed. The way it was described to me was that the police used the spray in a similar manner to the way you would spray a can of insect spray rather than a series of short, targeted bursts at the face of individuals.

**THE CHAIR:** I think you elaborated on the case in your submission very well, but there was no police case as to what they say happened. That was why I asked you had it gone to a tribunal or any sort of hearing where you have got one side and the other putting

their versions. That would enable us, I suppose, at least to—

**Mr Prest:** I certainly would not be misleading you to say that there were no arrests; there was no summons; there was no charge. So those individuals were not subject to any action by police. Certainly I believe they would have some rights to pursue some type of civil action. But that is up to them and to the courts to decide what would happen there.

**THE CHAIR:** In other words, in terms of what the police say happened, we would have to take that up with the police?

**Dr Prest:** Absolutely.

**THE CHAIR:** Because there is no tribunal where that has all been heard.

**MS MacDONALD:** We recently visited Tasmania and had conversations with them about the use of capsicum spray, tasers and guns with—

**THE CHAIR:** And restraining demonstrations.

**MS MacDONALD:** Yes, restraining demonstrations, controlling demonstrations generally. It seemed to us they had quite a strict set of guidelines in terms of the way they deal with demonstrations on the whole and the use of capsicum spray, et cetera. I was wondering, as the Environmental Defender's Office has put in a very extensive submission, whether or not the EDO had sought any meetings with the police to talk about guidelines or if they have any guidelines in place. I will, of course, ask the police what the guidelines are that they use with relation to capsicum spray, et cetera.

**Dr Prest:** Certainly.

**MS MacDONALD:** But I would be curious to know from the EDO's perspective.

**Dr Prest:** I suppose, as a result of our limited funding and the limited way in which this information is publicly available, for example, in terms of internet searches, it is not possible to obtain, say, police guidelines or instructions on the internet. We did not seek to obtain a detailed listing of what their current instructions are about the use of these sprays in terms of a response to a public gathering, no. But I think the committee would take that up with the police themselves.

But our office is only funded now to be open two days a week so that, for us to spend a large amount of time with the police—

**MS MacDONALD:** That is fair enough. It was a question. I thought you might have had some conversation with them. But I understand you are a part-time organisation so I am happy to ask the police questions about that.

**Dr Prest:** To our mind, it boils down to a question of this technology, capsicum spray initially. Our understanding is that it was initially introduced for the purposes of being an alternative to, say, lethal force in terms of firearms. The rationale was that this would be used in order to reduce the number of shootings by police of individuals. I can see that there certainly is a logic to giving police a range of options less than lethal force. Our

concern, though, is that, in a context where there is no risk to the life or limb of the police, they would still be entitled to carry this chemical weaponry to a political gathering.

Even from the point of view of risks to police, there is a danger that, for example, the spray may be taken from police if some scuffle developed somewhere and that the spray may be used against police. So from that point of view, I think that is another factor again.

**DR FOSKEY:** You refer in point 17 to the matters being investigated by the Commonwealth Ombudsman and the AFP's professional standards internal investigations division. Is that a joint investigation or are they two separate investigations?

**Dr Prest:** My understanding of the legislation, the Complaints (Australian Federal Police) Act 1979 or 1981, is that that legislation basically provides that either the AFP or the Ombudsman can accept a complaint under the act. However, if the Ombudsman's Office receives a complaint, the complaint is effectively passed on to the Federal Police for them to investigate. When I say that, it is a separate unit within the police, within the AFP. Then the Ombudsman's Office has the option of taking an oversight role in order to review the results of that investigation and to make its own comments about that investigation.

**DR FOSKEY:** It doesn't sound as though there is a huge enthusiasm and a great drive to complete this investigation, unless things have changed.

**Dr Prest:** As we said in the submission, it took seven months to even receive an acknowledgment that a complaint had been received and was being investigated. When I last spoke to the complainants—and again that would have been around the time of making this submission, so back in June—they hadn't been interviewed by the IID. My understanding is that normally IID would seek to interview people about what had happened. Some of the information that would be available—

**DR FOSKEY:** Is there somebody actively pursuing the Ombudsman? You said there were private solicitors for the victims or complainants.

**Dr Prest:** They have made the complainants aware of the existence of this inquiry. I have advised them, if they wished, to contact you. I am not sure whether they have. That is perhaps an option that could be taken up. I could facilitate that contact perhaps between the committee and those complainants.

**DR FOSKEY:** It is a question, I suppose, in part, of how public they want the case to be.

**Dr Prest:** Yes. I suspect they didn't hold a great amount of confidence in the complaints investigation system to produce a result that would show that there was any concern about what had happened. Principally, my concern was that, from the description of the events on the day, there was some kind of scuffle that might have broken out. But I didn't understand that there had been any kind of situation that would warrant the use of that type of force. The complainants were taken to hospital, as I am sure you are aware.

**DR FOSKEY:** Yes. We had a submission from the human rights commissioner that relates to the terms of reference of the inquiry itself, which indicates, as you do, that the Human Rights Act allows the right to peaceful assembly and freedom of association. I wondered about the role of the human rights commission in a case like this.

**Dr Prest:** We pass the information on to Dr Watchers. There was some electronic communication about this matter, but my understanding is that the Human Rights Office are limited in their powers. In terms of the Assembly reviewing the role of the Human Rights Office and its ability to look into matters like this, it seems to me and to the EDO to be the case that the Human Rights Office was not in a position to investigate this because they don't specifically have a power to take complaints and investigate them. So to the extent that they have been involved, you would have to take it up with them.

In the limited time that I have left, I direct the committee's attention to our specific recommendations in relation to the use of capsicum spray. We are looking at a moratorium on the use of capsicum spray in the crowd control situation. There are risks associated with violation of human rights protected by the Human Rights Act by the use of this chemical weaponry.

We make a number of recommendations at point 61 where we talk about proportionality and say that these are fairly self-evident propositions; that the amount of force that is used should be proportionate to the threat posed to the police; and that they should begin at the lowest levels of force possible. And they will be in a position to predict what is going to happen because usually there is some communication between people and the police force prior to events happening; so it is possible.

I suppose one of the points that we make in the second last dot point here is that people might have pre-existing medical conditions that police would not be aware of. For example, for asthmatics or people with certain particular issues with cardiac and respiratory problems, there is a risk there that significant harm could be done to them. Police would be unaware of which people had, I suppose, a pre-existing vulnerability. To our way of thinking, there is a real risk there.

We can see the use of capsicum spray in the situation where, say, police are being threatened by people with knives or guns. But in a situation where people are merely gathering and perhaps even resisting police, it seems to be an entirely different factual situation.

Going to the second part of our submission, which related to the use of—

**THE CHAIR:** Just before you do: I understand a lot of those recommendation are enshrined in police regulations already and certainly understood in courts, at least in common law if not even perhaps provided for in some of the statute law—minimal use of force, such force as is reasonable, those sorts of things.

**Dr Prest:** All I can say in relation to that is that, if those guidelines are in place already, they don't seem to have been effective to prevent that situation that arose in October last year. Perhaps there is a need to reinforce that message in the minds of police.

I was about to draw the committee's attention to the sections of our submission on pain-compliance techniques. And while we can see that there is a context in which police are certainly entitled to use these techniques, there are also situations where it was drawn to our attention that certainly in the early 1990s police had used these techniques against political demonstrators—a situation where, for example, even people in a sitting position, in what would be described as a sit-in demonstration, had been subjected to techniques, particularly the mandibula-angle pressure. And the expert evidence that we had obtained from the Ombudsman's Office, which is included in attachments to our submission, suggested that there were potentially quite serious health risks associated with the use of those techniques.

Our submission is simply that we would request that the committee inquire of police as to whether, in the ACT in relation to political gatherings and demonstrations, there is a restriction on the use of pain-compliance techniques above the line of the neck.

**THE CHAIR:** In relation to paragraph 82: I was well aware of that because I went out and saw it. The police at that demonstration were attacked with some pungie sticks—nails in things were being used. It was a fairly violent protest; it went for several days. On occasions there were quite a lot of injuries suffered by the police; demonstrators also rushed police lines and things.

I don't know if that is probably the best example you could use because my recollection of that is that, if anything, the police were greatly outnumbered and might have been acting in self-defence. I am not sure what crowd control gear they had; I just recall there being not many police, under strength. I don't know what sort of gear, if any, they had. I do recall pictures in the paper of implements used by people in what was a pretty violent demonstration. Certainly quite a few charges were laid. The matter has ended up in court.

**Dr Prest:** There were a wide range of people and a wide range of approaches to political protests that were used at that demonstration. Don't take my word for it; have a look at the Ombudsman's report on the subject. She certainly came to the conclusion that there had been some excessive use of force by police.

**MS MacDONALD:** And it was widely condemned, as you have said. It was widely condemned in Victoria as well. It became a big issue in Victoria, especially around the time of school closures. There was the issue around school closures. Peaceful protesters who were not bearing any form of weaponry had these techniques used against them.

Obviously there is the case of the Manions, where there is an issue. Apart from that issue, would you say that, in the main, things generally run reasonably smoothly?

**Dr Prest:** It is perhaps just a matter of time, I think, until the next thing happens. Perhaps if there is a large gathering of people protesting against certain changes to industrial relations legislation and police feel, for whatever reason, threatened by that gathering, there seems to be a good likelihood that perhaps they would be tempted to use capsicum spray or these particular types of pain-compliance techniques against that type of gathering.

Quite apart from the potential economic liability to the territory associated with

a compensation payout to settle a civil action as a result of excessive use of force, it is a question of whether we want to have that type of society where the only people who are willing to go to a public gathering are people who are willing to be sprayed with capsicum spray. My personal point of view is that I don't want to see our territory going in that direction.

**MS MacDONALD:** I agree and I take the point that has been made by Civil Liberties Australia as well in terms of it being important to have the protections in place so that those things don't happen. And my question was a little bit vague there. Would you say that there have been many issues to which have you have been alerted? You have referred to the Manion case and the case of NAIDEX, but it wouldn't be a regular occurrence that the EDO or other organisations would become aware of this?

**Dr Prest:** No, I can't say that this has happened on a regular basis but we thought it was potentially serious enough that people who hadn't been arrested or charged with anything were sprayed and ended up having to go to hospital and the police, from the description that was given to me, didn't offer any assistance for at least the initial 10 minutes or so. It took 45 minutes for an ambulance to arrive. That is the way the situation was described to me.

**MS MacDONALD:** Can I just say for the record that that concerns me as well. On my reading of the case, I am concerned about the use of capsicum spray as is related here. Of course, I would like to ask the police questions why and have their point of view put forward as well. Obviously that may very well interfere with their internal investigation. I don't know whether or not that is what they would say. I am straying from the point, though. I agree that we need to have the protections in place. I suppose I was asking the original question because I was trying to gauge the level of occurrence and not to take away from the seriousness of it, even if there are few occurrences of it happening.

I also note the suggestion that, any time there is an incidence of the use of capsicum spray or tasers or anything else, there should be a record kept of that and why it happened. There should be extensive training given for the use of all of those.

**Dr Prest:** Yes, and that is why in our submission, in point 63, we set out a number of specific recommendations about monitoring of the use of this by police for less than lethal weapons so that then the committee would be in a position to come to its own judgment about the frequency of use of these options by police. It might be necessary to have those statistics broken down so that there is a distinction between the types of situations in which the spray or other technologies have been used.

**MS MacDONALD:** I am curious to know if they are keeping those records in the first place.

**Dr Prest:** Obviously you will have to ask the question of them. Part of the broader context of our work is to participate in terms of other broader issues like, for example, the current review of the Land (Planning and Environment) Act. So it is probably important to keep in perspective the role of the Environmental Defender's Office and what it is more related to. This is not an organisation that is solely devoted to monitoring the use of police powers. Our main job is to assist the public to participate in terms of discussion about planning and environmental law in the territory and the surrounding

region in New South Wales and the commonwealth environmental law.

**DR FOSKEY:** Thanks very much for drawing this incident and issue to our attention because, if you hadn't, we wouldn't be having this inquiry, for a start. I do realise it is not your main field of work. If you hadn't acted, then it wouldn't be on the public record at this point anyway. So that is good.

You have got an excerpt there from Kylie Manion's statement. I think you indicate that the full statement would be available, but I can't see it. I am just checking with you that you do have it and that you could make that available to us.

**Dr Prest:** Part 1 of the question: we do have it. Part 2: I would need to perhaps make some further inquiries and judgments about whether it may be appropriate to provide that to the committee.

**THE CHAIR:** That is a fair comment.

**DR FOSKEY:** I think you do say that we should have a look at the full statement.

**THE CHAIR:** In fairness, too, we probably need the police statements. That might create a problem. If you provide a statement that says one thing and—

**DR FOSKEY:** You say that a full copy is attached to this submission. That is why I am looking for it.

**Dr Prest:** Yes, I can have a quick look. It is a number of months since I put the submission together. I may have made a last minute judgment which related to perhaps wanting to ensure that we hadn't in any way trespassed on the role of the Ombudsman or the internal investigations division.

**THE CHAIR:** My committee secretary mentions that you have named a police officer in the statement. There may be a problem with that. We will probably have to take advice from the Clerk on that.

**DR FOSKEY:** Advice will be taken on all sides, by the looks of it. Finally from me: at point 57, you talk about the peculiar arrangements between the ACT government and the AFP in terms of hiring police services, et cetera. It raises questions, I guess, as to what extent the government can impose certain operational procedures or ask for—

**Dr Prest:** My understanding is that obviously the day-to-day operations are at the discretion of police but that the Chief Minister or the minister for police is in a position to issue general directions to the AFP. I suppose, again, the principle is that the ACT has contracted the AFP to provide that service to the territory. So it seems logical that the territory could suggest some guidelines and conditions on the provision of that policing service to the community.

My understanding is that the chief police officer for the ACT, in paragraph 58, is responsible to the ACT minister to achieve the objectives set out in the purchase agreement. The minister is enabled to give general directions in writing as to policy, priorities and goals of the government in relation to police services. That is where we are

suggesting that the minister for police might go in terms of issuing a specific but yet general direction in relation to capsicum spray and other techniques.

**THE CHAIR:** Any further questions? Dr Prest, thank you very much for your assistance to the committee.

**Dr Prest:** Thank you for the opportunity to appear.

**SIMON JACKSON** was called.

**DR FOSKEY:** We haven't authorised the submission from VOCAL.

**MS MacDONALD:** No, we can't authorise it yet.

**Mr Jackson:** I have to apologise on behalf of VOCAL. I have been busy.

**MS MacDONALD:** That is okay. You can still speak to us.

**Mr Jackson:** As I understand it, my instructions are that VOCAL have sent the latest copy, meeting the requirement, to your colleague's email address.

**MS MacDONALD:** Mr Jackson, I am sure we will be happy to hear from you. If you address the issues, that is fine. And we can then deal with the submission, the final submission, when it comes in.

**Mr Jackson:** Sure.

**THE CHAIR:** Thank you, Mr Jackson, for attending. I need to read out the normal caution I read to everyone who attends before an Assembly committee. You should understand these hearings are legal proceedings of the Assembly, protected by parliamentary privilege, which gives you certain protections and certain responsibilities. The protections basically are that you are protected from certain legal action such as defamation, being sued for defamation for what you say at the public hearing. It also means that you have a responsibility to tell the committee the truth because giving false and misleading evidence will be treated by the Assembly as a serious matter. Do you understand that?

**Mr Jackson:** Yes, I do.

**THE CHAIR:** Could you please, for the record, state your full name and the capacity in which you appear in front of this committee.

**Mr Jackson:** Yes. My name is Simon Jackson. I am a committee member of the managing committee of VOCAL, Victims of Crime Assistance League.

**THE CHAIR:** This particular inquiry is into police powers of crowd control. There is another inquiry in relation to sentencing. I note you have done a submission on both. It has been sorted out. That is fine. Once the technicalities are done we will approve that for publication.

Thank you for appearing. This inquiry, of course, is into police powers of crowd control and specifically, as I think you might have heard from the last speaker, it relates to things like the use of capsicum spray, taser guns, physical restraint by police of demonstrators and those types of issues. If there are other areas you want to address, that is fine. The Council of Civil Liberties did that too. Are there any comments you would like to make at this stage? I note we do have something in writing here, even though it hasn't been authorised yet. If you would like to address the issue, please refer to any notes you have

got.

**Mr Jackson:** Sure. VOCAL is an organisation that is basically funded by the Department of Justice and Community Safety and from donations as well, to assist the victims of crime. Essentially, as our name says, we basically assist victims and try to help them to resume a more stable mental and physical capacity. And that is primarily how we are presenting our submissions—from their perspective as well as our organisation's.

In relation to the police powers of crowd control, VOCAL has a view that, in order to maintain a society that allows freedom to demonstrate and freedom of expression, it also must maintain a balance with the protection of the community. Basically, VOCAL has itself, at times, used public demonstrations to bring its message to the community.

Our position is that we are not denying that public protest or public demonstrations should be banned. However, VOCAL does believe that public crowds can indulge in criminal activities and police should have the power to deal with any large group of people who are engaging in criminal behaviour. It is the view of VOCAL that, if senior police in the AFP believe that the existing legislation is not sufficient for them to be able to fulfil their responsibilities to the ACT community, they should be granted necessary powers to act in certain situations and emergencies.

**DR FOSKEY:** How do you want to proceed? I would like to ask you a question about that. It seems to me that that view could contradict your point 1.1 which expresses the view that freedom of expression and freedom to demonstrate are something that is important. I think you are saying that. But then you seem to express here a willingness that if the police, alone—you just said “if they believe”—believe that the legislation isn't sufficient, the government should grant necessary powers to act in emergencies. But that doesn't take into account human rights implications.

**Mr Jackson:** Basically in 1.1 we talk about a balance. Unfortunately, due to what has been said—if I can expand on that—what we mean is that on one side citizens have a right to have a freedom of expression, whether that is in public demonstration or not. However, we also need to balance that as a protection to the community.

As you can see in 1.2, we talk about large groups of people engaging in criminal behaviour. Unfortunately, criminal behaviour is a pretty amorphous term. But I would say that basically, if the AFP believe that a public demonstration is going to cause danger to the community, then it should have the powers to prevent that happening. I am not saying it should have the power to basically step on any public demonstration whether it is peaceful or what-have-you, but VOCAL's position is that the AFP should have the powers and the discretion to use those powers in order to maintain peace and safety to the community.

**MS MacDONALD:** So where do you draw the line, Mr Jackson?

**Mr Jackson:** It was quite interesting—

**MS MacDONALD:** When does a peaceful demonstration cease to be a peaceful demonstration?

**Mr Jackson:** When an individual is being threatened with injury is one. Property destruction is another. Again, though, they are general terms. There are limits, I guess, when the police can use powers. Again, it is often at the discretion of the police officer at the time who is making that decision.

**MS MacDONALD:** Does a peaceful demonstration in the opinion of VOCAL and/or you cease to be a peaceful demonstration if the protestors start yelling abuse at the police officers?

**Mr Jackson:** No. I believe in that situation, no. But if the protestors start throwing Molotov cocktails or stones, or start brandishing weapons and start attacking police or other individual members, then the police have the right to go in and protect themselves and members of the communities who are threatened with violence. If it is merely a verbal demonstration, then I cannot see why the police would use aggressive powers in that respect. However, if it does become aggressive, such as basically damaging property or things are getting thrown and police officers are under threat—

**MS MacDONALD:** I think it is fairly clear that it is no longer a peaceful demonstration if Molotov cocktails or stones are thrown, but is it no longer a peaceful demonstration if the demonstrators use passive resistance, sit on the ground, refuse to be moved and put themselves in front of, say, bulldozers that are trying to knock down some trees?

**Mr Jackson:** Again, I guess it depends on the situation. If those people are hindering something that is of critical danger to the community, such as if they put themselves in front of nuclear waste that is being transported, then the police might argue that there might be a danger leaving a truck full of nuclear waste out in the middle of a public street.

**MS MacDONALD:** Let's leave that alone because we don't have too many trucks of nuclear waste come through Canberra; so that is not an incident which I am particularly concerned about occurring. Let's take the incidents of the Gungahlin Drive extension. My views on the Gungahlin Drive extension are on the record. I believe that it should go through but I also believe in the right of people to peacefully protest. And that may very well mean people locking themselves to machinery. Is it no longer, in your opinion, a peaceful protest if people, which did happen, lock themselves up to machinery or to the ground, which also happened?

**THE CHAIR:** I don't think anyone is complaining about how the police behaved in that situation, which was to cut them free and just move them.

**MS MacDONALD:** No. I have a point in asking that. My point is: where do you draw the line? Nobody has complained about the way the police behaved in that situation. What Mr Jackson is saying is that it is at the police discretion. What if the police decided—and it has happened in the past in other jurisdictions, where people have locked themselves to bulldozers in order to stop forests being deforested—to act? In your opinion, is it then no longer a peaceful demonstration and are the police within their rights to use force in order to remove the demonstrators?

**THE CHAIR:** I get back to the point here: the police did use force to remove the

demonstrators but it was obviously reasonable force. It is sort of subjective.

**Mr Jackson:** Yes, I understand because, again, in—

**THE CHAIR:** I don't think anyone argues the police shouldn't be able to use reasonable force.

**MS MacDONALD:** Yes, that is right, but it comes down to the definition of what is reasonable and when does it become an overreaction. Had they used capsicum spray in that instance, would that have been reasonable?

**Mr Jackson:** I understand what you mean, because we are coming down to how do we define what is peaceful and what isn't. We are also defining what is reasonable and what isn't reasonable. In those situations I don't think VOCAL can really give you a clear answer in that respect. However, what I think VOCAL's position would be is that there would be an overview of what happened. In those situations, whether the police acted reasonably or not would be determined, I guess, by a review process that would either be internally handled by the police or handled by an inquiry.

**MS MacDONALD:** We are looking at these issues and I have a desire to ask the police a number of questions. My concern is: are police making the decisions on the run and making decisions sometimes inappropriately? Maybe it is up to us as legislators or those people who are—I am not a police person; you would know the right title—the heads of the police, the powers that be within the AFP, to have the guidelines, the framework, in place in order to avoid excessive use of force.

**Mr Jackson:** Again, I guess, the situation is that, if mechanisms are in place to overview the actions of the police either through internal police or through an oversight committee handled by the Legislative Assembly, that is the best thing. I think VOCAL's vision is that that would be the best thing to do. The decision as to whether or not a protest has got out of control and whether it has become violent and whether or not there is a threat is, I think, down to the decision of the people on the ground, with whoever the commanding officer is having the information that he needs to make that decision. Of course, that commanding officer will be responsible for whatever consequences come from that. And that can be examined in a review internally or publicly—

**THE CHAIR:** According to the law?

**Mr Jackson:** According to the law or according to whatever the oversight committee believes is correct.

**MS MacDONALD:** Do you not think, though, it would be useful and in the interests of the police officers as well as those people who are in a protest situation to have guidelines in place?

**Mr Jackson:** I believe so, but we have been bantering this question around now for five or 10 minutes—whether or not you can put clear procedures in place that are going to measure every step a police officer must take; whether or not you give them guidelines and that basically what happens is they have to make the decision on the spot and are responsible for that decision, and that decision will be reviewed internally or externally.

That would be an easier way of managing it, rather than constraining a police officer, I believe, in a situation where he is deciding whether or not something has got out of control. If something has happened and it turns out in the end that he overreacted, then obviously the oversight committee or the review process would point that out and due punishment or consequences would be made of that.

**THE CHAIR:** Thanks for that. We are yet to find out from the police the exact guidelines that they will operate under. Are there any other points you wish to raise? You raised abuse of power.

**DR FOSKEY:** Could I ask a question about that topic as well. In 1.3, you say that police behaviour is under close scrutiny from a number of quarters and that there are existing mechanisms which prevent the misuse of power. First of all, which are the quarters that there is close scrutiny by, and do they have any power? Secondly, we do know that there can be incidents. They are not always prevented. There may be mechanisms but they don't always work. That is a question about that. Then in 1.4 you mention an incident in Narrabundah but I don't believe it is quoted above. You say "such as the one quoted above".

**Mr Jackson:** It is not quoted under the police powers of control; it is quoted in the sentencing structure, though.

**THE CHAIR:** It is something else, is it?

**Mr Jackson:** Yes, they refer to an incident in the sentencing structure.

**THE CHAIR:** They are redoing their submission.

**Mr Jackson:** Yes. I do apologise for that.

**DR FOSKEY:** Fine.

**Mr Jackson:** If I can again address the first issue about the mechanisms in place for police behaviour: I think it is an important thing that there are mechanisms in place for police behaviour. If you look back in history—I am not saying all totalitarian states are like this—any totalitarian states really don't have mechanisms to overview the police other than the central power.

In this situation, at least a citizen can complain to the commonwealth Ombudsman for the behaviour. I do note that, in other submissions, they talk about an incident where a brother and sister were capsicum-sprayed and that the commonwealth Ombudsman has received their complaints. However, there is some dispute about the speediness of the investigation. At least there is a mechanism in place for a citizen, if they believe they have been abused by police activity, to complain. Whether or not that needs to be modified or whether or not the commonwealth Ombudsman needs to have more powers or at least better procedures in place, I guess, is the next step that we need to look at. But at least a person has a right to go and complain to an outside body—that is, the commonwealth Ombudsman—although I do note that the brother and sister have complained to the internal police complaints section as well.

**DR FOSKEY:** Through the Ombudsman.

**Mr Jackson:** Yes, through the Ombudsman.

**MS MacDONALD:** I think they made the complaint to the Ombudsman and the Ombudsman referred it straight to the police and then didn't take it any further.

**Mr Jackson:** One of the things that I find in my experience—I have got to let the Assembly know that I am a solicitor; I deal with criminal matters and civil matters as well, but that is not the capacity in which I am here representing VOCAL—and I do note is that basically I have had clients comment on their frustration that they do complain to the commonwealth Ombudsman and that nothing happens; that they don't hear anything more about it. But at least they have got a starting point. I am saying, "Sure we need to improve on that but at least they have got somewhere to go." Ultimately, if a person who has been abused by the police is often not happy with the complaints, they can always take a civil action, if they need to, against the police.

**MS MacDONALD:** At what cost?

**Mr Jackson:** That is the interesting thing, isn't it? They can apply for legal aid if they don't have the affordability to take it. It is an option there that they can take.

**MS MacDONALD:** They can apply but whether or not they will receive the legal aid is a question as well.

**Mr Jackson:** That is a question with legal aid.

**THE CHAIR:** If they win they have their costs paid.

**Mr Jackson:** Yes.

**MS MacDONALD:** I think the suggestion is that legal aid probably wouldn't fund something like that. Given the comments that legal aid have made to us in the last 12 months that they haven't had an increase in their funding for a long time, that is another issue.

**THE CHAIR:** The courts themselves are a protection, though, for people. I take it you appear in court?

**Mr Jackson:** Yes, I do.

**THE CHAIR:** Certainly I would imagine you would have seen on a regular basis, both in the Magistrates Court or the Supreme Court, complaints being taken very, very seriously; questions asked; and complaints gone through in the course of evidence before either a magistrate or a judge.

**Mr Jackson:** Yes. I do note Ms MacDonald's comments that there are people in the community who have not the financial capability of taking the police to court. However, again it is something that would probably need to be addressed. I don't know whether or not this is the right place to talk about it. Like I said, legal aid would be the first port of

call for someone who cannot afford their own form of legal action. But, again, as is noted, legal aid is not exactly enthusiastic in granting aid in situations, especially of a civil nature.

**THE CHAIR:** I understand. I want to ask you something in your capacity as the representative of VOCAL. So wear your VOCAL hat. It is good you are appearing before the committee, too, as a practising solicitor who actually appears in court. So I ask you from that angle, too. But firstly from VOCAL's perspective: my experience is that VOCAL is mainly people who have been traumatised through criminal activity caused by criminals.

**DR FOSKEY:** But it could be by police action, too.

**THE CHAIR:** I am saying also some people might be annoyed by or disappointed by the action that police have taken in relation to their matter. I would imagine on occasions you would have some victims there who might have been quite traumatised by the criminal action but also by some aspect of the police involvement. Have you had, in relation to VOCAL, anyone complain or be unhappy in relation to the police powers of crowd control, specifically in relation to any demonstrations where people have been unhappy with the police?

**Mr Jackson:** To the best of my knowledge, no, I haven't. I have not heard of any.

**THE CHAIR:** That is in your VOCAL experience?

**Mr Jackson:** Yes. I haven't been instructed or I haven't been informed of any incident where we have clients who have complained about police behaviour during public demonstrations or their exercise of crowd control. The majority of our clients are individuals who are victims of another individual's actions, like burglary.

**THE CHAIR:** That is probably a better way of putting it than how I put it.

**Mr Jackson:** We really don't come across that much about police abuse of powers per se.

**THE CHAIR:** Wearing your solicitor's hat—how long have you been practising in the territory?

**Mr Jackson:** Three years.

**THE CHAIR:** In those three years, wearing your solicitor's hat, have you received in your professional capacity, any instances of complaints by clients in relation to police abuse of powers during crowd control situations?

**Mr Jackson:** In crowd control situations, no, I haven't, in my experience.

**THE CHAIR:** Be it demonstrations or just general crowd control?

**Mr Jackson:** But then again, I have never represented clients who have been charged with offences in crowd control situations, who have been charged in public

demonstration. I would say no, but I qualify that no with—

**THE CHAIR:** Okay, but you have represented a large number of clients, I take it, who have been charged with other offences—

**Mr Jackson:** Yes.

**THE CHAIR:** —not related to crowd control, demonstrations or anything?

**Mr Jackson:** No, none relating to crowd control or demonstrations.

**THE CHAIR:** Is there anything else you would like to add? This is a fairly narrow inquiry.

**Mr Jackson:** Yes, I understand. I also understand that you have had many, many, submissions.

**DR FOSKEY:** No, not that many, on this subject.

**THE CHAIR:** A couple of big ones.

**MS MacDONALD:** They were quite big ones.

**Mr Jackson:** Like that 22-page submission. We have also received copies of other submissions.

**MS MacDONALD:** There is one that is bigger than that.

**Mr Jackson:** Is that the Environmental Defender's one?

**THE CHAIR:** Yes.

**Mr Jackson:** Yes. That one is quite interesting. Basically, we have got our third submission, which is the reduction of victims of crimes and offenders. If I can just read it out to you.

**THE CHAIR:** Please.

**Mr Jackson:** Having the Crime Prevention Powers Act 1998, in our opinion, helps to prevent crime occurring, which in turn lessens the extent of traumatisation to individuals and hence promotes a healthier and safer community. A question could, in fact, be asked as to why it should only apply to violent conduct. Any criminal conduct should be deterred, such as, basically, shoplifters and persons known to engage in provocative acts of vandalism, planning a raid on a business or any other such activity.

If I can expand on that: what we are trying to say is that violence isn't the only form of crime that a victim can suffer emotion or trauma from. Often, again putting on my lawyer's hat, I have come across experiences or reading of victim impact statements where they talk about an emotional impact where they are just simply a victim of burglary or their car gets stolen.

I believe VOCAL's position is that we believe that basically victim impact statements should also expand upon and include people who have suffered loss through property, because our contention is that they also suffer trauma and emotional hurt. I guess that is the first thing VOCAL would like to put across.

The last point is that police powers and citizens' powers, citizens arrests, for example—such diverse groups—can act as a preventative measure for members of the community who often long to retaliate, who perceive a lack of safety and control over their freedom to enjoy their activity without being hindered by offenders who take control of the environment. I guess what we are trying to say there is that we often find that victims feel that they are powerless.

Granted that the Narrabundah example, which is more expanded in the sentencing part of our submission, is that often the victim finds that basically they complain to the police; the police come in and arrest the offender; but the next day the offender is back out on the street and often is continuing the harassment of the victim; often the victim complains to the police; and their view is the police don't do anything. So they come away with a perception that the police don't really care about these situations and often they show their frustration to that effect.

**THE CHAIR:** That insight might not be fairly relevant to crowd control, but that related to an incident at VOCAL, with one or two offenders causing damage to employees' cars?

**Mr Jackson:** Yes. We are not really allowed to talk about specifics, are we, in this hearing?

**MS MacDONALD:** You can't mention names.

**Mr Jackson:** Okay.

**THE CHAIR:** You can't mention names.

**Mr Jackson:** The extent was that a car was burnt and destroyed by fire and a house was also set on fire. That was the maximum extent; that was not the only form of harassment that allegedly occurred with these offenders. But what seemed to be the biggest frustration with the victims—and I am not just saying the victims of the car and house; apparently the whole shopping complex because VOCAL is across the road from a shopping complex—the majority of the shop owners also expressed frustration that these offenders were arrested by the police; the police did put on a police blitz; but after the police blitz was gone the offenders came back; and the whole situation returned to what it was before.

**THE CHAIR:** You are right; that is probably more relevant to the next inquiry more than the crowd control.

**Mr Jackson:** Yes, it is.

**THE CHAIR:** I wanted to make sure that the committee knew of the incident. I received some correspondence in my capacity as a member, as did Mr Pratt. I was wondering if

you were talking about that incident.

**Mr Jackson:** Yes.

**THE CHAIR:** Which is not a crowd control incident.

**Mr Jackson:** No, it's not.

**THE CHAIR:** Thank you for that. Are there any further questions of Mr Jackson? No. Thank you very much, Mr Jackson. We will sort out the formalities with the joint submission. The committee secretary will do that. Thank you very much for your assistance to the committee and your attendance here today.

**Mr Jackson:** Thank you very much.

**The committee adjourned at 3.14 pm.**